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# How to Hire and Fire: A Global Guide

2014 Edition

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## 2014 Edition

Edited by Jon Heuvel, Global Chair, Multilaw Employment Group

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# About Multilaw

Business and corporate relationships frequently embrace ever-changing combinations of nations, continents, cultures, languages and laws. Performing effectively in this complex, global environment demands expert legal advice you can rely on. Multilaw encompasses over 8000 lawyers in more than 150 commercial centres around the world. Our priority is to help our members deliver the best possible client services in every situation.
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## Using this e-book Guide

This e-book is divided into chapters by country, listed in alphabetical order. In the case of a federal country (eg USA), there are separate chapters covering the individual state jurisdictions as well as a chapter covering federal law itself.

We hope that this e-book is easy to navigate. If you get stuck, please refer to the notes below. Clicking on a country/jurisdiction in the list of Contents will take you straight to the corresponding chapter. Alternatively, you can navigate around the book by electronically "flicking" through the pages.

If you would like to contact the author of a chapter directly, click the individual's name at the top of the relevant chapter to open a blank email addressed to the person, ready for you to complete and send with your enquiry.

To find out more about the member firm in any particular jurisdiction, please click on the firm name (which is both at the top of each chapter - underneath the author's name - and again at the end of each chapter) and you will be directed to the firms's website.

Clicking on the "home" logo at the top of each page will take you straight back to the contents page."

# Preface

**Jon Heuvel, Global Chair, Multilaw Employment Group**

Almost 9 years ago, members of the Multilaw Employment Practice Group from around the world decided that they wanted to demonstrate their ability to join forces and work together across the jurisdictional divides, on a single project. The result was "How to Hire and Fire in 76 Jurisdictions", a hardback book with over 600 pages, published by Kluwer Law International in October 2005.

Given the success of our first effort, we agreed that we should produce further editions of the international handbook to keep it up to date. However, as we wanted to retain greater control over the whole process, we decided to "go it alone", and parted company with the publishers. By this time, Multilaw had grown – it had more member firms and covered a greater number of jurisdictions than it had done in 2005. We also wanted to have the ability to cover the topics in a bit more detail, but we were now looking at having to produce the book in 2 volumes, which we wanted to avoid.

We returned to the drawing board. This e-book represents the culmination of our efforts. Some 75 different law firms, encompassing between them over 8,000 lawyers spanning the globe, have participated in the project.

The purpose of this e-book is to provide the reader with a quick overview of the rules and regulations governing the employment relationship around the world. It is aimed at directors, in-house counsel and senior HR staff in businesses operating in the global marketplace to help them gain a general overview of the employment legal framework in around 100 jurisdictions.

Although the information published is complete and represents the law as at **1 January 2014**, this e-book is not intended as a substitute for obtaining detailed and relevant legal advice in relation to any particular case. Readers are encouraged to contact the contributors directly for answers to more specific questions.

As general editor, I must give credit to the many hundreds of hours which my Multilaw colleagues from around the world have spent in compiling the individual chapters. They have had suffer my continuing demands and unreasonable deadlines, and have tolerated my amendments and edits to their original texts with unstinting good grace. Where errors have crept in to the final copy, I am entirely to blame.

I must also give particular thanks to my own team, particularly my loyal PA, Ann, who has worked tirelessly behind the scenes to co-ordinate the operations – without her, this latest edition of our e-book would never have seen the light of day.

I sincerely hope that this e-book will be of benefit to you, and that you will find it a quick but practical guide providing to everyday labour and employment concerns.

London

May 2014

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# Argentina

# Argentina

**Alejandro Mao**
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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are specialised courts that have jurisdiction on claims between employers and employees ("Fuero Laboral"). Different rules apply depending on the place the claim is filed.

### The Main Sources Of Employment Law

The main sources of employment law are "Ley de Contrato de Trabajo" or Labour Contract Law, other laws and decrees, labour ministry resolutions, collective bargaining agreements, individual contracts, company rules and regulations and, court decisions. There are further sources of employment law, such as the Constitution, International Treaties and custom and practice.

### National Law And Employees Working For Foreign Companies

Our "Ley de Contrato de Trabajo" states that Argentine law is applicable when it is enforced within our country. Therefore, national laws are applicable to all employees working for foreign companies within Argentina.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Parties can agree to maintain the application of national law but the application is not automatic.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no formal requirements as to the hiring agreement

### Mandatory Requirements:

#### Trial Period

The labour law establishes a mandatory trial period of three months.

#### Hours Of Work

There is a maximum of 8 hours a day or 48 hours a week. There are two exceptions:

Where an employee is engaged in unhealthy work (as defined by the Labour Ministry) the employee cannot work longer than 6 hours per day. Unhealthy work is similar to unsafe work.

Employees who work night shifts between 9pm and 6am cannot work longer than 7 hours.

#### Earnings

There is a statutory minimum vital and adjustable wage which is set by Government annually. In addition there are minimum wages set by collective bargaining agreements. The current minimum wage is ARS 3.600.

#### Holidays / Rest Periods

Employees are entitled to a minimum of 14 days holiday a year. This entitlement increases with each the year of service the employee completes. Employees are entitled to a maximum of 35 days holiday per year. Other holidays are included. Employees are also entitled to various compulsory daily and weekly rest periods.

#### Minimum/Maximum Age

The minimum age for a person to be employed is 18, although 16 year olds can enter into labour contracts with their parents' consent as long as they live on their own. There is no maximum age limit.

#### Illness/Disability

Argentinean legislation establishes a medical examination, which is mandatory for the employer before the employee starts working. Employees are protected by labour law and the period of the illness will be paid for a specific period

#### Location Of Work/Mobility

There is no requirement for an employer to specifically set out an employee's location of work/mobility.

#### Pension Plans

Contribution by the employers and employees to a pension plan is mandatory.

#### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

There are different rules regarding each case. In the case of maternity leave, women cannot work during the month before birth. Fathers are entitled to two days paternity leave after the birth/adoption.

#### Compulsory Terms

The employer must record the labour relationship in a special book and in the "Sistema Único de Registro Laboral" or Unique System of Labour Registration as set out by the National Employment Law. Also, the employer has to establish the level of pay, the hours of work, holiday entitlement, provisions relating to sickness or injury, provisions relating to pension and pension schemes, place of work, length of notice or anticipated fixed term, any collective agreements which apply and certain information regarding grievance and disciplinary procedures.

#### Non-Compulsory Terms

The parties are free to agree other non-compulsory provisions as long the agreed non-compulsory term do not contravene the law or collective bargaining agreements.

### Types Of Agreement

All employment relationships are eventually contractual in nature, whether or not the terms have ever been reduced to writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term, full-time, part-time or seasonal. The compulsory terms apply regardless of the type of contract contemplated.

There are discrimination laws which prevent employees from being treated less favourably than other employees because of working part-time or working on a fixed term contract.

### Secrecy/Confidentiality

Labour Contract Law establishes that employees are subject to a duty of fidelity/ confidentiality. Express agreements are used in particular cases regarding the activities or employee degree.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The employee's personal inventions are his own property, unless he is hired for investigation or research or the discovery is the result of industrial procedures, in which case inventions are the employer's property.

### Hiring Non-Nationals

There is a procedure to hire non- nationals. The company interested in hiring non-nationals should present immigration information to the relevant body in order to get an authorization to hire this kind of employee(s). The local company must file and obtain the authorization from de National Migratory Agency to act as "Foreign Personnel Petitioner".

### Hiring Specified Categories Of Individuals

Law for the Integral Protection of the Disabled states that it is the obligation of the State, public entities and public utility corporations to hire disabled people, who shall represent no less than 4% of the total staff. Private Companies which hire people with disabilities will have certain tax and provisional benefits.

### Outsourcing And/Or Sub-Contracting

In certain cases the law extends responsibility to the sub-contractor so that joint and several liability is established between the employer and the sub-contractor.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

Under Argentine labour law, the principle of "ius variandi" entitles the employer to make any necessary change to the contract of employment. Such changes cannot be arbitrary, modify essential provisions of the contract of employment or cause damage to the employee.

### Change In Ownership Of The Business

Where there is a change in the ownership of the business, the employees are automatically transferred to the new employer under the same terms and conditions as their previous employer.

### Social Security Contributions

Employers and employees are required to make social security contributions. Employers are also required to contribute towards allowances payable to employees during their employment. These allowances include sick pay, maternity pay and paternity pay.

### Accidents At Work

Argentine law provides for a special law called "Ley de Riesgos del Trabajo" or Labour Risk Law. This law provides for work-related accidents and illnesses. It is a specific law to regulate the periods in which employees do not work in cases of illness.

### Discipline And Grievance

The employer may enforce disciplinary measures on the employee. In the event that the act of the employee being subjected to disciplinary measures has resulted in harm that calls for the termination of the work relationship, the employer may dismiss the employee without compensation. Companies can use their own discipline and grievance procedures but these procedures have to be in accordance with labour law. The procedures have to be drawn to the employee's attention and easily available for them to be enforceable.

### Harassment/Discrimination/Equal pay

Labour Contract Law forbids any type of discrimination of employees due to sex, race, religion, nationality, political reasons, trade unions or age. The law does not provide for equal pay. There are no specific regulations in labour law which addresses harassment. However, the judges determine whether discrimination or harassment has taken place and they will apply the relevant penalties.

### Compulsory Training Obligations

Compulsory training is not specifically required although training should be provided and is implied by virtue of the general obligations that exist between the parties (principles of good faith, diligence and collaboration, proper conduct of the worker, etc.).

### Offsetting Earnings

Employers are allowed to offset employees' earnings but subject to a maximum of 20% of the total remuneration. In cases of alimentary debts there is no top rate.

### Payments For Maternity And Disability Leave

There are statutory provisions for paid leave in the event of maternity, accidents and illness.

### Compulsory Insurance

It is mandatory to enter into a contract of Life Insurance and hire the services of an "Aseguradora de Riesgos del Trabajo" or Labour Risk Assessment Bureau to cover accidents and illnesses at work.

### Absence For Military Or Public Service Duties

Compulsory military service has been abolished in Argentina since 1994. Employees are entitled to time off work for public services or trade unions services.

### Works Councils or Trade Unions

It is obligatory to recognise Trade Unions. An employee who is a member of a Trade Union has certain rights in relation to his employment. For example, dismissal for membership of, or for taking part in the activities of, an independent Trade Union is automatically unfair for the purposes of unfair dismissal and higher awards of compensation may, in some circumstances, be made. Action short of dismissal against an employee or subjecting an employee to a detriment for membership of, or for taking part in the activities of, an independent Trade Union gives the employee the right to complain to a tribunal which may award him or her compensation. A Trade Union member has the right to paid time off work to take part in Trade Union activities.

Unions must have legal capacity to represent employers. This legal capacity is given by Labour Ministry.



### Employees' Right To Strike

The right to strike is provided for by the Argentinean Constitution (section 14 bis). A strike must be declared by a trade union. The right to strike is subject to limits where public services are concerned.

### Employees On Strike

Employers can still dismiss employees on strike if the strike was not properly authorised. Even if the strike was validly authorised, after a certain period the employer can dismiss employees. Other courses of action may also be open to the employer depending on the circumstances (e.g. withholding pay, seeking an injunction, claiming damages for financial loss).

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

Labour Contract Law lists the different grounds on which an employment contract can be terminated eg, fair dismissal, employee's resignation, employer's bankruptcy, etc. The law provides various rules which are applicable in each case.

### Instant Dismissal

In the event that the employee is responsible for gross misconduct, the employer is entitled to dismiss him instantly without any severance pay.

### Employee's Resignation

The employee's resignation is only effective if notice of the employee's intention to resign is communicated to the employer by means of a registered telegram or the employee notifies an administrative authority.

### Termination On Notice

The employee may terminate an agreement by giving the employer 15 days advance notice. In order for the employer to terminate the contract by notice, the employer has to be the employee one month or two months advance notice, depending on the employee's seniority and date of the employee started at the company. The party that fails to provide the due notice within the required minimum period must compensate the other party.

### Termination By Reason Of The Employee's Age

Argentinean legislation sets an age for retirement. For women it is 60 and for men it is 65 years old. Women can agree with their employer to continue working until 65. In both cases it is necessary to register social security contributions for a period of 30 years.

### Automatic Termination In Cases Of Force Majeure

There is a crisis procedure that must be followed before suspending or dismissing employees due to force majeure.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire.

Where the parties agree to terminate the employment, the agreement should be in writing and placed before the Labour Ministry or a Notary Public. The employee has to be present in the agreement.

### Directors Or Other Senior Officers

If the directors or senior officers are employees, they are subject to the same rules as everyone else.

### Special Rules For Categories Of Employee

Trade unions delegates are subject to special employment rules.
In addition, there are some situations in which an employee is entitled to a higher compensation (e.g. fair dismissal during pregnancy, illness, etc.)
Trade Union delegates are protected from dismissal for one year from the date of appointment.

### Specific Rules For Companies in Financial Difficulties

The contract of employment may be terminated due to lack of or decrease in the workload, for which the employer is not liable. The employer must pay the employee a reduced compensation, previously the company has to initiate a procedure before the Labour Ministry named "Procedure for Companies in crisis".

In the event of the employer's reorganization proceeding (Chapter 11), the collective bargaining agreement will cease to be in effect for three years or until the date on which the reorganization plan is fully performed, whichever is shorter.

### Restricting Future Activities

An employer can restrict the future activities of employees unless the restriction injures an employee's rights



### Severance Payments

A severance payment is calculated according to the employee's seniority (a monthly salary per year worked or a period over 3 months). Also the company has to pay advance notice (calculated on the same basis as the severance payment with a limit of two monthly salaries), unpaid holidays and a proportional 13th of the employee's salary.

### Special Tax Provisions And Severance Payments

Severance payments are not within the scope of social security contributions (i.e. retirement funds, etc). Furthermore, if the severance payment is calculated and paid in accordance with the Labour Contract Law, income tax is not levied upon it. However, if the parties agree on a higher compensation than the employee is entitled to under the Labour Contract Law, income tax is levied on that part of the compensation which is beyond the scope of the law.

### Allowances Payable To Employees After Termination

Employers are not under a mandatory obligation to pay an allowance to employees are termination but in some situations parties can agree some type of allowance.

### Time Limits For Claims Following Termination

The time limit for presenting a claim following termination in the Court is two years.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Fair Work Commission ('FWC') (a Commonwealth or federal, that is, Australia-wide, tribunal) has jurisdiction to hear industrial and employment disputes, including unfair dismissal claims, and a broader based employment claim called a 'general protections' claim.

Contractual claims can be brought in the civil courts of the relevant State or Territory. Claims relating to discrimination in employment can be brought in specialist administrative bodies and/or tribunals in the States or Territories or in the Federal courts. Claims of misrepresentation in establishing the employment relationship can be brought in the Federal or State courts.

### The Main Sources Of Employment Law

Australia is a common law jurisdiction with its own federal court system (including relevantly the Federal Court of Australia and the Federal Circuit Court). Further, the six States and two Territories each have their own court system. All employment arrangements are governed by general common law principles of contract law. There are, however, various legislative requirements which over-ride those general principles in some instances. The main sources of legislation include the Fair Work Act 2009 (a Federal law) and State and Federal anti-discrimination, workplace compensation and occupational health and safety laws.

### National Law And Employees Working For Foreign Companies

The statutory rights under State and Federal law will apply to all individuals physically working in Australia, regardless of their nationality, and regardless of the law governing their contract of employment.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Statutory rights generally do not apply when the employee is physically working outside Australia. Contractual law can still apply based on common law principles.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract to be in writing.

## Mandatory Requirements:

### Trial Period

An employer has no legal obligation to provide a new employee with a trial period, otherwise known as a 'probationary period'. However, the Fair Work Act imposes a minimum period of six months continuous employment (12 months for an employer with fewer than 15 employees) before an employee has the right to make an unfair dismissal claim. However, an employee, or potential employee may file a 'general protections' claim, irrespective of the length of their employment.

### Hours Of Work

The National Employment Standards provide that the maximum weekly ordinary hours of work are 38 (with the potential to average hours over a 6 month period). An employer can request an employee to work additional hours with the employee being able to refuse such a request on reasonable grounds. There is no limit on the amount of additional hours that can be worked.

### Earnings

An employer must pay an employee at least the national minimum wage - $16.37 per hour as at 1 July 2013 and until 30 June 2014. The FWC reviews this rate annually. There are different rates depending on the type of work performed and, in the case of workers below 21 years of age, the age of the employee.

### Holidays / Rest Periods

An employee accrues 4 weeks paid holiday leave per year (pro rata for part-time employees). The entitlement accrues indefinitely, and the employee must be paid out for any untaken leave. There are also various compulsory daily rest periods and breaks which an employer must observe.

### Minimum/Maximum Age

An employee is not required to retire at a certain age, and it is unlawful discrimination to require an employee to retire because they have reached a certain age. Legislation varies from State to State. Maximum age limits apply only to certain statutory appointments in the pubic sector. Age discrimination is proscribed by Federal and State laws.

### Illness/Disability

Discrimination in employment on the basis of illness or disability is proscribed by legislation. Discrimination is not unlawful, however, if the employee cannot fulfil the inherent requirements of the position without the employer having to make unreasonable adjustments.

### Location Of Work/Mobility

The employee's normal place of work is not required to be specified by the employer in writing. Mobility clauses can be included in the contract of employment. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

### Pension Plans

An employer must either contribute an amount equal to 9.25% (rising to 9.5% on 1 July 2014 and progressively to 12% from 1 July 2019) of an employee's earnings to a superannuation fund, or pay a tax of an equivalent or higher amount. An employer must provide a new employee with information giving an option to nominate the superannuation fund of their choice or the name of the fund to which the employer will make contributions by default.



### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A range of "family-friendly" rights exist, including maternity leave, paternity leave, adoption leave, time off for dependants and seeking flexible working arrangements. Generally, employees must have completed 12 months of service to qualify for the right in question.

### Compulsory Terms

In addition to a minimum rate of pay (see above), the National Employment Standards include that all employees are entitled to a maximum of 38 ordinary hours work per week, up to 2 years unpaid parental leave, 4 weeks paid annual leave , 2 weeks paid personal leave (sick leave or leave to care for ill or injured family members) per year, 2 days paid compassionate leave if a family member dies or suffers a serious, life-threatening illness or injury, unpaid leave to participate in voluntary emergency management activities, paid leave to undertake jury service, paid long service leave (generally 2 months leave after 10 years service), 10 paid public holidays a year, up to 5 weeks notice of termination of employment (depending on age and length of service), and up to 16 weeks redundancy pay if an employee is dismissed because their position became redundant. Employers must also give new employees the "Fair Work Information Statement" prepared by the Fair Work Ombudsman - an Australian Government agency with powers to prosecute employers who do not comply with their statutory obligations.

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights or any applicable terms under a relevant industrial instrument, being either:

(i) an "award", which is an instrument setting minimum terms and conditions for a specific industry or occupational group; or

(ii) an "enterprise agreement" (also previously known as an "enterprise bargaining agreement" or "collective agreement"), which is an instrument setting minimum terms and conditions for a specific workplace.

## Types Of Agreement

All employment relationships are contractual in nature, whether or not the terms have ever been reduced to writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term, casual, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated.

### Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality of employer information that are implied into the employment relationship.

During the employment relationship an employee is under an implied duty to respect the confidentiality of the employer's commercial and business information. Therefore, information that an employee is expressly told is confidential, and obviously is confidential, is protected without covenant during employment.

After the employment relationship has ended, an employer can protect legitimate trade secrets and any other information that can be fairly described as confidential. The employee remains bound by the implied duty of confidentiality, after the employment relationship has ended, so long as the information remains confidential in nature. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after the end of the employment relationship.

In addition to the implied duties, an employer may include in the employment contract an express term specifying the type of information that it considers is confidential or is a trade secret, and therefore protected from improper use or future disclosure. Many employers also include post employment restrictive covenants as a means of protecting confidential information (see below).

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any express contractual terms, copyright legislation confers on the employer ownership of copyright in any work created by an employee performing their duties in the course of employment. There is no equivalent provision concerning ownership under patent or trade mark law. In such a case, the question of ownership is left to a Court to determine whether an implied contractual term confers ownership on the employer or employee. An employer must draft an express clause in the employment contract conferring ownership on the employer of all types of IP to avoid costly litigation to determine ownership of IP.

### Hiring Non-Nationals

An employer must ensure that it only employs individuals, who are legally entitled to work in Australia.

Different requirements apply depending on the type of visa held by a foreign national. The Migration Act 1958 provides for a number of working visas, conferring either temporary or permanent residence on an overseas national. Overseas students may have limited working rights in certain circumstances.

An employer will be liable to a penalty if they employ someone who is not entitled to work in Australia. An employer will commit a criminal offence if they knowingly employ such a person.



### Hiring Specified Categories Of Individuals

While there are child labour and anti-discrimination laws that impact of which categories of employees can be hired, there are no other laws that deal specifically with specified categories of individuals.

### Outsourcing And/Or Sub-Contracting

There are specific rules relating to outsourcing, insourcing and where there is a change of outsourced service provider. All of these scenarios are regulated by the Transfer of Business provisions of the Fair Work Act 2009. There is no requirement that the employee(s) carrying out the work in question automatically transfer with the work and thereby become employees of the new entity carrying out the work. Where employees do transfer to the new entity, some entitlements under the National Employment Standards will automatically carry over. The new employer can decide if they want to recognise other entitlements. If an enterprise agreement (or other form of statutory collective bargaining agreement) applies to the workplace, the employee(s) will retain those terms and conditions after a transfer unless the new employer obtains an order from the Fair Work Commission that the agreement ceases to operate.

The old employer under awards and or enterprise agreements may be required to consult with the affected employee(s) and their representatives prior to the transfer taking place (financial penalties may be imposed if the employer fails to do so).

## 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with common law contractual principles, an employer may not change any terms of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change).

Any change of terms to which the employee does not consent will amount to a breach of contract. If the change is a significant one which goes to the root of the contract, the employee is entitled to resign and treat the contract as at an end. In so doing, the employee may also claim that he or she has been constructively dismissed (and seek damages accordingly).

### Change In Ownership Of The Business

When there is a change in ownership of a business (except a change merely in the shareholding ownership), the Transfer of Business provisions of the Fair Work Act 2009 will apply. There is no requirement that the employees carrying out the work in question automatically become employees of the new owner of the business. Where employees are employed by the new employer, some entitlements under the National Employment Standards will automatically carry over but the new employer can decide if they want to recognise others. If an enterprise agreement (or other form of statutory collective bargaining agreement) applies to the work, the employees will retain those terms and conditions unless the new owner obtains an order from FWC that the agreement ceases to operate.

There are obligations imposed on the old employer by most awards and as a mandatory term of enterprise agreements to consult with the affected employees and their representatives prior to the change in ownership taking place (and financial penalties may be imposed if the employer fails to do so).

### Social Security Contributions

An employer must either contribute an amount equal to 9.25% (rising to 9.5% on 1 July 2014 and progressively to 12% from 1 July 2019) of an employee's earnings to a superannuation fund, or pay a tax of an equivalent or higher amount. A superannuation fund may pay a pension or lump sum upon retirement, and may also provide insurance for total and permanent disability, while in the workforce. There are no other social security contributions imposed on employers. The Department of Social Security administers a range of means tested welfare benefits for low paid or sick employees and retirees.

### Accidents At Work

Employers have a common law duty to have regard to the safety of their employees. Employers are also responsible under common law for loss and damage suffered by third parties caused by the acts of their employees where the employees were acting in the course of their employment.

There are statutory insurance schemes in each State and Territory that provide for payment of medical costs and compensation for loss of income by injured workers, funded by premiums paid by employers. Employees may also be able to seek other common law damages if they are seriously injured.



In addition to common law duties, a number of additional obligations are imposed on employers through legislation (most significantly the various occupational health and safety statutes applying in each State or Territory). In addition the employer also owes specific statutory duties to members of the public who are affected by the activities of the employer, and other people's employees working on their premises. In some instances, a breach of the employer's statutory duties may give rise to criminal and civil liability.

The Commonwealth and State governments had reached agreement to enact one identical set of 'harmonised' occupational and health and safety laws administered across Australia by a single regulator, Safe Work Australia, instead of each State and Territory having its own distinctive set of laws and enforcement agencies. The commencement date was 1 January 2012. National occupational health and safety legislation has been enacted in most States and Territories. Western Australia had committed to introducing a modified version of the harmonised legislation in 2013. It remains unclear when this may happen. Victoria has indicated it does not propose to adopt the 'harmonised' legislation for the present time. A State election in Victoria in 2014 may cause a new administration to re-consider the current position.

### Discipline And Grievance

For those employees who are protected from unfair dismissal (in summary, employees who have completed the minimum period of employment, who are not irregular casual employees and whose remuneration is below the high income threshold - AUS$129,300 in the year ending 30 June 2014), a failure to give a warning about poor performance and an opportunity to improve will render any performance-related dismissal unfair. Similarly, a dismissal will also be unfair if the decision to dismiss is made before giving the employee the opportunity to respond to the reason for the dismissal.

For employees who are not protected from unfair dismissal, the management of discipline and grievances is a matter for the employer, limited only by the terms of the contract of employment. At the time of writing, due to conflicting decisions of Federal and State courts, there is considerable uncertainty about whether employers have a duty not to conduct themselves in ways that would destroy the trust and confidence that is necessary to maintain the employment relationship, for example by according employees natural justice and procedural fairness in the course of disciplinary action.

### Harassment/Discrimination/Equal pay

Employees are protected from discrimination on grounds of sex, age, sexual orientation, marital status, race, religion or belief, disability, family responsibilities, parental or carer status, political activity or belief, membership or non-membership of a trade union or other industrial activity.

Such discrimination is prohibited before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote) or on termination.

Prohibited conduct includes both direct (for example refusing to employ a man or woman) and indirect discrimination (for example by imposing a condition which is irrelevant to the job but is such that fewer people of a particular group can qualify).

Sexual harassment is a separate type of claim, but is linked with discrimination. It involves unwanted conduct of a sexual nature that a reasonable person, having regard to all the circumstances, would have anticipated would have offended, humiliated or intimidated the victim.

There is no minimum period of employment for protection from discrimination or sexual harassment, and potential employees are entitled to file a discrimination claim. Discrimination or sexual harassment can lead to a complaint to State of Federal human rights bodies and claims in anti-discrimination tribunals or the Federal Courts. There is no limit to the damages which can be awarded. Damages are calculated so as to put the claimant in the position they would have been in if the unlawful discrimination had not taken place, plus an element for injury to feelings. Compensation may be awarded for personal injury if the employee can show that the discrimination caused the harm.

In addition, persons alleging discrimination or sexual harassment may file claims with the FWC that they were the subject of "adverse action" because of a "workplace right". Where such claims are made, the employer must establish that the adverse action was taken for reasons that did not include the workplace rights of the employee. Where an employee succeeds in such a claim, penalties may be imposed on the employer and any person involved in the adverse action.

Victimisation is a form of prohibited discrimination if it involves treating a person less favourably because they have complained (or intend to complain) about discrimination or sexual harassment, or because they have given evidence in relation to another person's complaint. An employee must not be disciplined or dismissed, or suffer reprisals from colleagues, for complaining about discrimination or harassment at work.

The concept of equal pay is recognised by legislation, namely the Equal Pay provisions of the Fair Work Act 2009. Those provisions are aimed at classes of work where there are differences in rates of remuneration between men and women where the work is of comparable value.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but some trades/professions impose their own standards/expectations.



### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts. However, the employer may only make a deduction from the employee's wages if it meets the requirements of the Fair Work Act 2009. These requirements include that the deduction is authorised by a statutory or contractual provision or a term of an industrial instrument; the employee has given his or her prior written consent to the deduction and the deduction is reasonable and not directly or indirectly for the benefit of the employer.

### Payments For Maternity And Disability Leave

The federal government funded paid maternity leave scheme provides for 18 weeks of payment at the national minimum wage ($622.10 per week as at 1 January 2014) and for 2 weeks of payment at the minimum wage for fathers or same sex partners of the mother of the child. In addition, many employers had, before the introduction of the scheme, voluntarily (or as a result of collective bargaining) adopted policies that provide for paid parental leave funded by the employer.

Workers compensation schemes provide for payments to employees if they are unable to work as a result of an illness or injury arising as a result of the employment.

Workers who are unable to work as a result of illness or injury not related to work may be able to access social security payments or, if they are injured as a result of a traffic accident, third party insurance schemes.

### Compulsory Insurance

Employers are required to maintain workers compensation insurance under an approved policy with an authorised insurer, against liability for bodily injury or disease sustained by employees during, and arising out of, their employment.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or jury service duties or participate in voluntary emergency management activities.

### Works Councils or Trade Unions

There are no provisions relating to works councils.

Employees have a workplace right to join or not join a trade union and to participate in activities as a representative of other employees. An employer who refuses to employee a person or dismisses a person because of such membership/non-membership or activity is liable to prosecution and claims for damages for unlawful adverse action. Where such claims are made, the employer must establish that the adverse action was taken for reasons that did not include the workplace rights of the employee. Where an employee succeeds in such a claim, penalties may be imposed on the employer and any person involved in the adverse action.

Trade unions have a right to enter premises on 24 hours notice to hold discussions with employees during authorised breaks or to investigate suspected breaches of industrial instruments. An employer and union can agree on the location within an employer's premises where a union may meet with the employees. In the absence of any agreement, the employee lunch room is the default location for such meetings to take place. The current Commonwealth Government has stated that it will repeal this lunch room requirement in 2014.

In negotiations for an enterprise agreement, employers must bargain in good faith with bargaining representatives of employees, which can include a trade union. Where a union wants to bargain for an enterprise agreement but the employer does not want to bargain, the union may make application to the FWC for a majority support determination. If a majority of the employees support the union's involvement, the employer must recognise and bargain in good faith with the union.

### Employees' Right To Strike

There is no general right for employees to strike. However, certain immunities will be granted in respect of taking "protected industrial action" which is industrial action taken during enterprise bargaining negotiations for new terms and conditions, after the expiry of the current agreement. "Protected industrial action" excludes picketing or strikes taken in sympathy with other workplaces or for broader political goals.

Further, "protected industrial action" must be conducted strictly in accordance with statutory requirements, which include obtaining an order from the FWC to conduct a ballot beforehand and providing the employer with notice of the actual industrial action to be taken at least 3 working days before the action commences.

### Employees On Strike

Employers can dismiss employees if they engage in industrial action that is not "protected industrial action" but must not dismiss employees where the action is protected.

Employers must not pay employees while they are engaged in industrial action that is not protected, and must deduct a minimum of 4 hours pay for each occasion of such unprotected action. Where the action is protected, the employer must not pay the employee for the duration of the action (unless the employees are engaged in partial work bans).

### Employers' Responsibility For Actions Of Their Employees

Employers are generally responsible for the acts of their employees, except where the employee was acting wholly outside the course of his or her employment.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract.

Employees who are protected from unfair dismissal (see Discipline & Grievance above) are entitled to make an application to the FWC for a remedy. In a claim of unfair dismissal the Commission must take into account whether

- the employee was given a warning and opportunity to improve;
- the employee had the chance to respond to the reason for dismissal before the decision to dismiss was made;
- the employer had a valid reason to dismiss the employee; and
- dismissal was a harsh penalty to impose on the employee for the poor performance or misconduct.

If the Commission finds that a dismissal was unfair, it may reinstate the employee (including making an order for payment of income lost as a result of the dismissal) or order the employer to pay up to 6 months remuneration as compensation.

### Instant Dismissal

The employer can terminate employment by instant dismissal if the employee is guilty of serious misconduct. Even in this instance, where the employee is within a class of employees protected from unfair dismissal, the employer must still give the employee an opportunity to respond to the allegations of misconduct before making the decision to dismiss and must still be able to satisfy the test of fairness (see above).

### Employee's Resignation

The employment can generally always be terminated by the employee's resignation. Normally the contract or award will stipulate the notice period required.

### Termination On Notice

The employer can terminate the employment on notice, but the employer remains exposed to a potential liability for an unfair dismissal claim. The Fair Work Act sets out statutory minimum periods of notice which will override any lesser contractual notice period. The length of the minimum period of notice is dependent on the period of continuous employment. If the period of continuous employment is less than one year, not less than 1 week's notice must be given. If the employee's period of continuous employment is more than one year but less than three, the notice must be not less than two weeks. If the employee's period of continuous employment is more than three years but less than five, the notice must be not less than three weeks.

If the employee's period of continuous employment is five years or more, the notice period must not be less than four weeks. If the employee's period of continuous employment is more than two years and the employee is over 45 years of age, the notice should be increased by one week.

If the employee's contract of employment has not specified the amount of notice to be given by the employer, it will be implied that the contract can be terminated on reasonable notice. Factors taken into account in determining what is reasonable include the employee's age, length of service, seniority, level of remuneration, what the employee gave up to come to the position and any established industry practice. An employee who believes that have not received the notice they are entitled to under their contract can make a civil claim. It is not unusual for courts to find that at least three months notice was required and cases where one years notice was required are not rare.

### Termination By Reason Of The Employee's Age

Termination of employment by reason of the employee's age is prohibited by anti-discrimination legislation and the Fair Work Act 2009.

### Automatic Termination In Cases Of Force Majeure

The contract may be deemed "frustrated" where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace are examples.

The Fair Work Act 2009 allows employers to stand employees down without pay if the employees cannot be usefully employed because of industrial action, a breakdown in machinery or other stoppage of work for which the employer cannot reasonably be held responsible. Limitations on this entitlement to stand employees down can be imposed by enterprise agreements or awards.

### Termination By Parties' Agreement

The parties are entirely free to agree on termination on any grounds they desire.

Where the parties agree to terminate the employment, they are not required to obtain the courts' or regulatory body's approval before the termination is effective.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director's or other senior officer's employment. In the case of a statutory director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association), and requires written notification to the Australian Securities and Investment Commission.

It should be noted that regulators can consider prosecuting a director personally in addition to the employer in the event of, for example, a breach of minimum employment terms, an award or enterprise agreement, occupational health and safety laws or migration laws. Directors may also be personally liable for unpaid superannuation contributions (see above) in the event of company insolvency.



### Special Rules For Categories Of Employee

There are no categories of employee to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous rules for protection from unfair dismissal.

### Specific Rules For Companies in Financial Difficulties

There are special rules which apply if a company is in financial difficulty. If a company goes into liquidation, all employees are automatically dismissed. Any claims by the employees against the company are as unsecured creditors, although employee claims rank above ordinary unsecured creditors. The Fair Entitlements Guarantee (a Federal Government scheme) provides some payments to employees in cases of liquidation or bankruptcy (but not administration) with the scheme administrator standing in the shoes of the employees in respect of recovery of those payments.

### Restricting Future Activities

Generally, employment contract clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable. The courts, however, will uphold restrictions if they are drafted sufficiently narrowly. Essentially, such restrictions must be designed to protect a 'legitimate business interest' and they should be no wider than is necessary to protect those interests. Further, such restrictions must be clear and reasonable in time and area. Typical clauses include those designed to restrict an employee from joining a competitor (or setting up in competition), from soliciting business from/dealing with certain customers or from enticing other employees to leave.

Each case is considered on its own facts, so what might be considered appropriate for one individual may be held by a court to be unreasonable for another.

### Severance Payments

Normal contractual principles apply to severance payments included in the contract. In addition, unused annual leave and long service leave is paid out at the end of the employment relationship.

In cases of redundancy there are statutory payments which are calculated by reference to the employee's length of service.

### Special Tax Provisions And Severance Payments

Contractual payments are subject to tax in the normal way. There are concessional tax rates (differing based on the age of the employee) that apply to payments made to employees in consequence of termination of employment. There is also a tax-free threshold that applies to severance payments made as a consequence of termination if the dismissal was because of the redundancy of the employee's position.

### Allowances Payable To Employees After Termination

Other than payment of superannuation contributions relating to income that was earned by the employee before the termination, employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Unfair dismissal claims and adverse action claims must be made within 21 days of the dismissal. Discrimination claims (including those arising from dismissal) must generally be made within one year. Contractual claims or claims relating to breaches of industrial instruments must be made within six years.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Long service leave is an entitlement throughout Australia. Different entitlements exist from State to State. In addition, there are particular schemes for specified industries. For example the construction industry is covered by portable long service leave arrangements (meaning that service in the industry rather than with a particular employer is counted in determining any entitlement to long service leave).

Australia is a federal jurisdiction, where complexity can be encountered between the operation of Federal (ie national) and State/Territory law. Much of this complexity has been reduced with the creation of a national system for unfair dismissal laws, award and agreement making and regulation generally, which has been achieved by the States and Territories largely agreeing to cede their powers to the Commonwealth in the field of employment and industrial law. Recent reforms of occupational health and safety law has had less success in creating a single national system. However, accident compensation laws are dealt with on a State by State basis, and there are no proposals to change this. Discrimination statutes operate concurrently at both a Commonwealth and State/Territory level.

Policies about employment and industrial relations are one of the main areas of difference between the major political parties in Australia. A change in Commonwealth Government between the two major political parties, the Liberal Party and the Australian Labor Party, usually results in major reforms in this field. The federal election held on 7 September 2013, resulted in a change of Government from the Australian Labor Party to the Liberal/National Party coalition.



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## 01. General Principles

### Forums For Adjudicating Employment Disputes

All law suits between employers and employees arising from employment and disputes arising from collective labour law have to be brought before specialized Labour Courts (Arbeitsgerichte). The decision-making panel consists of one professional judge and two non-professional judges. One of the non-professional judges is elected by employers and one by employees.

### The Main Sources Of Employment Law

The main sources of Employment Law are: the Labour Code and supplementary statutes, European Law, Collective Contracts, Company Rules, individual contracts and court decisions.

### National Law And Employees Working For Foreign Companies

Austrian law applies, if the employment agreement provides for the application of Austrian law. In any case Austrian Public Policy Rules apply.

If there is no applicable law agreed upon in the contract, Austrian law applies provided work is executed in Austria.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The parties to the employment contract are free to maintain the application of Austrian law to employees of an Austrian company working in another jurisdiction. If there is no applicable law agreed upon in the contract, the law governing the contract will usually be that of the usual place of work.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

There is no requirement that an agreement has to be signed, but the employer has to provide a written record of the terms of the agreement to the employee immediately after the commencement of the employment relationship.

## Mandatory Requirements:

### Trial Period

There are no compulsory rules relating to trial periods, but the parties are free to agree upon one. If a trial period is agreed, its duration may not exceed one month.

### Hours Of Work

Normal working time shall not exceed 40 hours per week (in some professions this is limited to 38.5 by virtue of Collective Contracts). If an employee works overtime, the limit is increased to 50 hours (subject to some very limited exceptions).

### Earnings

If employees benefit from Collective Contracts which stipulate minimum wages, those employees may not be paid less than this prescribed minimum.

### Holidays / Rest Periods

Employees have to be granted a minimum of 5 weeks paid holidays per year (pro rata in the case of part time work).

If the period of work exceeds 6 hours, the employee is entitled to a half-hour daily rest period. In addition, various detailed rules concerning daily rest periods as well as weekly rest periods have to be observed.

### Minimum/Maximum Age

Except for a very few exceptions (for example children who act in a film or in a theatre play) the minimum age for employees is 14. Special protective provisions apply for minors. The general (theoretical) age for retirement is 65 for male employees and 60 for female employees. In practice, most people retire at around this age.

### Illness/Disability

Employers have to pay employees for the first 6 weeks in case of illness. After that, the employee will receive payments from the health insurance fund for a further 20 weeks of illness.

Employers have to engage one disabled person per 25 employees otherwise a monthly penalty has to be paid. Disabled persons may not be given notice without permission of the competent authority.

### Location Of Work/Mobility

The normal working place must be specified, but mobility clauses may be agreed upon. In case of reasonable necessity, an employee can be relocated.

### Pension Plans

Pension Plans are not obligatory, but can be provided on a voluntary basis. If an employer provides a pension plan all employees have to be given the opportunity to participate.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A set of rules provide rights such as maternity leave and pay, paternity leave and pay, adoption leave and pay and rights for part-time working. A lot of detailed rules regulate maternity protection such as working conditions and dismissal protection.

### Compulsory Terms

A written record of terms has to be provided to the employee immediately after the commencement of the employment relationship containing the name and address of both employer and employee, the date of commencement of the employment relationship, details of when the employment will end, the duration of the employment (if it is only agreed for a certain time period), details of the applicable notice period, the usual place of work, the tariff classification, details of the job, the salary and payment date, the holiday entitlement, the agreed hours of work, the identification of any applicable Collective Contract and the name of the severance fund.

### Non-Compulsory Terms

The parties can agree to any other terms of their choice, provided those terms are no less favourable than statutory rules.



## Types Of Agreement

Agreements may be concluded orally or in writing (compulsory terms have to be provided in writing to the employee regardless of the form of agreement). Employment agreements exist in several different forms, such as full-or part-time work, fixed or variable term or traineeships.

Discrimination rules forbid discrimination of part-time or fixed term employees compared to employees with full-time or variable term contracts.

## Secrecy/Confidentiality

There are no statutory rules obliging employees to maintain secrecy but judicature states that the employee's duty to maintain secrecy forms part of the obligation of mutual trust in every employment relationship.

Employment contracts usually contain provisions concerning the employee's duty to maintain secrecy both during the employment relationship and after its termination. A contractual penalty may be agreed upon in case of breach of secrecy. Contractual penalties agreed upon in employment relationships are mandatory subject to reduction by judgement.

Employers have to observe data privacy rules concerning employee's data.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

According to the statutory provisions of the Patent Act, unless the employment contract states otherwise, the employee will be the owner and retain all rights over inventions even if they are developed during the employment.

## Hiring Non-Nationals

Employers are required to ensure that all employees are entitled to work in Austria. Generally all citizens of EU member states are entitled to work in Austria but exceptions apply for Croatia until 2020 (to protect the resident Austrian labour market).

Employers have to apply for work permits for citizens from non-EU states. Work permits are usually granted for one year but can be renewed each year.

Employers caught employing foreign employees without the necessary permission to work will be liable to pay high penalties. In turn, the employee may lose his or her right of residence in Austria.

## Hiring Specified Categories Of Individuals

Special (protective) rules apply to the hiring and employing of apprentices, minors and disabled persons. Furthermore special (protective) rules apply to the employment of certain groups of employees such as pregnant women. Certain specified (mostly hazardous) jobs are forbidden for these specially protected groups.

Employers with more then 25 employees are obliged to employ at least one disabled person per 25 employees. If the employer fails to do so it will have to pay a penalty (for 2014, the penalty is €244 per month for each disabled person who should have been employed but for the employment failure).

An employer is obliged to make special arrangements for protected employees where necessary.

### Outsourcing And/Or Sub-Contracting

There are specific rules depending on whether in-house or external outsourcing is concerned. If part of the employer's business – such as book-keeping or IT-department – is completely outsourced, the employer may be entitled to terminate employment relationships which are usually protected, such as relationships with older employees or members of the work council.

If the outsourcing consists of temporary employment by another employer, specific regulations oblige the employer to apply the same rules and terms regarding salary, workplace and safety rules as required for the person for whom the outsourced employee is working.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In general an employer may not vary the contract unless the employee agrees. Employee's consent may be given expressly or implicitly. A very effective way for an employer to exert pressure on the employee is to use his right to terminate the employment relationship, if the employee does not agree to the change (in other words the employee has a choice between dismissal or accepting the revised conditions of employment).

This mean of pressure only works if the employee is not in a protected class - such as being pregnant, disabled or a member of the works council.

### Change In Ownership Of The Business

A change in ownership of the business – or in any part of the business – cannot give rise to any change in conditions of the employment relationship; nor does it entitle the new owner to terminate any employment contract. All employment relationships are automatically transferred to the new owner. Special rules apply in case of pension commitments.

Either the old or the new employer has to inform the employees or the works council (if a works council exits) in writing, of the date the ownership changes, the reasons for changing, any legal, economic and social consequences concerning the employees and any measures concerning the employees.



Employees may refuse to transfer. If there is a legal ground for refusal, such as the lapse of a right of continuance according to the relevant collective bargaining agreement or a refusal to take over the pension commitments, the employment relationship remains with the old employer. If the employee refuses to change where there is no legal basis for doing so, the refusal is treated as a resignation of the employee. The employee may not claim damages in this instance.

### Social Security Contributions

Employers and employees are obliged to make social security contributions. Rates are determined from time to time, usually on an annual basis.

It is the employer's obligation to ensure payment of both the employer and employee contributions.

Employers are required to contribute towards allowances payable to the employees during their employment (such as payments in respect of certain periods when the employee is absent due to illness or maternity).

### Accidents At Work

Employers are obliged to ensure the safety of their employees.

Employers are also responsible if an accident is caused by an employee acting in the course of his employment. If an employee is injured as a result of an accident at work, the employer will only be liable if the accident was caused by a deliberate act on the part of the employer (in such circumstances, the employer will also be liable for the accident insurance which has to compensate the employee's claims). If the accident was not caused by an intentional act on the part of the employer, it will not be required to pay any compensation in respect of claims resulting from the employee's injury.

### Discipline And Grievance

In cases where certain grievances are raised, the labour inspector has to be informed. The labour inspector also has the right to enter the workplace without warning. Where a grievance concerning harassment is made, the employer has to provide assistance to the employee and support him against other employees if necessary.

Rules concerning discipline are more typical in employment relationships governed by public law, (for example, for magistrates who have tenure).

### Harassment/Discrimination/Equal pay

Employees are protected from harassment by law. Harassment mainly means sexual harassment and ranges from displaying pornographic pictures in the workplace to verbal attacks, and from sending e-mails with sexual content to violation of a person's physical integrity. The rules regarding harassment are directly linked to discrimination.

Employers have to treat employees equally and are not allowed to discriminate against employees on grounds of sex, age, sexual orientation, marital status, race, religion or believe, disability, part-time status or fixed term status. Unequal treatment is only allowed if legitimated by reasonable grounds.

Equal pay is also directly linked to discrimination and is commonly referred to as "equal pay for equal work." Despite the existence of such rules, it remains the case that male employees on average earn more than female employees.

An employee who has been discriminated against may seek compensation, if the employee is able to prove that the discrimination caused harm. In addition to any damages paid to the employee, an employer found guilty of discrimination may also be ordered to pay a penalty.

### Compulsory Training Obligations

There are no compulsory obligations in relation to training, but some employers will require their employees to attend training which is paid for and/or organized by the employer.

### Offsetting Earnings

It is possible for an employer to offset sums it is owed by an employee against that employee's earnings, but only if the employee agrees or does not protest within 14 days of receipt of a statement informing him of the intended set-off ,or if the employer already has an enforceable judgement against the employee.

### Payments For Maternity And Disability Leave

Employees are entitled to maternity payments. These payments (which are made not by the employer but by the compulsory health insurance fund) are made for a period of 8 weeks before and 8 weeks after childbirth. Payments are calculated on the basis of the average salary of the final 13 months prior to the commencement of maternity protection (which kicks in 8 weeks before childbirth).

An employee can choose to take maternity leave at any time up until the third birthday of the child; during maternity leave, the employee will receive child allowance which is paid by the health insurance fund. The amount payable depends on the duration of maternity leave, but for the year 2014 it ranges from €430 to €1.000 per month. From their first day of sickness absence or disability leave, employees are entitled to receive statutory sick pay. The maximum entitlement is 26 weeks. From 1st day until the end of the 6th week it is the employer who has to pay (and pays full salary); for the remainder of the period, the health insurance fund has to take over the payment which from then on amounts to half of the average monthly salary.



### Compulsory Insurance

All employees have to be registered with the compulsory health insurance fund by the employer before the commencement of their employment. All employment related insurance payments have to be made to this fund. The fund then allocates the payments to the other compulsory insurances such as retirement pension insurance, unemployment insurance and accident insurance.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties. An employer may not serve notice on an employee whilst he is undertaking military service.

### Works Councils or Trade Unions

If an employer employs more than 5 employees, the establishment of a works council is mandatory. This does not mean that the employees themselves are obliged to establish a works council, if they do not want to, but rather that the employer cannot avoid the establishment of a works council in such circumstances.

The number of members in a works council depends on the number of employees.

The main functions of a works council are (i) representing employees' interests against employers' interests, (ii) ensuring compliance with labour law regulations and (iii) receiving information on all important decisions of the employer which may relate to employees interests.

As long as an employee is a member of a works council, notice of termination may only be given with permission of the labour court. The labour court will only grant its approval if the employer can establish serious grounds and show that continuation of employment relationship is not reasonable for the employer.

Employees may voluntarily become a member of a trade union. Members of trade unions are not as protected as members of a works council but still have certain rights against their employer. An employee may not be dismissed for membership of a trade union or for taking part in trade union activities.

Trade unions are allowed to represent their members in the first and second instance of labour court proceedings (but not at the supreme court).

### Employees' Right To Strike

There is no general right for employees to strike but such a right is derived from the Austrian Federal Constitution.

### Employees On Strike

An employer can generally dismiss employees on strike. An employer can also take other action such as withholding pay of employees on strike. Where this happens, the trade union will usually take over the payment of wages to those employees on strike.

### Employers' Responsibility For Actions Of Their Employees

In general employers are responsible for their employees' actions according to the Civil Code. An exception is made where the employee acts outside the course of his employment. In the event that the employee is guilty of gross negligence or takes deliberate action the employer has the right to claim against the employee.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

Where 5 or more employees are to be dismissed within one month, the regional employment bureau has to be informed at least 30 days before notice is given.

If a works council exists, it has to be informed before any dismissal and can give an opinion within one week. If the works council disagrees with the dismissal or does not give an opinion, either the works council or the affected employee can appeal against the dismissal at the labour court. If the works council agrees, only the affected employee can appeal against dismissal. An appeal against dismissal is only possible for certain reasons (for example if dismissal is not in accordance with the social employment rules concerning elder employees).

In all cases termination must comply with the terms of the contract and the labour law and certain notice periods and termination dates have to be complied with.

### Instant Dismissal

An employer can terminate the employment relationship by instant dismissal where there are serious grounds, such as misappropriation, corruption, incapability, competing against the employer or violence against the employer, his relatives or other employees.

The employee can appeal against such a dismissal at the labour court. Even if the employee succeeds with his appeal, the employment relationship is still terminated but the employer will be required to pay the amount it would have had to pay had it complied with the appropriate notice period.



### Employee's Resignation

The employee can generally always resign, assuming the contract is not for a fixed term. The employee has to comply with any legal and contractual notice when resigning.

### Termination On Notice

Both employer and employee can terminate the employment relationship on notice. According to the Employees Act minimum periods of notice and termination dates have to be observed. Statutory minimum periods of notice override contractual notice periods. The minimum period of notice depends on the duration of the employment relationship and increases as the length of the relationship increases.

According to the Employees Act employment agreements may only be terminated at the end of each quarter. However, the parties can agree that the termination date may also be the 15th, or the last day of each month.

The minimum notice period for employees with up to two years of continuous employment is six weeks; for employees with between two and five years continuous service, the minimum notice is two months; for those with between five and fifteen years service, the minimum notice is three months; for those with between fifteen and twenty-five years service, four months is the minimum; and for all employees with twenty-six or more years service, the minimum notice period is five months.

### Termination By Reason Of The Employee's Age

An employer can only terminate by reason of an employee's age if the employee reaches the applicable retirement age. The default requirement age is 65 for male and 60 for female employees.

If the employee is not of retirement age when dismissed, he can appeal against his termination if the termination is not in accordance with the social employment rules. To succeed, the employee has to prove that he is not able to find new employment (with a comparable salary) within 12 to 14 months of termination, and that he depends on employment. If the employee can prove this, the employer has to prove that notice was given either for good reasons in the employee's sphere (for example because the employee is not able to do his work any more) or for good reasons in the employer's sphere (for example, the closure of the part of the business in which the employee was employed or because of an economic need to restructure).

### Automatic Termination In Cases Of Force Majeure

Automatic termination in cases of force majeure only applies if continuation of the employment relationship is impossible.

### Termination By Parties' Agreement

The parties are free to agree to terminate the employment relationship on any grounds and subject to whatever conditions they desire.

No formal requirements have to be met, but from an employer's point of view a written agreement is advisable in case the employee subsequently files a law suit and the employer has to prove the content of the agreement in court proceedings.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director's or other senior officer's employment, but in the case of a statutory director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association).

### Special Rules For Categories Of Employee

There are several specific rules for certain categories of employees such as:

- pregnant women
- mothers and fathers during parental leaves,
- disabled persons,
- apprentices,
- persons during military service,
- employees of a certain age,
- members of work councils

Such employees are either protected from dismissal entirely, or can only be dismissed with permission of the labour court, and/or may appeal against their dismissal.

### Specific Rules For Companies in Financial Difficulties

If an employer gets into financial difficulties and is not able to pay wages on the due date, the employees may instantly resign and may claim for damages.

There are specific rules for insolvent companies. Where insolvency proceedings have commenced, the receiver takes over running of the business. Employment agreements are not terminated automatically but have to be terminated by the receiver under the usual conditions as described above.

If a company or the assets of a company are sold during insolvency proceedings, rules concerning transfer of the employees from one employer to another as described above do not apply and employees do not have to be adopted by the new owner of the business.



### Restricting Future Activities

Non-competition clauses are legally binding, if certain conditions are met. Such clauses are void if the employee was a minor when the clause was agreed upon and/or if the employee's earnings for the last month of the employment agreement do not exceed a certain amount (currently € 2,567 for 2010). The restriction must not last for more than one year, the clause has to define a limited geographical scope and it must not significantly hamper the employee's ability to find new employment.

Usually the parties will agree on a contractual penalty payable in the event the employee breaches the non-competition clause. This penalty is subject to mitigation by the labour court, which may not be excluded by contractual agreement.

### Severance Payments

Employment relationships which commenced before January 1st 2003 are subject to the "old" severance payment regime; employment relationships which commenced on or after January 1st 2003 are subject to the "new" severance payment regime.

The old system provided that an employee is entitled to claim for severance payment, if employment lasted for at least three years and is terminated by the employer. In this situation, the employee is entitled to receive a payment equivalent to two months' earnings. If employment lasted between 5 and 10 years, the severance payment amounts to three months' earnings; after 10 years the payment is increased to four months' earnings; after 15 years it increases to six months' earnings; for those with 20 years service, the payment is equivalent to nine month's earnings; and for those with 25 years service or more, the payment amounts to a full year's salary.

For all employment agreements which commenced after January 1st 2003 (or where the parties have agreed to change from the old to the new system) a fixed amount of 1.53% of the monthly salary has to be paid into a special severance payment fund. If the employee worked for at least three years for the same employer and is dismissed he can decide whether he wants to take the paid-in amount or whether to leave it in the fund.

If the employee himself terminates the employment agreement or decides to leave the paid-in amount in the fund, he keeps it and takes it with him to his new employer. If not withdrawn earlier, the paid-in amount is eventually paid out when the employee retires. It is only taxed at a rate of 6%.

### Special Tax Provisions And Severance Payments

Statutory severance payments are taxed at only 6%. If the parties agreed on additional severance payments on a contractual basis, these payments are subject to normal income tax.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination, as employers already contributed during the employment agreement through payment of unemployment insurance.

### Time Limits For Claims Following Termination

The general limitation period of 3 years applies to claims arising from an employment agreement.

Some collective and individual contracts shorten this period. However, according to judicature, the time limit cannot be reduced to less than three months.

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# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

In addition to the usual monthly payment of salary, all employees receive 2 additional payments every year, each equivalent to one month's earnings (in general one additional payment is received in June and the other in November). Both additional payments are taxed at a fixed rate of only 6%.

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# Belgium

# Belgium

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Labour Court has exclusive jurisdiction for all claims (exclusive competence). At first instance and appeal the court is presided over by a professional judge and assessed by two non-professionals, one of which is representing the employers and the other the employees.

### The Main Sources Of Employment Law

Belgium is a civil law jurisdiction. There is no employment law Code, but several Acts. The main Acts are the 3 July 1978 Employment Contract Act, the 16 March 1971 Work Act, the 12 April 1965 Remuneration Protection Act, the 8 April 1965 Work Rules Act, the 5 December 1968 Collective Bargaining Agreements Act, the 24 July 1987 Interim Work and Secondment Act, and the 4 August 1996 Welfare at Work Act

The principle of social dialogue is very important in Belgium. Collective Bargaining Agreements are an important source of employment law, concluded at several levels.

Belgian legislation relating to employment relationships is to be found at different levels.

1. Firstly there are the National Laws and Royal Decrees that are applicable to the whole Belgian territory. There are also Collective Bargaining Agreements concluded within the National Works Council that, if they are declared generally binding by Royal Decree, are mandatory for all employees and employers in Belgium.
2. Since problems and necessities are not always the same in different industry sectors, quite a few topics are regulated at sector level. At this level, the Collective Bargaining Agreements can also be declared generally binding by Royal Decree. In this case, they are binding for all employers and employees relevant to the industry sector concerned. Sector-wide Collective Bargaining Agreements generally relate to the work conditions and employment contract modalities.
3. The third level on which Collective Bargaining Agreements can be executed is by the company itself. Some problems specific to the company can be handled by a company's Collective Bargaining Agreement. Those Collective Bargaining Agreements cannot be declared generally binding by Royal Decree. Work rules are also decided by the company. These rules are binding on employers and employees.

At the individual level, the employment contract is also binding for both parties.

Belgian law provides for a hierarchy. The highest level is the mandatory provisions of the law and the lowest level is the content of an oral employment agreement.

### National Law And Employees Working For Foreign Companies

The parties can choose the law applicable to their contract. If no governing law is provided for, the law of the usual place of work will apply.

Even if the agreement does not provide for the application of Belgian law, the Belgian Public Policy Rules, namely for example the provisions regarding the work duration, the remuneration protection, the notice period or indemnity in lieu of notice, the annual holidays and holiday pay, the security and welfare at work and all the Collective Bargaining Agreements declared generally binding by Royal Decree, will still apply to all individuals physically working in Belgium, regardless of their nationality, and regardless of the law governing their contract of employment.

### National Law And Employees Of National Companies Working In Another Jurisdiction

As above-mentioned, in principle, the law of the usual place of work will apply or the parties can also designate the law applicable to their contract, and the mandatory rules of the jurisdiction will apply. There are also particular provisions regarding Belgian employees sent on secondment in other countries (a complementary contract has to be concluded if the secondment exceeds one month).

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract to be in writing. The contract may be either oral or written. However, some clauses or particular contracts must be in writing to be valid (see "compulsory terms" below).

If an employment contract is not in writing, it is always deemed to have been concluded for an indefinite period.

The contract can never derogate from the mandatory rules of Belgian law.

## Mandatory Requirements:

### Trial Period

Trial periods are no longer allowed in employment contracts which commence on or after from 1 January 2014.

Trial periods in contracts which commenced prior to this date are still valid and run until their expiry.

According to these "old" rules, the trial period has to be concluded in writing, at the latest before the first day of employment, and cannot exceed 14 days (manual or blue-collar workers), 6 months (white-collar employees) or 12 months (higher white-collar employees). Minimum durations are also provided for.

### Hours Of Work

An employee can work a maximum of 40 hours per week (provided that the employee does not work more than 38 hours per week, averaged out over a definite period). This maximum can be reduced at sector or company level.

### Earnings

There is a minimum hourly wage fixed by a national Collective Bargaining Agreement. There are also different salary scales in some sectors, depending on the experience of the employee and the function.

### Holidays / Rest Periods

Employees are entitled to a minimum of 20 days (25 in a work schedule of 6 days a week) paid holidays per year (pro rata for part-time employees) provided that they worked an entire year the year before. There are also 10 public holiday days a year. There are various compulsory rest periods which have to be observed if the employee exceeds the maximum hours he/she should work.

### Minimum/Maximum Age

The minimum age of employment is 15. The law regulates how and what work can be carried out by children of particular ages. Different rules (e.g. on working time) apply to children or young workers. There is no maximum age limit.

### Illness/Disability

In cases of illness and disability, the employment contract is suspended and the employees are entitled to a guaranteed remuneration from the employer for 30 days (white-collar employees) or 7 days (blue-collar workers, with degressive rates for 30 days).

### Location Of Work/Mobility

It is not mandatory for the employee's normal place of work to be specified by the employer in writing, but case law considers that the place of work is an essential element of the contract, which cannot be changed without the consent of the employee. In this context, moving an employee more than 30 to 40 km is considered by case law as an important change leading to the termination of the contract.

Mobility clauses can however be included in the contract of employment or the nature of the job can require mobility. In these cases, the location of work can be modified by the employer.

### Pension Plans

Within the social security system there is a pension system which employers have to pay contributions into. Complementary Pension Plans are more and more frequent for white-collar employees but are not mandatory, unless set out by collective agreements for the sector.



### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A range of "family-friendly" rights exist, including paid maternity leave, paid paternity leave, paid adoption leave, paid parental leave, time off for dependants and part-time working. In order to benefit from these "family-friendly" rights employees have to satisfy the appropriate qualifying conditions. Different rules apply to different rights, and it is not possible to summarise here all the details (most of which are set out in various Regulations).

The above listed employees are protected against unfair dismissal: their dismissal cannot be based on their parental status, but has to be founded on other reasons.

### Compulsory Terms

There's no obligation to have the contract in writing. However, some particular clauses or particular contracts must be in writing to be valid. A contract for a fixed period or for a specific project must be executed in writing as well as a part-time employment contract and replacement contract. The trial-period clauses (only applicable to contracts entered into force before 1 January 2014), the non-competition provisions and notice period clauses for more senior employees must always be in writing to bind the parties.

At the company level, written work rules are compulsory.

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable for the employee than minimum mandatory statutory rights.

## Types Of Agreement

Contracts of employment exist in several different forms: fixed term or indefinite periods, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated.

Under national law employees are given an employment status, which has its own regulations (namely manual or blue-collar worker, white-collar employee, sales representative, interim worker, etc.).

However, with effect from 1 January 2014, the Act, establishing a single status for blue-collar and white-collar employees with regard to the notice periods and the first day of sick leave, came into force. The other differences which exist between blue-collar and white-collar employees for the moment remain as they are. The social partners must take care of a further harmonisation in accordance with a compulsory timeframe.

## Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied into every employment relationship.

During the employment relationship an employee is under a duty to keep confidential information relating to the employer's business. This confidentiality obligation continues to bind the employee after the termination of the employment contract.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights.

### Hiring Non-Nationals

Employers are obliged to ensure that all employees are entitled to work in Belgium. They must ask for work permits and authorization from the Belgian authorities. Different requirements apply depending on the nationality/status of the individual concerned. There are different sorts of work permits (A, B and C), depending on the duration of the work and the duration of the employee's residence in Belgium.

An employer will be subject to penal prosecutions if he employs someone who is not entitled to work in Belgium.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain dangerous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

### Outsourcing And/Or Sub-Contracting

Under Belgian law, a natural or legal person may not put its employees at the disposal of a third party that utilizes these employees and exercises an authority over them as an employer. There is an exception made for Interim Companies.

There are some further exceptions to this prohibition. The secondment will be authorized if the (employer's) authority of the user towards the concerned employees is limited to instructions regarding health and safety and to instructions given in the frame of performance of the contract with the employer (working time, breaks and the performance of the work agreed upon). The secondment is also authorized if it is exceptional and limited in time. Different conditions and procedures have to be fulfilled in this respect: the secondment may not be the principal activity of the employer, the employee put at disposal must be a permanent employee of the employer (i.e. the employee must be in service of the employer before being put at the disposal of the third party), the employee may only be put at the disposal of the third party for a limited period, a written agreement must be drafted and executed by the employer, the user, the employee and the employer must in principle declare the secondment in advance to the social inspection and receive the social inspection's authorization prior the secondment. This authorization may only be granted after an agreement has been reached between the user and the user's in house union delegation (or with workers organization).



# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with the law and case law, an employer may not change any fundamental term of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change).

Any important change of fundamental terms to which the employee does not consent will amount to a breach of contract. If the change is a significant one which goes to the root of the contract, the employee is entitled to treat the contract as terminated by virtue of the employer's actions. In so doing, the employee may claim that he has been constructively dismissed. He may also ask the labour court to rescind the employment contract.

### Change In Ownership Of The Business

When there is a change in the ownership of a business (except a change merely in the shareholding ownership), all employees are automatically transferred to the new employer on the same terms and conditions. These rules apply also where only a specific part of a business changes ownership.

There are obligations imposed on both the old and the new employers to inform the employees.

The transferor and the transferee are also both responsible for the existing debts at the day of the transfer and resulting from the employment contract.

### Social Security Contributions

Employers and employees are required to pay social security contributions (rates are determined by the law). In practice, the payment of the contributions is the employer's responsibility. Such contributions finance the national social security which in turn pays for employee benefits (e.g. sick pay, pensions, unemployment allowances).

### Accidents At Work

Employers have a legal duty to have regard to the safety and welfare of their employees. Employers are also responsible for accidents caused by the acts of their employees where the employees were acting in the course of their employment.

Breaches of the employer's statutory duties may give rise to criminal and civil liability.

It is compulsory for the employer to take out insurance to cover the risk of accidents at work regarding the employees' health.

### Discipline And Grievance

The Employer can discipline employees. To allow the employer to impose disciplinary actions, the employer's Work Rules must set out what the employee's duties are and what constitutes a breach. The rules must set out the corresponding applicable sanctions to such breaches. The sanction must be notified to the employee within 24 hours of the breach.

It is not compulsory to follow a certain procedure before being able to dismiss an employee. Sometimes, the employer's Work Rules will provide for a dismissal procedure to be followed when dismissing an employee (for example the employee's hearing).

Except for sexual or moral harassment, it is not necessary to have grievance procedure.

### Harassment/Discrimination/Equal pay

Employees are protected against harassment, namely conduct that has the purpose or effect of violating a person's dignity or creating an offensive, intimidating or hostile environment. An employee who lodges a complaint for harassment cannot be dismissed and the employer cannot modify his/her working conditions, except for reasons other than the complaint.

Employees are also protected from discrimination on grounds of sex, age, sexual orientation, marital status, race, religion or belief, disability, part-time status and fixed-term status.

Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), on termination or even after the employment has ended.

The discrimination may be direct (for example refusing to employ someone on the grounds of their sex), or indirect (for example by imposing a condition which is irrelevant to the job but is such that fewer people of a particular group can qualify).

There is no qualifying period of employment for protection from discrimination. Discrimination can lead to a claim in the Employment Tribunal and damages can be awarded.

The concept of equal pay is recognised by legislation, namely Collective Bargaining Agreement n° 25. It provides that female and male employees must receive equal pay and offers protection to employees who lodge a complaint on this basis.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/ expectations. Some sectors impose training obligations by sectorial Collective Bargaining Agreements.



### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts, but several limits are provided by the law.

### Payments For Maternity And Disability Leave

The employment contract is suspended during maternity and disability leave. Except in the case of guaranteed remuneration paid by the employer during the first month of disability, the employee receives allowances from the social security system and is not paid by the employer.

### Compulsory Insurance

It is compulsory for the employer to take out insurance to cover the risk of accidents at work regarding employees' health.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

Social dialogue plays an important role in Belgian employment law. Employees may join unions and there are also joint bodies representing employers and workers at national level. Belgian employment law is also organized into sectors that can elaborate the rules specific to their activities and their workers by Collective Bargaining Agreements.

Within a company there is an obligation to create a body to represent the employees, namely the Company Committee, the Union Delegation, the Committee for the Prevention and Protection at Work. This obligation depends on the size of the undertaking which is determined by the number of employees (generally from 50 employees).

These employee bodies play an important role in social procedures and in the company. Their members are also protected against unfair dismissal and special procedures (which are sometimes approved by the Court) to end their contracts, for economic reasons rather than for serious misconduct.

### Employees' Right To Strike

The right to strike is recognized under Belgian law. The strike is authorized, provided it does not involve illicit acts or vandalism. It is not only the trade unions that have the right to call a strike. Sometimes, Collective Bargaining Agreements provide for conciliation procedures which must be followed by the company before a decision is taken to strike.

### Employees On Strike

Employees on strike are not afforded special protection against dismissal. However, general rules for unfair dismissal are still applicable.

### Employers' Responsibility For Actions Of Their Employees

Employers are civilly liable for the acts of their employees, except where the employee was acting outside the course of his employment. Where harm is caused to the employer or third parties, employees are only liable for their wilful misconduct, gross negligence or habitually minor negligence.

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# 04. Firing The Employee

### Procedures For Terminating the Agreement

Some forms of employment contract termination require compliance with a specific procedure to effect a termination. It depends on the type of termination and on the employee status.

### Instant Dismissal

The employer can terminate employment instantly if the employee is guilty of gross misconduct. In this case, the employee has no right to a notice period or payment in lieu of notice. The employer must notify the employee of the reason for dismissal in writing. Such a letter must be served by registered post, by hand or by a bailiff writ within three days after the employer is notified of the gross misconduct. If the employer does not comply with this formality, an indemnity in lieu of notice will be payable.

### Employee's Resignation

The agreement can generally always be terminated by the employee's resignation. The employee has to respect the applicable notice period.

### Termination On Notice

The parties can terminate the agreement for an indefinite period on notice (special rules apply to contracts concluded for a definite period)

New notice periods apply for contracts terminated as from 1 January 2014.

If the employee resigns, the new notice periods to be respected range from 1 week to 13 weeks depending on the employee's seniority.

For determining the notice period applicable in the event the employer gives notice, two distinct periods will be taken into account:



(i) For the seniority acquired until 31 December 2013, the old dismissal rules apply, with small alterations.

White-collar workers:

- Gross annual salary < 32,254 EUR in 2013: three months for every started period of five years' seniority
- Gross annual salary ≥ 32,254 EUR in 2013: one month of notice per started year of seniority, with a minimum of three months, or conventional agreement applicable on 31 December 2013

Blue-collar workers: notice periods determined by the Collective Bargaining Agreements or Royal Decrees applicable on 31 December 2013, or as determined by more favourable conventional agreements applicable on that date.

(ii) For the seniority acquired as from 1 January 2014, the new dismissal rules apply. The notice periods are fixed and depend only on the employee's seniority. More favourable conventional agreements continue to apply. There are derogations for certain industries and activities and compensations for blue-collar employees with an employment contract entered into force before 1 January 2014.

| Seniority | Notice Period |
|---|---|
| Less than 3 months | 2 weeks |
| Between 3 months and < 6 months | 4 weeks |
| Between 6 months and < 9 months | 6 weeks |
| Between 9 months and < 12 months | 7 weeks |
| Between 12 months and < 15 months | 8 weeks |
| Between 15 months and < 18 months | 9 weeks |
| Between 18 months and < 21 months | 10 weeks |
| Between 21 months and < 24 months | 11 weeks |
| Between 2 years and < 3 years | 12 weeks |
| Between 3 years and < 4 years | 13 weeks |
| Between 4 years and < 5 years | 15 weeks |
| As of 5 years | + 3 weeks per started year of seniority |
| Between 20 years and < 21 years | + 2 weeks per started year of seniority |
| As of 21 years | + 1 week per started year of seniority |

- Grounds for dismissal

  As from 1 April 2014 on, employers have to provide a reason for dismissal if the employee concerned requests it. If the employer does not provide a reason for dismissal, the employee is entitled to an indemnity equal to two weeks' salary.

  Also, employees will be able to claim an indemnity from 3 up to 17 weeks' salary for unlawful dismissal, i.e. dismissal without objective grounds. Certain categories of workers are excluded from this right.

**Termination By Reason Of The Employee's Age**

The law provides for a reduced notice period if the employee is over 65.

**Automatic Termination In Cases Of Force Majeure**

The contract will be deemed terminated where intervening events make its continued performance impossible, although instances of this are rare, for example, the death of the employee or complete destruction of the workplace.

**Termination By Parties' Agreement**

The parties are entirely free to agree termination on any grounds they choose, without any notice or indemnity. This mode of termination does not need to comply with any formality, but it is preferable to sign an agreement to avoid litigation.

**Directors Or Other Senior Officers**

There are no special rules which relate to the termination of a director or other senior officer's employment, but in the case of a statutory administrator, termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (by amending and publishing the articles of the company).

**Special Rules For Categories Of Employee**

There are some categories of employee to whom special rules apply, namely the status of manual-blue collar workers/white-collar employees (to be abolished in future), salesmen or interim workers. Certain categories (e.g. pregnant women) benefit also from greater protection from unfair dismissal. Some special procedures are also provided for when looking to dismiss an employee representative.



**Specific Rules For Companies in Financial Difficulties**

There are special rules which apply if a company is in financial difficulty, which relate mainly to informing the authorities and the employees (collective dismissal and business closure).

If a company goes into liquidation, specific rules will apply. There is also a special fund that pays the salaries and allowances of employees in case of default by the employer.

**Restricting Future Activities**

It is possible to agree clauses that restrict the future activities of an employee (non-competition clauses) under certain conditions (namely a strict territorial application and duration). After the contract is terminated the employer can decide not to enforce the clause or alternatively choose to pay the employee compensation if the clause applies.

**Severance Payments**

If the employer dismisses the employee with irregular or insufficient notice, it will be liable to pay (complementary) in lieu of notice, and possibly compensation for unfair dismissal or further damage.

**Special Tax Provisions And Severance Payments**

Severance payments are subject to tax in the normal way as is remuneration in the case of payment in lieu of notice or special indemnities. Payments are not subject to taxation if the payment is to compensate for an employee injury (for example a moral damage).

**Allowances Payable To Employees After Termination**

Employers are not required to contribute to any allowances payable to employees after termination, except the amounts founded on the contract (for example the indemnities). However, in some cases (namely employees over 45) employees are entitled to a notice period of at least 30 weeks), guidance allowances for re-employment must be paid.

**Time Limits For Claims Following Termination**

Claims must be submitted within one year of termination of the contract. There is a special period of five years when penal sanction are provided, namely for the remunerations or the Collective Bargaining Agreement declared generally binding by Royal Decree.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

There are three national languages in Belgium: Dutch, French and German.

Under Belgian law, special attention must be paid to the detailed legislation on which language is to be used in a professional capacity between employer and employee and in all official documents (such as the employment contract, a notice letter). The main rule is that the language to be used depends on the place where the company is located (Dutch, French or German speaking region, with special rules for Brussels). There are different sanctions in case of infringement of these rules. On 16 April 2013, the European Court of Justice decided that, as a consequence of these rules, the free movement of workers within the EU is at risk in a cross border employment situation. This decision can be invoked as a precedent in similar legal proceedings. However, in purely Belgian employment situations, these rules remain entirely applicable.

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# Bolivia

# Bolivia

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Specialized Labour and Social Courts adjudicate all employment disputes in Bolivia. There are seven Judges of Labour and Social Security in La Paz and two in El Alto, three rooms in the Tribunal Departamental de Justicia and one room in the Tribunal Supremo de Justicia for cases of annulment.

### The Main Sources Of Employment Law

The main sources of employment law in Bolivia are codified laws, decrees, ministerial decisions, Collective Agreements and individual contracts.

### National Law And Employees Working For Foreign Companies

Bolivian law applies to people who work for foreign companies within Bolivian territory. Foreign companies cannot hire employees in Bolivia, they must be incorporated in Bolivia.

### National Law And Employees Of National Companies Working In Another Jurisdiction

There are no Bolivian long-arm statutes. Accordingly Bolivian law does not apply to employees of Bolivian companies working in another jurisdiction.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

For an employment contract to be enforceable under Bolivian law it does not have to be in writing. The following, however, are essential elements that an employment contract must have: capacity of the parties to contract; acceptance; object; and consideration.

A written employment contract should contain the following: the employer's contact details (name, domicile, legal representative, identification number, legal representative's identification number), the name of the employee; identification number, age, nationality and domicile of employee; nature of the service or task and place where the service or task will be performed; amount of salary; duration; place and date of employment contract; name of children, age of children, and wife.



If the employee is single, the name of the parent or appropriate legal heirs must be indicated.

Bolivian labour law also recognizes collective agreements. Associated employers must enter into collective agreements with the employees, which are considered part of an individual employment contract.

### Mandatory Requirements:

#### Trial Period

A three-month trial period only applies to new employees with indefinite employment contracts. Employees dismissed during the three-month trial period are not entitled to severance payment or other employment benefits.

#### Hours Of Work

The following Hours of Work are set by statute: 8 hours per day, 7 hours per night shift (night work is between 20.00 and 06.00), 48 hours per week for men, 40 hours per week for women. Working hours do not apply to those employees that cannot submit themselves to working hours set by statute because of the nature of their work, in this case employees may not work for more than 12 hours. Overtime, holidays and Sunday work is paid at a 100% surcharge.

#### Earnings

Employees may not earn less that the minimum income level (currently $172.41 (Bs. 1.200) per month) set by the Executive branch of Government.

#### Holidays / Rest Periods

Employees are entitled to annual vacation that varies according to the length of service: 1 – 5 years' service entitles an employee to 15 days; 5 – 10 years' service entitles an employee 20 days; 10 + years' service entitles an employee to 30 days annual vacation. In addition, employees are entitled to various public holidays and Sunday as a day off.

#### Minimum/Maximum Age

Minors under 14 years old are prohibited from working. The maximum working age is 65 years unless the employer agrees to hire the employee for three more years, The normal retirement age under the social security system is 58 for men and 55 for women. Retirement age for pension plan purposes depends on the amount of capital accumulated by the employee.

#### Illness/Disability

The "Caja Nacional de Salud" must provide the covered employee with all the necessary medical assistance for any illness work related or not.

Disability benefits are provided as part of a long term insurance by the pension funds that cover disability, old age and death. The benefits are monthly annuities that depend on the years of contribution to such fund by the employee. The employees must contribute to the mentioned fund up to 12.21% of their monthly remuneration, and a contribution called 'Solidarity'. (For further details, see under Social Security Contributions in Section 3).

Disability benefits are paid based on the level of employee's disability as a result of the sickness.

#### Location Of Work/Mobility

When the task or service of the employee takes place over 2 km away from the employee's residence, employers may be obliged to provide transport. When the task or service of the employee takes place over 100 km away from the employee's residence, the employer must pay food and transport expenses.

#### Pension Plans

Monthly social security contributions allow employees to retire. Pension Payments are made monthly unless the employee opts to be paid in one lump sum.

#### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

Maternity leave amounts to 45 days before birth and 45 days after birth. Maternity leave may be extended due to medical reasons.

Compulsory Terms

The following compulsory provisions must be included in every employment contracts: Employer's contact details (name, domicile, legal representative, identification number, legal representative's identification number), name of employee; identification number, age, nationality and domicile of employee; nature of service or task and place where service or task will be performed; amount of salary; duration; place and date of employment contract; name of children, age of children, and wife. If the employee is single, the names of the parents or appropriate legal heirs should be included.

Non-Compulsory Terms

Non-Compulsory Terms in addition to compulsory provisions may be included in an employment contract.

### Types Of Agreement

Employment contracts under Bolivian Labour Law may be as follows: Individual; collective, verbal, in writing, fixed term, and for an undefined term.

### Secrecy/Confidentiality

When an employee reveals industrial secrets, the right to receive social benefits is waived and the employee can be dismissed.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Ownership of IP Rights is determined by statute.

### Hiring Non-Nationals

A maximum of 15% of the total workforce of a company registered and domiciled in Bolivia can be comprised of non-nationals. Also, a company registered and domiciled in Bolivia may hire only qualified non-nationals. Non-nationals working in Bolivia require a visa.

### Hiring Specified Categories Of Individuals

Women and minors under the age of 18 can only work during the day and cannot be employed on dangerous tasks.

### Outsourcing And/Or Sub-Contracting

Employers may not outsource or subcontract work that is inherent to the company.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers may not make changes to an existing employment contract unless they have the employee's consent and such changes are not contrary to Bolivian Labour Law.

### Change In Ownership Of The Business

Changes in the ownership of the business do not affect the validity of the existing work contracts. Employees are not allowed to refuse a change in ownership of the business.

### Social Security Contributions

The following Social Security Contributions are mandatory by statute. An employer's contribution amounts to a total of 13.71% which consists of housing 2%, professional risk 1.71% and short term insurance 10%., and a contribution called Solidarity. A solidarity fund aimed at helping to improve the lower incomes of other policyholders, which corresponds to 3%

An employee's contribution amounts to a total of 12.21% which consists of seniority contribution 10%, common risk 1.71% and Pension Fund commission of 0.5%, and a contribution called Solidarity. The solidarity fund is aimed at helping to improve the lower incomes of other insured, according to the following: If the total earned is greater than Bs. 13,000, the contribution is 1%; for earnings above Bs. 25,000, the contribution is 5% and if it is greater than Bs. 35,000, the contribution is 10%.

### Accidents At Work

Where there is an accident at work the employee must file a complaint within 24 hours of the accident before the employee's respective Health Fund.

### Discipline And Grievance

In cases where certain grievances are raised, the labour inspector has to be informed. The labour inspector also has the right to enter the workplace without warning. Where a grievance concerning harassment is made, the employer has to provide assistance to the employee and support him against other employees if necessary.

Rules concerning discipline are more typical in employment relationships governed by public law, (for example, for magistrates who have tenure).

**Harassment/Discrimination/Equal pay**

There are no express provisions in Bolivian Labour law which relates to equal pay.

All companies must have Internal Regulations that treat the following types of racist and/or discriminatory behaviour as misconduct:

- Racially motivated verbal attacks and/or discriminatory action intended to offend a person's dignity as a human being.
- Denial of access to employment or benefits because of racism and/or discriminatory conduct.
- Physical, psychological and sexual ill-treatment to any employee regardless of hierarchy, for racist and or discriminatory reasons, that cause psychological and / or physical harm, provided it does not constitute itself as a felony.
- Activities which denigrate the moral and good customs of any company employee.

**Compulsory Training Obligations**

There are no compulsory training obligations under Bolivian Labour Law.

**Offsetting Earnings**

Offsetting earnings against employees' debts is not allowed under Bolivian Labour Law.

**Payments For Maternity And Disability Leave**

Disability benefits are provided as part of a long term insurance by the pension funds that cover disability, old age and death. Disability benefits are paid based on the level of employee's disability as a result of the sickness. Accordingly disability benefits are paid as follows: absolute disability, 2 years of salary; permanent disability, 1 year of salary; partial disability, 18 months of salary; temporary disability, salary is paid for duration of disability for a maximum of 6 months.

During maternity leave the employee is entitled to receive necessary medical treatment. Maternity leave consists of 45 days leave prior to the birth of the child and 45 days after the child's birth. During maternity leave the employee's salary must be paid.

An employee on Maternity Leave has a right to receive milk products prior to the birth of a child. The value of the milk products must be at least equal to one month's salary at the minimum wage and must be given to the employee at the start of the fifth month of pregnancy and up to the day of birth.

A post-natal subsidy and a milk subsidy are also provided to the employee on maternity leave after the birth of a child. The post-natal subsidy is given once and must be at least equal to one month's salary at the minimum wage. The milk subsidy must be provided a monthly basis until the child is one year old.



It is important to note that both the father and the mother cannot be dismissed from their place of work until their child has reached the age of one.

**Compulsory Insurance**

The employer must ensure that the mandatory contributions to the security services to provide for disability, sickness indemnifications and pensions.

**Absence For Military Or Public Service Duties**

Bolivian Labour Law does not regulate absence for military or public service duties.

**Works Councils or Trade Unions**

Bolivian labour law recognizes the right of association. Trade Unions are allowed in companies with more than 20 employees.

**Employees' Right To Strike**

Employees have the right to strike. Before the declaration of a strike, all conflicts between the employer and the employees must be submitted to a process of conciliation and arbitration.

**Employees On Strike**

An employer may not fire employees who are on strike.

**Employers' Responsibility For Actions Of Their Employees**

According to Article 992 of the Bolivian Civil Code employers are responsible for damages caused by employees in the course of their employment.

# 04. Firing The Employee

### Procedures For Terminating the Agreement

Termination of an employment contract is the result of a dismissal or a voluntary withdrawal. In either of the mentioned cases, the employee is generally entitled to a severance payment and other benefits.

According to Bolivian Labour Law an employee can only be dismissed if the Employee is found to be guilty of one of the following: intentional material damage caused to work instruments; disclosure of industrial secrets; negligent acts that may affect industrial security and hygiene; failure to comply with work agreement; and theft or robbery.

If dismissal is for a reason not contemplated by the Bolivian Labour Law, the employee may request the labour authorities to be reinstated in the work place or payment of corresponding social benefits may be requested. Upon dismissal or resignation, the employer and employee must file a form (finiquito) before the Bolivian labour authorities.

### Instant Dismissal

According to Bolivian Labour Law an Employee can only be instantly dismissed if the Employee is found guilty of one of the following: intentional material damage caused to work instruments; disclosure of industrial secrets; negligent acts that may affect industrial security and hygiene; failure to comply with work agreement; and theft or robbery.

### Employee's Resignation

There are no statutory provisions in Bolivian Labour Law that impedes an employee from resigning. However, the employee must give 30 days' notice to the employer of his wish to resign.

### Termination On Notice

Although current labour statutes provide that agreements are indefinite, employment contracts require 30-days' notice of termination to be given by the employee and 90 days notice by the employer; Temporary employment contracts and employment contracts for a specific task or service require one-week's notice following one month of work, 15 days notice after three months of work and 30 days notice after one year of work, to the extent that an employee can only be dismissed for the following reasons, in practice notice of termination is no longer used:

- Intentional material damage caused to work instruments; disclosure of industrial secrets; negligent acts that may affect industrial security and hygiene; failure to comply with work agreement; and theft or robbery.
- Notice of termination only applies in cases liquidation and dissolution of a company.



### Termination By Reason Of The Employee's Age

A labour relationship may be terminated if the employee is 65 years old or older.

### Automatic Termination In Cases Of Force Majeure

Employment contracts may not be terminated automatically in cases of force majeure.

### Termination By Parties' Agreement

Termination only proceeds for reasons established by statute or if employee resigns. No approval from a court or other regulatory body is required before the termination is effective.

### Directors Or Other Senior Officers

When a Director or other Senior Officer is not an employee of the company and is dismissed, the rules provided by the Bolivian Commerce Code will apply.

### Special Rules For Categories Of Employee

There are no special rules for other employee categories.

### Specific Rules For Companies in Financial Difficulties

Employee salaries may not be the subject of an attachment. Employees' salaries have priority payment over other debts owed by the Employer to creditors.

### Restricting Future Activities

There are no rules with regards to clauses in an employment contract that restrict future activities. This is up to the parties to decide.

### Severance Payments

If the duration of a labour agreement has been left open, upon an unjustified dismissal accepted by the employee, the employee may be entitled to an indemnity (three months severance payment) and an indemnity for length of service (provided the employee has worked for the employer for more than 3 months), corresponding to one month's salary.

### Special Tax Provisions And Severance Payments

There are no special tax provisions that apply to severance payments.

### Allowances Payable To Employees After Termination

Employees are not required to contribute towards any allowances payable to them after termination.

### Time Limits For Claims Following Termination

There are none. No statute of limitations applies.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are none.

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# Brazil

# Brazil

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Labour Court has exclusive jurisdiction over any claims involving general work-related situations, including but not limited to claims from employees, officers, independent contractors and independent consultants.

### The Main Sources Of Employment Law

In Brazil, basic employment rights are provided for in the Federal Constitution, which establishes rights and minimum contractual conditions that must be complied with in employment relations.

The rights provided for in the Federal Constitution are codified by federal laws and in their great majority are consolidated in the Brazilian Labour Code ('CLT').

In addition to the CLT, a significant amount of regulation is introduced by secondary legislation. There are also regulations relating to occupational health and safety issued by the Ministry of Labour and Employment.

There are mandatory regulations set forth in Collective Bargaining Agreements. Please note that, in Brazil, almost all companies are under Collective Bargaining Agreements, which are executed between one or more Trade Unions representing the companies, and one or more Unions representing employees.

Finally, policies set forth by the employer are also considered a source of Employment Law.

### National Law And Employees Working For Foreign Companies

National law applies to work performed in Brazil, even if the employee works for a foreign company (with or without a branch in Brazil) or is a non-national employee (in this case, specific visa regulations apply). It is not possible to override this by specifying a different set of regulations chosen by the parties and included in the employment agreement. Thus, the company must provide to the foreigner the same rights guaranteed by law to Brazilian workers, and it is advisable to include him or her in the local benefits policy.

When hiring non-nationals, employers are subject to specific visa regulations. Labour regulations also limit the total of non-nationals hired as employees in a company to 1/3 of the employees and/or 1/3 of the cost of the payroll.



## 02. Hiring The Employee

### National Law And Employees Of National Companies Working In Another Jurisdiction

Law 7.064/1982 establishes the rights applicable to employees of Brazilian companies working in another jurisdiction, whether hired in Brazil to perform services abroad or simply transferred to a foreign subsidiary of a Brazilian company. Such rights include the labour rights in the jurisdiction where the work is done as well as any rights under Brazilian law, whichever is the more beneficial to employees.

### Legal Requirements As To The Form Of Agreement

As a general rule, Brazilian law does not require the execution of a written employment agreement. However, in the interests of certainty, companies usually tend to execute written employment agreements with their employees setting out all rights and duties to be performed by the parties. In certain situations, such as temporary workers, a written agreement is mandatory.

It is important to highlight that an offer letter is usually construed by the Brazilian Labour Courts as an employment agreement and once written, it creates duties and rights for the employment even if the offer letter has been replaced by a formal employment agreement.

In any case, it is mandatory to provide the details of the agreement in the Employee Booklet ("CTPS") and employment registration form – this procedure is also called "to register an employee".

### Mandatory Requirements:

Under Brazilian labour law, an employee is entitled to certain rights, in addition to what may have been agreed to in a written employment agreement.

#### Trial Period

The probationary period can last up to 90 days. Depending on the collective bargaining agreement, the trial period could be less than the legal 90-days term. After such period the employment agreement will automatically became an employment agreement without any term set forth.

If the trial period is extended, even by one day, it will automatically be considered an employment agreement with unlimited term.

#### Hours Of Work

In general terms, hours of work are limited to 8 per day and/or 44 per week. In certain situations, such as night shifts or by agreement, this maximum limit may be reduced. In some professional categories the hours of work are limited to 6 per day and/or 36 per week. For offshore employees the hours of work are limited to 12 hours per day, in a shift of 14 days of work per 14 days of rest.

### Earnings

Annual Christmas bonus (13th Salary) - an additional monthly salary, paid in two instalments, the first during the period from February to November, and the second in December.

Severance fund (or FGTS) – an amount to be funded by the employer by depositing 8% of the employee's monthly salary in a special bank account of the employee at the Federal Savings Bank (Caixa Econômica Federal). The amounts deposited in such fund may be withdrawn by the employee upon retirement as well as in certain very special cases, such as termination of employment by the employer, without cause.

### Holidays/Rest Periods

Employees are entitled to an annual 30-day vacation coupled with a bonus equal to 1/3 of the employee's monthly salary.

The company must provide a break for rest and a meal whenever the working period is more than four hours, which will be of 15 minutes for a working period of up to six hours and of one to two hours for a working period of more than six hours. The break for rest and a meal is not included within daily working hours.

Weekly paid rest - The weekly rest of 24 hours is paid by the employer and is included in the employee's monthly salary;

### Minimum/Maximum Age

The minimum age for work as an employee is 16 years. Apprentices may be hired once they are 14. There is no maximum age for non-governmental employees. Apprentices must not be older than 24. Retirement does not imply an automatic cause for termination.

### Illness/Disability

15-day paid sick leave – the employer is responsible for the payment of salary for the first 15-days' sick leave. As from the 16th day, the employee becomes subject to the Social Security care and will receive social security allowance.

Brazilian laws provide that companies are obliged to hire certain number of apprentices and disabled workers. Employers are obliged to hire a number of apprentices for at least 5% of the job positions existing in the company that requires specific professional qualification.

Also, companies with more than 100 employees must hire disabled workers in a proportion from 2% to 5%, according to the total number of employees

### Location Of Work/Mobility

The employment agreement must provide details of the employee´s location of work. If the employee may be required to travel for business or even to be transferred to another location of work, it is recommended that this be recorded in the employment agreement. In case of a temporary transfer to another location of work, the employer must pay a transfer allowance of 25% of employee´s salary during such transfer, together with any costs of transfer. In the event of a permanent transfer to another location of work, this must be recorded in a formal agreement and the employer must pay the corresponding costs related to the employee´s relocation. Any transfer of the employee to work abroad will trigger the application of a Brazilian special law related to cross-border work.

An employee may work from his/her home under a home office system, provided that such condition is expressly provided under the employment agreement.

### Pension Plans

The employer is under no obligation to establish and/or contribute towards a private pension scheme, even though this is a common practice in Brazil. Employees are considered covered by the Social Security pension plan (mandatory for employees), which is funded by employers and employees to the Government

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

120-day maternity leave – female employees are entitled to 120-days' maternity leave to be paid by the Social Security, as well as in case of adoption. This amount is not an employment right, but rather a social security right. In addition during the pregnancy until 150 days after birth, the employee has a guarantee of employment.

5-day paternity leave - male employees are entitled to 5-days' paternity leave paid by the employer.



### Compulsory Terms

As a general rule, the compulsory terms must be noted in the Employee Booklet, i.e. the name of the parties, job title, salary, commencement date and probation period (if applicable), promotions, salary increases and other rights and duties.

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable to the employee than the rights provided under the Federal Constitution, the Labour Code the Collective Bargaining Agreements, and in any applicable special laws.

## Types Of Agreement

Employment Agreements may but do not have to be in writing, provided that the basic elements are noted in the Employee Booklet. Employment Agreements usually are established for an indefinite period, however, in a few circumstances may be established for a fixed period and for part-time.

## Secrecy/Confidentiality

Employees must keep confidential any secrets or confidential information belonging to the employer. A breach of this obligation may enable the employment agreement to be terminated for cause. Specific and more detailed confidentiality clauses are commonly inserted in Employment Agreements. It is also possible to add a confidentiality clause after the employment has commenced by means of a written agreement.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

In general terms, inventions or objects (subject to intellectual property rights) produced or created by the employee during his/her employment belongs to the employer, but for certainty it is advisable to have an express provision in the Employment Agreement. Agreements may provide different provisions for such rights.

## Hiring Non-Nationals

When hiring non-nationals, employers are subject to specific visa regulations. Immigration and Labour regulations also limit the total of non-nationals hired as employees in a company to 1/3 of the employees and/or 1/3 of the cost of the payroll.

## Hiring Specified Categories Of Individuals

There are Constitutional and/or legal restrictions relating to specific tasks, such as night work and hazardous work, which may not be performed by under-age employees. Employers are also obliged to hire a certain number of apprentices and of disabled employees.

### Outsourcing And/Or Sub-Contracting

Hiring consultants or service providers through an intermediary company is possible as long as such consultants or service providers are not involved in the hiring company's core business. This is so because the Superior Labour Court, through Abstract 331, recognised that outsourcing of a company's core business is considered to be illegal.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

The Labour Code Legislation provides that alterations to employment agreements are only allowed by mutual consent and provided that there is no harm to the employee or to his/her labour situation.

### Change In Ownership Of The Business

In general, changes in ownership of a business do not have any impact in labour agreements. In that sense, the new owner must observe all the employees rights.

### Social Security Contributions

Social security contributions are made by the employers and also by the employees. The Federal Government also contributes to Social Security. The contribution paid by employees is calculated as a percentage of the salary (varying from 8% to 11%), limited to a maximum contribution, which is lower than the minimum wage. The contribution paid by employers is not subject to limitations and is calculated, according to the activity of the company, as a percentage of the payroll (this percentage may vary from around 25.5% to 28.8%) and/or a percentage of the revenues.

### Accidents At Work

Employers have an obligation to guarantee a safe work environment. During sick leave (including leave caused by an accident at work), the employee's salary is paid by social security. Employers are responsible for any damage suffered by their employees as a result of an accident at work. The same rules apply to accidents that take place on an employee's way to work.



### Discipline And Grievance

Brazilian labour regulation provides for specific situations in which employees may be dismissed with cause. Some situations allow an employer to terminate the employee's agreement immediately. Other situations, i.e. lack of effort at work, provide for prior disciplinary actions, such as warnings to the employee and disciplinary unpaid leave. Employees are also entitled to terminate their agreements for cause, in specific situations established under Brazilian labour law.

### Harassment/Discrimination/Equal pay

There are specific rules concerning discrimination and equal pay. In general, employees who perform the same work must receive the same pay and also be treated equally. Women have special protection against discrimination. It is a crime to ask any questions about contraception. Other categories of employee are also protected by special regulations. Harassment situations are covered by general civil law, which also applies to labour relations.

### Compulsory Training Obligations

Compulsory training in Brazil is mainly related to health and safety of employees.

### Offsetting Earnings

Deduction for earnings against employees' debts are only allowed when (i) determined by the courts, (ii) when the debt has arisen as a result of damage caused deliberately by the employee or (iii) when authorized by the employee in specific situations provided by the Court's understanding. It is only possible to make deductions for damage caused by negligence if there is a specific provision in the agreement.

### Payments For Maternity And Disability Leave

Payments for maternity and disability leave are made by Social Security, subject to certain financial limitations.

### Compulsory Insurance

There is no legal obligation to provide or pay for private insurance. Nevertheless, employers contribute to Social Security which acts as a general insurer for employees. Social Security provides employees with pensions, but Social Security will not pay any premium.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

Companies are represented by Trade Unions according to their business activity. Employees are represented by an appropriate Workers Union dependent upon the industry in which they operate. Collective Bargaining Agreements must be observed by both employers and employees when negotiated between Trade Unions and the relevant Workers Union.

### Employees' Right To Strike

The right to strike in Brazil is a Constitutional Right. There is specific regulation regarding the right to strike, which is subject to certain limits. Employers must be notified at least 48 hours before the strike begins and employees must obey certain limitations. If strike procedures are not followed, employees may lose payment for such days.

### Employees On Strike

Employees may not be dismissed during a strike and employers are not allowed to hire replacement personnel during a strike.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for any damage caused by their employees in the performance of their contractual duties.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

When an employment agreement is terminated without cause, no reason is required to be given and the employee will be entitled to payment in full in respect of all severance payments provided for in his employment agreement, under the relevant labour laws and pursuant to any applicable collective bargaining agreement.

Brazilian labour regulation requires employment agreements to include a minimum notice period for termination of 30 calendar days, with an addition of three days of each full year of employment, up to 90 calendar days.



Listed below are severance payments required in the event an employee is terminated without cause:

- Notice period indemnity;
- Vacation, based on one month's salary per year of employment, calculated on a pro rata basis, with an addition equal to one-third of the pro rata vacation;
- Christmas bonus (also called "13th salary") equal to 1/12 of the employee's monthly salary per month of employment (or a fraction thereof at least equal to 15 days), counted from the relevant January 1st to the day of termination, calculated on a pro rata basis;
- Fifty percent (50%) of all amounts existing in the employee's FGTS bank account on the date of termination.

When an employment agreement is terminated with cause, a reason is required to be given. The dismissal of an employee with cause may only occur where the dismissal results from one or more of the following acts of the employee (as defined under Brazilian labour laws):

- dishonesty;
- improper conduct or lack of self-restraint;
- regularly doing business on his/her own account or for the account of a third party without the employer's permission, or when the activity is in competition with the employer's business or adversely affects the quality of the employee's work;
- criminal sentencing of the employee, in a final court decision, provided that execution of the penalty has not been suspended;
- indolence in the execution of his/her duties;
- habitual drunkenness during working hours;
- violation of trade secrets;
- any act of indiscipline or insubordination;
- abandonment of employment;
- during working hours, any act of violence or any act injurious to the honor or reputation of any person, except in legitimate cases of self-defense, or in defense of the interests of a third party;
- during working hours, any act of violence or any act injurious to the honor or reputation of the employer or the employee's superiors, except in legitimate cases of self-defence, or in defense of the interests of a third party; or
- constant gambling.

If the employee is dismissed with cause, he/she will be entitled only to accrued unpaid salary.

The cause for termination must be fully evidenced; otherwise, the employee may argue in the Labour Courts that his/her termination was, in fact, without cause and, therefore, the right to receive all due severance pay applies. Furthermore, the employee may seek payment of damages if the termination for cause is turned into termination without cause.

**Instant Dismissal**

An employee may be dismissed immediately and without payment of notice of termination in any of the above-mentioned circumstances amounting to dismissal for cause.

**Employee's Resignation**

Employment agreements may, generally, be terminated if the employee resigns, subject to a minimum notice period of 30 calendar days, as provided for in the Brazilian Labour Regulation.

**Termination On Notice**

For a fixed term agreement, it will be deemed to terminate automatically at the expiry of the fixed term. However, if there is an extension of work even for one day, such Employment Agreement will be considered as an unlimited Employment Agreement.

**Termination By Reason Of The Employee's Age**

Under the Brazilian labour law there is no maximum age for non-governmental employees. Furthermore, a termination for age could be construed as an act of discrimination.

**Automatic Termination In Cases Of Force Majeure**

There is no specific provision for an automatic termination in the event of Force Majeure. Therefore, the employment will continue and in the event the employer terminates the employment, the mandatory severance will apply.

**Termination By Parties' Agreement**

There is no provision for termination by Parties´ Agreement. Under the Brazilian Labour Laws, the Employment is terminated under the following events: (i) termination of employment without cause upon the employer´s initiative; (ii) termination of employment with cause due to the employee´s commitment of gross fault; (iii) employee´s resignation without cause; (iv) constructive dismissal due to employer´s gross fault to be stated by the Labuor Court; (v) termination due to the Parties´ mutual gross faults; and (vi) termination due to employee´s death.



**Directors Or Other Senior Officers**

Since they are not working under subordination, officers and statutory directors are not considered employees. An employment agreement may also be signed alongside such contracts. In this event, the termination of the statutory office does not automatically bring to an end the employment agreement. Separate steps will be required to bring both relations to an end.

**Special Rules For Categories Of Employee**

Certain categories of employee benefit from more generous rules for protection from dismissal without cause, for example, pregnant women, Union leaders, and members of a company's accident prevention commission. They have a right to return to their job following a connected leave of absence.

**Specific Rules For Companies in Financial Difficulties**

Companies in financial difficulties may negotiate with Unions certain special conditions in regard to labour relations. Additionally, in Brazil collective dismissals are not permitted without previous negotiations with the Union.

**Restricting Future Activities**

Generally clauses that attempt to restrict the future activities of an employee are contrary to the Brazilian Federal Constitution and therefore unenforceable, but the Courts will uphold restrictions if they are drafted sufficiently narrowly and upon the payment of an indemnity. Essentially such restrictions must be designed to protect a 'legitimate business interest' and they should be no wider than is necessary to protect those interests. Further, such clauses must be clear and reasonable in time and area limitations. Typical clauses include those designed to restrict an employee from joining a competitor (or setting up in competition), from soliciting business from or dealing with certain customers or from enticing other employees to leave.

**Severance Payments**

Brazilian Labour Regulation lays down statutory payments which are calculated by reference to the employee's length of service and salary. In case of dismissal without cause the severance payment includes additional compensatory elements to reflect the losses suffered by the employee.

**Special Tax Provisions And Severance Payments**

Income tax and social contribution may be deducted from employees' compensations, in accordance with applicable tax legislation.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination, unless there is a specific contractual provision.

### Time Limits For Claims Following Termination

Claims to the Labour Court (including contractual claims) must be issued within 2 years of the termination of the employment agreement.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are none.

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# Bulgaria

# Bulgaria

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Bulgarian District Court, which has jurisdiction in the region where the permanent address or the registered office of the employer is established, has exclusive jurisdiction for all employment claims. The employee may also file a claim against his/her employer in the District Court, which has jurisdiction in the region where the employee regularly works.

### The Main Sources Of Employment Law

The Labor Code provides the basic requirements which should be followed when concluding an employment contract (e.g. it is mandatory that the employment contract is concluded in written form, the employment contract must consist at least of the place of work, the character of the job occupied, date of conclusion and date of signing-in, term of the contract, term for termination notices, working hours, minimum holiday leave). Any other clauses should be agreed by the parties. Another main source of employment law is the Health and Safety at Work Act, which sets out the minimum requirements for health and safety conditions, which must be met at the workplace, the Social Insurance Code, regulating the social contributions required from the employee and the employer, the Protection against Discrimination Act, which deals with any discrimination in the employment relationship, the Insurance Code and the insurance regulations, which deals with insurance obligations for employers of those who work in high risk roles. The Bulgarian employment law also provides a great number of acts and regulations in the employment relationships (e.g. for the structure and forming of the remuneration, for the length of service and the record of service, health and safety requirements for different work positions, settlement of collective labour disputes, etc.).

### National Law And Employees Working For Foreign Companies

Bulgarian legislation applies to the employment relationships of all employees, whose employers' registered office and address of management is in Bulgaria (e.g. a Bulgarian company owned by foreign company or a representative office), as well as with Bulgarian employers abroad, save as otherwise provided for in a law or in an international treaty which is in force for the Republic of Bulgaria.



This shall not apply to employment relationships with an international element if the parties have elected that the employment relationship there between shall be governed by the legislation of another State.

Nevertheless, it shall not deprive the employee of the protection ensured thereto by the mandatory standards of the legislation of a Member State of the European Union, of a Contracting Party to the Agreement on the European Economic Area or of the Swiss Confederation within the territory of which the work is performed, where the said standards are more favourable for the employee.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Bulgarian legislation shall apply to the employment relationships of employees, sent by a Bulgarian employer to work abroad in a foreign enterprise or joint venture, as well as of foreign citizens working in Bulgaria, save as otherwise provided for in a law or in an international treaty which is in force for the Republic of Bulgaria.

This shall not apply to employment relationships with an international element if the parties have elected that the employment relationship there between shall be governed by the legislation of another State.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

The employment contract must be in written form. Also the employer is obliged to provide to the employee before his/her signing-in an original of the signed employment contract and a copy of the notification to the National Revenue Agency (for the registration of the employment contract).

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide trial periods, otherwise known as 'probationary periods', when engaging new employees, but it is common in practice to do so. The Labor Code stipulates that this trial period shall be not more than 6 months. The trial period shall be applied only once with each employer.

#### Hours Of Work

The regular working week consists of 5 working days with up to 40 working hours. The working hours may vary during the week by written agreement with the employer when it proves necessary within the employee's job. Also the Labor Code provides that the employees may work with a reduced working time or part time in certain circumstances.

### Earnings

Generally the remuneration is agreed between the parties. The law prohibits the arrangements for any remuneration, which is less than the established for the country minimum working salary (EUR 174 as of 01.01.2014) when the employee has worked all working hours during the respective month. The social contributions are calculated depending on the work position. Additional statutory remuneration is paid depending on the length of service of the employee (0.6% per annum), for overtime working, qualification, availability of the employee out-of-hours.

### Holidays / Rest Periods

There is a requirement that employees must take a minimum of 20 working days paid holiday per year if the employee has worked at least the half of the usual working time per week (please see Hours of Work). There are also various compulsory daily and weekly rest periods and breaks which have to be observed.

### Minimum/Maximum Age

There is a minimum age of 16, below which employees cannot work. As an exception, persons aged between 15 and 16 years may be employed in work which is light and which is not hazardous or harmful to their health and to their proper physical, mental and moral development and which would not be detrimental to their regular attendance at school or to their participation in vocational guidance or training programmes. Also, as another exception, girls who have attained the age of 14 years and boys who have attained the age of 13 years may be appointed to apprentice positions at circuses, and persons who have not attained the age of 15 years may be recruited for participation in the shooting of films, in the preparation and performance of theatrical and other productions under relaxed conditions and in conformity with the requirements for their proper physical, mental and moral development. Different rules (e.g. on working time/health and safety requirements) apply to children or young workers. There are no maximum age limits.

### Illness/Disability

The employment contract may be terminated if the employee is unable to work by reason of illness which has led to permanently reduced working capacity or because of health contraindications on the basis of a conclusion of the medical expert board for working capacity certification. If the employer can provide alternative work suitable for the employee and he/she agrees to take it, termination cannot be effected.

An employee, who by reason of a disease/ illness or employment injury is unable to execute the work assigned thereto, but who may execute another suitable work or the same work under relaxed conditions without hazard to his or her health, shall become an occupational rehabilitee, being transferred to another work or to the same work under suitable conditions at a prescription of the health authorities.

An employee shall be entitled to holiday leave for temporary disability through general sickness or occupational disease, employment injury, for treatment or for urgent medical examination or tests, quarantine, suspension from work prescribed by the health authorities, attendance of a sick or quarantined member of the family, urgent need to accompany a sick member of the family to a medical examination, test or treatment, as well as for taking care of a healthy child dismissed from a children's establishment by reason of a quarantine imposed on the establishment or on the child.

The employer shall be obliged to take measures for the prevention and reduction of the incidence of employment injuries and of general sicknesses and occupational diseases.

Upon termination of an employment relationship due to ill-health, the employee shall be entitled to compensation from the employer amounting to two months' gross pay, provided that the said employee has been employed for at least five years and has not received compensation on the same grounds during the last five years of employment.



### Location Of Work/Mobility

The employee's normal place of work must be specified in the employment contract. Usually this is the registered office of the employer, unless otherwise agreed or ensuing from the nature of the work. Where necessary the employer may second an employee to work outside his/her permanent workplace, but such period cannot exceed 30 continuous calendar days without the written consent of the employee. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

### Pension Plans

The Bulgarian legislation provides the minimum social contribution related to pensions, which should be made by the employer (it is calculated as a percentage ratio from the insurance income). Additionally, the law permits the parties to make optional additional voluntary pensions contributions.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A range of "family-friendly" rights exist, including maternity leave and pay, paternity leave and pay, adoption leave and pay, parental leave and pay, time off for dependants and part-time working. Different rules apply to different rights, and it is not possible to summarise all the details within the scope of this book (e.g. each mother is entitled to maternity of 1 year paid holiday and after its expiration – another year unpaid parental leave).

### Compulsory Terms

The employment contract must contain particulars of the parties and must specify: the place of work; the position and the nature of the work; the start and finish dates; the duration of the employment contract; the amount of basic and extended paid annual leave and of additional paid annual leave; equal length of the period of notice to be observed by both parties upon termination of the employment contract; the basic and supplementary employment remunerations of a permanent nature, such as the frequency of their payment; the duration of the working day or week.

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights.

## Types Of Agreement

All employment relationships are contractual in nature, as it is mandatory that the employment contract is in writing. Contracts of employment exist in several different forms: fixed term, variable, full-time or part-time. The compulsory terms provided by the employment legislation in force apply regardless of the type of contract contemplated.

There are discrimination clauses and law which prevent employees from being treated less favourably than other employees because of working part-time or working on a fixed term contract, or because of nationality, sex, race, ethnicity, citizen, origin, religion, education, political ideas, age, family status, etc.

### Secrecy/Confidentiality

The employee is obliged to be loyal to the employer and not to abuse the employer's trust and not to disclose any confidential data of the employer, as well as to protect the reputation of the enterprise. In this regard more detailed clauses are usually written in the employment contracts. Therefore, information that an employee is expressly told is confidential, or which by its nature is self-evidently confidential, is protected (without express covenant) during employment.

After termination of employment, only trade secrets are protected by the implied duty of confidentiality. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment. In addition to the implied duties, employers will often include in the employment contract an express term specifying the type of information that is a trade secret, and therefore protected, to prevent future disclosure. They may also include restrictive covenants as a means of protecting future confidentiality (see below).

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The author is the person, the creative activity of whom leads to the creation of works. However, unless otherwise agreed, IP rights over computer programs and databases, created under an employment relationship, are property of the employer.

### Hiring Non-Nationals

Different requirements apply depending on the nationality/status of the individuals concerned.

The same rules shall apply to the hiring of employees who are citizens of a member-state the European Union as apply to Bulgarian citizens. Depending on the length of residence in Bulgaria, they are only required to obtain a permit for residence in Bulgaria.

Employees who are not citizens of a member-state of the European Union must obtain a work permit from the National Employment Agency before concluding the employment contract. This work permit is one of the documents which should be attached to the application for obtaining a permit for residence.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.



### Outsourcing And/Or Sub-Contracting

There are specific rules relating to outsourcing and/or sub-contracting.

An employment contract with an enterprise providing temporary work shall stipulate that the employee concerned is to be commissioned for temporary work at a user undertaking, such work being supervised and controlled by such user undertaking. The total number of employees commissioned by an enterprise providing temporary work at a user undertaking may not exceed 30 per cent of the employees employed by such enterprise. Any employment contract may not stipulate terms prohibiting or preventing the formation of an employment relationship between the user undertaking and the employee while the employee is commissioned to perform the assignment at a user undertaking or thereafter. The enterprise providing temporary work may not require from the employee any fee for the assistance to start a job at the user undertaking or any fee upon the conclusion of an employment contract or the formation of an employment relationship with a user undertaking, either before, during or after the assignment where such employee is commissioned. Additional requirements apply regarding the execution of the employment agreement to the user undertaking.

Special rules apply upon the change in the employer (please refer to change in ownership of the business below).

## 03. Maintaining The Employment Relationship

### Changes To The Contract

The employment relationship may be amended only by written consent between the parties for a fixed term or for an indefinite duration. The employer may unilaterally increase the employee's remuneration.

Where production so requires, or where there is a temporary cessation of work, the employer is permitted to require the employee, without his or her consent, to temporarily carry out other work in the same or in another enterprise, but in the same village/locality, for a period of up to 45 calendar days within one calendar year, or, in the case of a temporary cessation, for the duration of that cessation. The employer may assign work of a different nature to the employee, even though it does not correspond to his or her qualifications, where this is necessitated by insuperable reasons.

An employee may be assigned to a position with a European Union institution for a period of up to four years. While occupying such position, the employee shall retain the employment relationship thereof and shall continue to receive the relevant basic labor remuneration from his/her employer. When performing his/her duties, the employee shall be guided solely by the interest of the institution to which he/she has been sent and shall not undertake actions for the employer. Upon expiry of the period of assignment to a position at an institution of the European Union, as well as in the cases of early termination, the employee shall be re-employed in the same role within 15 days, or if the said position has been eliminated, shall be re-engaged in another equivalent position.

The amendments should be registered with the National Revenue Agency.

### Change In Ownership Of The Business

The employment relationship with the employee shall not be terminated in the event of a change of employer as a result of:

- merger of enterprises by the formation of a new enterprise;
- merger by acquisition of one enterprise by another;
- distribution of the operations of one enterprise among two or more enterprises;
- passing of a self-contained part of one enterprise to another;
- change of the legal form of the enterprise;
- change of the ownership of the enterprise or of a self-contained part thereof;
- transfer of activity from one enterprise to another, including transfer of tangible assets.

In each of the above circumstances, the rights and obligations of the transferor employer arising from the employment relationships existing on the date of the change shall be transferred to the new transferee employer. Liability in respect of the obligations to the employees which arose before the change above shall be incurred by:

- the transferee employer, upon merger of enterprises and upon change of the legal form of the enterprise;
- jointly by the transferor employer and the transferee employer: all other circumstances.

The employment relationship with employee shall not be terminated upon change of employer in the cases of rental, lease or concession of the enterprise or of a self-contained part thereof.

Before carrying out the above indicated changes the transferor employer/ the old employer and the transferee employer/ the new employer must inform the trade union organizations' representatives of:



- the proposed change and the date of carrying out the said change;
- the reasons for the change;
- the possible legal, economic and social implications of the change for the employees;
- the measures envisaged in relation to the employees, including such measures envisaged for fulfilment of the obligations of the employers to the employee.

The transferor employer/the old employer must provide the information not more than two months before the change is carried out. The transferee employer/the new employer must provide the information in proper time, and in any event not more than two months before the employees thereof are directly affected by the change as regards their conditions of work and employment.

### Social Security Contributions

Employers and employees are required to make social security contributions. Employers are also required to contribute towards allowances payable to employees during their employment. These allowances include sick pay, maternity pay and paternity pay.

### Accidents At Work

Employers must ensure appropriate health and safety protections are in place so that any risks to the employee's life and health could be eliminated, restricted or mitigated and the employees are obliged to observe the rules in this regard. A breach of health and safety conditions constitutes a breach of the work discipline and gives right to the employer to impose discipline sanctions. In certain circumstances, a professional insurance policy is compulsory.

### Discipline And Grievance

The employer must issue internal work rules, which shall define the rights and obligations of the employees and of the employer under the employment relationship and shall regulate the work organisation at the enterprise according to the specific nature of the activities thereof.

A culpable failure to fulfil any employment duties shall constitute a breach of work discipline. The offender shall be punished as per the disciplinary sanctions provided for in the Labor Code without prejudice to the financial, administrative penalty or criminal liability, if such liability is relevant.

The procedure for imposing any disciplinary sanction requires the employer to properly investigate the matter, to notify in writing the findings to the employee, to hold a disciplinary hearing or meeting (or to require the written statements of the employee). When considering the disciplinary sanction, consideration shall be given to the gravity of the breach, the circumstances of the commission, as well as the conduct of the employee, and the decision of the employer following that hearing must be communicated to the employee in writing.

Only one disciplinary sanction may be imposed for one and the same breach of work discipline.

**Harassment/Discrimination/Equal pay**

The general rule according to the Bulgarian Protection Against Discrimination Act is that any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, is unlawful. There are certain exceptions to this general rule (but the details are outside the scope of this book).

The employer shall not have the right to refuse to employ a candidate on the grounds of pregnancy, maternity or bringing up a child.

The employer is also required to ensure equal working conditions in addition to complying with the general rule above.

Where reasonably practicable, an employer shall take such steps, in terms of working time and days off work, as are necessary to enable employees to comply with their religious requirements.

When a mother on maternity or using a parental leave, or a father on a paternity, returns to work on the expiration of the leave or termination of its use, such person is entitled to assume the same job position as the one prior to the leave, or another equal position, and to benefit from any improvement in the work conditions to which this person would have been entitled if not on leave.

The employer shall ensure equal remuneration for equal or equivalent work notwithstanding the validity term of the employment contract or the length of business hours.

Where an employee who believes that he/she has been is subjected to harassment, including sexual harassment, in the workplace, files a complaint with his/her employer, the employer must immediately hold an inquiry, take measures to stop the harassment, and to discipline another employee if he/she caused the harassment.



**Compulsory Training Obligations**

The employer must ensure conditions for the maintenance and upgrading of the professional qualification of employees for the effective performance of the obligations thereof under the employment relationship in accordance with the requirements of the work performed and future professional development.

Where an employee undergoes a prolonged absence from work, the employer must give the employee the means to familiarize him/herself with the changes which have occurred during his/her absence and to attain the qualification level necessary for the effective fulfillment of the employment duties.

Employees must participate in any training for the maintenance and upgrading of the professional qualification and for the improvement of the professional skills, organized or financed by the employer, as well as to make efforts to upgrade his/her qualification level in accordance with the nature of the work performed.

**Offsetting Earnings**

It is possible for employers to offset earnings against employee's debts. However, the employer may only make a deduction from the employee's wages if it is required or permitted by a statutory or contractual provision; or the employee has given his prior written consent to the deduction.

**Payments For Maternity And Disability Leave**

Persons insured in respect of common disease and maternity shall have the right to cash benefits instead of remuneration for the duration of the leave of absence due to temporary incapacity to work and in case of occupational rehabilitation, provided that they have at least 6 months' service, in the course of which they have been insured in respect of such risk. The requirement for 6 months' service shall not apply to those under the age of 18.

The daily cash benefit for temporary disability through common disease shall be calculated at the rate of 80 per cent, and the daily cash benefit for temporary disability through employment injury and occupational disease shall be calculated at the rate of 90 per cent, of the average daily gross wage or the average daily contributory income on which social insurance contributions have been remitted or are due, and in respect of self-insured persons, on which social insurance contributions have been remitted for common disease and maternity for the period of 18 calendar months preceding the month of occurrence of the disability. The daily cash benefit for temporary disability through common disease may not exceed the average daily net wage for the period on the basis of which the benefit is calculated.

Persons insured in respect of common disease and maternity shall have the right to cash benefits for pregnancy and childbirth instead of salary, provided that they have at least 12 months' service, in the course of which they have been insured in respect of such risk. The daily cash benefit for pregnancy and childbirth shall be 90 percent of the average daily gross wage or the average daily contributory income whereon insurance contributions have been paid or are due, and in the case of self-insured persons - paid insurance contributions in respect of common disease or maternity for the period of 18 calendar months preceding the month in which the temporary incapacity to work due to pregnancy and childbirth has occurred. The daily cash benefit may not be more than the average daily net wage for the period based on which the benefit has been calculated, or less than the minimum daily wage for Bulgaria

**Compulsory Insurance**

Employers are required to maintain insurance with an authorised insurer, against employment accidents sustained by employees during and arising out of their employment in enterprises belonging to economical activity with a higher than average risk of occupational injuries. Where an employee has to be insured and is insured on any other grounds for accidents, his employer does not need to provide insurance for employment accidents. All expenses regarding the mandatory insurance shall be incurred by the employer.

**Absence For Military Or Public Service Duties**

Employees are entitled to take leave for military or public service duties.

**Works Councils or Trade Unions**

The State shall implement the regulation of industrial relations and the relations immediately associated with industrial relations, the social-security relations, as well as the living standard issues, in co-operation and after consultations with the employees' and the employers' representative organisations. The scope of living standard issues subject to consultation shall be determined by an act of the Council of Ministers on a proposal by the National Council for Tripartite Co-operation. The National Council for Tripartite Co-operation shall comprise two representatives each of the Council of Ministers, the representative organisations of the employees and the representative organisations of the employers. The Council of Ministers shall designate its representatives, and the representatives of the representative organisations of the employees and the employers shall be designated by their managing bodies in compliance with their statutes.



The co-operation and consultations by industry, branch, region and municipality shall be implemented by industry, branch, regional and municipal councils for tripartite co-operation. The industry, branch, regional and municipal councils for tripartite co-operation shall comprise two representatives, each of: the relevant ministry, another central government department, regional or municipal administration, representative organisations of employees and of the employers.

Employees are entitled, with no prior permission, to freely form, by their own choice, trade union organizations; to join and leave them on a voluntary basis, showing consideration for their statutes only. Trade union organizations shall represent and protect employees' interests before state bodies and employers as regards the issues of industrial and social-security relations and living standards through collective bargaining, participation in tripartite co-operation, organization of strikes and other actions within the law.

Employers are entitled, with no prior permission, to freely form, by their own choice, organizations to represent and protect them, as well as to join and leave them on a voluntary basis, conforming only to their statutes. The employers' organizations under the foregoing sentence shall represent and protect their interests through collective bargaining, participation in tripartite co-operation, and through other actions within the law.

Employees who are members to such councils/trade unions have certain rights, e.g. to time off to carry out his duties as a member of such council/trade union. Where an employer is contemplating collective dismissals, it must begin consultations with the trade union organisations' representatives and with the employees' representatives in good time but not later than 45 days before the said dismissals are to take effect, and to make efforts to reach an agreement with the said representatives so as to avoid collective dismissals or reduce the number of employees affected and to mitigate the consequences of the said dismissals. The procedure and manner for conduct of such consultations shall be determined by the employer, the trade union organisations' representatives and the employees' representatives.

**Employees' Right To Strike**

According to the Settlement of Collective Employment Disputes Act, employees are entitled to strike when their employment or social contribution rights are breached and when no agreements or voluntary arbitrage can be achieved.

Participation in a strike is voluntary. No one can be forced to participate or not to participate in a strike. It is unlawful to obstruct or to create any other difficulties for those employees who do not participate in a strike.

### Employees On Strike

The employees and the employer shall be obliged to provide, by written agreement, conditions for carrying on, during a strike, the activities whose non-fulfilment or stopping can create danger:

- to the life and health of citizens in need of emergency or urgent medical care, or of such admitted for hospital treatment;
- to the production, distribution, transmission and provision of natural gas, electricity and heat, the adequate public utility and public transport services and of a disruption of the broadcasting of radio and television programmes and voice telephone services;
- the employer had a valid reason to dismiss the employee; and
- of inflicting irreparable damage to public or personal property or to the natural environment;
- to public order.

An employee shall not receive his/her salary for the period during which, by reason of participation in a strike he/she has not carried out of his/her duties. He/she can obtain compensation for this period at the expenses of a strike fund specially created. The fund shall be created at the choice of employees with their resources or with resources of trade unions.

Freezing of strike funds during a strike shall be prohibited. For the time during which he/she participates in a legal strike an employee shall be entitled to indemnification at the account of the social security system following the general procedure, and if the strike is recognised as illegal, only if he/she has been voluntarily insured. The time whilst on strike lawfully shall still count towards length of service.

An employee who has not participated in a strike, but because of the strike of other employees had not been able to carry out his/her duties (eg because of a temporary cessation) is still entitled to be paid.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms and conditions of the Labor Code and of the contract (e.g. must give the notice required under the contract). In most cases, there are certain minimum steps which must be followed prior to termination to avoid the termination being pronounced illegal.

When an employee is dismissed for a disciplinary offence, the employer must follow the steps provided by the law and must be able to demonstrate a well grounded reason for dismissal.

However, in most cases (with the exception of the disciplinary dismissal or termination without notice as provided by the law), termination is effective provided the employer has given proper notice of termination. An employee has the right to be re-engaged or re-instated only upon a court resolution.

### Instant Dismissal

An employer may terminate an employment contract without notice if the employee is imprisoned.

An employer shall terminate an employment contract without notice where:

- the employee has been disqualified, by a sentence or according to an administrative procedure, from practicing a profession or from occupying the position to which the said employee has been appointed;
- the employee is divested of the academic degree, if the contract of employment has been concluded considering the degree awarded;
- the employee has been struck off the registers of the professional organizations under the Doctors and Dentists Professional Organizations Act, from the register of the professional organization of masters of pharmacy under the Professional Organization of Masters of Pharmacy Act, or from the register of the Bulgarian Association of Bulgarian Health Care Specialists under the Professional Organizations of Medical Nurses, Midwives and Associated Specialists Guild Act;
- the employee refuses to accept a suitable work offered to him/her upon occupational rehabilitation;
- the employee is dismissed on disciplinary grounds. The employer can terminate an employment contract summarily if the employee is guilty of gross misconduct and/or has committed a fundamental breach of the employment discipline, but even in this instance the employer must still follow the minimum statutory steps for dismissal (see discipline and grievance above) and must still be able to demonstrate a well grounded reason for the dismissal;

- the employee fails to fulfil the obligation to notify the employer of the existence of any incompatibility with the work executed, where during implementation of the said work any of the grounds for incompatibility occurs;
- incompatibility exists;
- a conflict of interest has been ascertained by an effective act under the Conflict of Interest Prevention and Disclosure Act.

The employer, acting on his or her own initiative, may offer to the employee termination of the employment contract in consideration of compensation. If the employee fails to react in writing to any such offer within seven days, a rejection of the offer shall be presumed. If the employee accepts the offer, the employer shall owe to the said employee compensation to the amount of not less than the quadruple amount of the gross monthly wage as last received, unless the parties have agreed on a larger amount of the compensation. If the compensation is not paid within one month after the date of termination of the employment contract, the grounds for termination of the said contract shall be presumed lapsed.

**Employee's Resignation**

The agreement can generally always be terminated by the employee's resignation. Normally the contract will stipulate the notice period required.

**Termination On Notice**

The parties can terminate the employment contract on notice observing the statutory and contractual requirements provided (e.g. there are statutory minimum and maximum periods of notice which will override the contractual notice period – from 30 days up to 3 months).

Employees who occupy positions of property accountability, in case the property entrusted thereto cannot be handed over within the 30-day notice period, may be allowed an extended time period for hand-over of the said property which, however, may not exceed two months inclusive of the notice period.

The notice period shall begin to run on the day after the receipt of the said notice. A notice may be withdrawn if the employee communicates this fact before or simultaneously with the receipt of the said notice. With the consent of the employer, a notice may furthermore be withdrawn before expiry of the notice period.



**Termination By Reason Of The Employee's Age**

The employment can be terminated due to the employee's age but only once the employee reaches the applicable retirement age. The Bulgarian law in force provides different age requirements and length of service (including regarding the social contributions) depending on the calendar year (regulated until the year of 2020) and depending on the work category (e.g. first, second, third). Also the law provides different requirements as far as it concerns retirement due to illness or for early retirement.

**Automatic Termination In Cases Of Force Majeure**

Employment contract may be terminated upon objective impossibility for the execution of the employment contract. Here the requirements for the termination notice are also applicable.

**Termination By Parties' Agreement**

The parties are entirely free to agree termination on any grounds they desire. The agreement must be in writing and registered with the National Revenue Agency within 7 days of its signing for the termination to be considered valid.

**Directors Or Other Senior Officers**

Any employee from the enterprise management may be dismissed by notice by reason of conclusion of an enterprise management contract. Any such dismissal may be effected after the commencement of performance of the management contract, but not later than nine months (e.g. this provision of the law gives the opportunity of a new manager to elect his/her team).

**Special Rules For Categories Of Employee**

There are no categories of employee to whom special rules apply, but certain categories (e.g. pregnant women, reassigned employee, etc) benefit from more generous rules for protection upon dismissal.

In the cases of closing of a part of the company or upon reducing of the staff, reducing of the workload or disciplinary dismissal the employer must obtain advance permission before dismissing:

- a female employee, who is the mother of a child who has not attained the age of three years;
- a reassigned employee;
- an employee suffering from a disease designated in an ordinance of the Minister of Health;
- an employee who has commenced the use of a leave permitted thereto;
- an employee who has been elected employer's representative for the time until the said employer is in such capacity;

- any employee, who is member of a special negotiating body, a European Works Council or a representative body in a European Company or a European Cooperative Society, for the duration of performance of the functions thereof.

In the cases under Items 2 and 3 above, the medical expert board for working capacity certification shall be approached for an opinion as well before the dismissal.

An employer may dismiss an employee who is a member of the trade union leadership at the enterprise, of a territorial, industrial or national elective trade union governing body, during the time of occupation of the relevant trade union position and within six months after the said employee vacates this position, only with the advance consent of a trade union body designated by decision of the central leadership of the trade union organization concerned. Where so provided for in the collective agreement, the employer may dismiss an employee due to reducing of the staff or reducing the workload after obtaining the advance consent of the relevant trade union body in the company.

A pregnant female employee and a female employee in an advanced stage of in vitro treatment, may be dismissed with notice only in the cases of closing of the company or upon refusal of the employee to follow the company or the department when moving to other city/village, as well as without notice in the cases of disciplinary dismissal (the dismissal may take place only with the prior permission of the labor inspectorate). An employee, using a pregnancy, child-birth and adoption leave, may be dismissed only if closing the company.

**Specific Rules For Companies in Financial Difficulties**

The employer may terminate an employment contract on written notice due to:

- closing of the company;
- closing of a part of the company or upon reducing of the staff;
- reducing the workload;
- stopping work for more than 15 days;
- upon refusal of the employee to follow the company or the department when moving to other city/village;

When closing a part of the company, reducing of the staff or reducing of the workload the employer is entitled to carry out a selection process to retain the better performing or more appropriately qualified employee. The procedure starts with an order for appointment of a selection commission, which gives its proposal as to which contracts should terminate. The employer sends a notice to the employees whose contracts shall be terminated. The order should indicate the compensation that should be paid to the employees (e.g. for unused holiday, for loss of employment). The termination must be registered with the National Revenue Agency after the expiry of the notice term.



If the reorganization is to be followed by a transferring of the department to a new employer, the employee will be transferred to the new employer (see Change in Ownership of the Business).

**Restricting Future Activities**

Generally clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable (furthermore such clauses contradict to the Constitution of the Republic of Bulgaria, which guarantees the general rights of the citizens, including the right of employment). Such clauses shall be pronounced as null and void.

**Severance Payments**

The party who is entitled to terminate the employment relationship with notice or the party who has been given notice may terminate the said relationship even before the expiry of the notice period, in which case the said party shall owe the other party compensation amounting to the employee's gross wages for the unobserved notice period.

Upon termination of the employment relationship by an employee without notice (in the cases when: the employer delays the payment of wages or of a benefit under the Labor Code or under social insurance; the employer changes the place or nature of work or the agreed wage, except in the cases where the employer has the right to make such changes, as well as where the employer fails to fulfil other obligations agreed under the employment contract or under the collective agreement, or established by a statutory instrument; as a result of a transfer of employees the working conditions under the new employer deteriorate substantially), the employer shall owe the said employee compensation amounting to the gross wage for the notice period in case of an employment relationship of an indefinite duration; and amounting to the actual detriment in case of a fixed-term employment relationship.

On a disciplinary dismissal, the employee shall owe the employer compensation amounting to the employees' gross wages for the notice period in case of an employment relationship of an indefinite duration; and amounting to the actual detriment in case of a fixed-term employment relationship.

Upon dismissal by reason of closure of the enterprise or of a part thereof, downsizing of personnel, reduction in the volume of work, cessation of work for more than 15 working days, upon refusal to relocate, or where the position occupied by the employee must be vacated for reinstatement of a wrongfully dismissed employee who previously occupied the same position, the employee shall be entitled to compensation from the employer. The said compensation shall amount to the employee's gross wage for the period of unemployment but not more than one month. A compensation for a longer period may be provided for by an act of the Council of Ministers, by a collective agreement or by the employment contract. If the employee begins lower paid work wage during this period, the employee shall be entitled to the difference for the said period.

Upon termination of the employment relationship by reason of illness, the employee shall be entitled to compensation from the employer amounting to the employee's gross wages for a period of two months, provided that the said employee has at least five years' service and has not received compensation on the same grounds during the last five years.

Upon termination of the employment relationship, after the employee has acquired entitlement to a contributory-service and retirement-age pension, irrespective of the grounds for the termination, the said employee shall be entitled to compensation from the employer amounting to the employee's gross wage for a period of two months; and where the employee has worked for the same employer for the last ten years, the compensation shall amount to the employee's gross wages for a period of six months. Compensation under this paragraph shall be payable on a single occasion only.

Upon termination of the employment relationship, the employee shall be entitled to a cash compensation for any unused paid annual leave for the current calendar year in proportion to the time assimilated to the length of employment service and for any unused leave, the right to which has not lapsed by prescription. The paid study leave of students and of doctoral candidates without interruption of employment and for an entrance examination at an educational establishment, when unused, shall not be compensated in cash.

Upon wrongful dismissal, the employee shall be entitled to compensation from the employer amounting to the worker's gross wages for the period of unemployment caused by reason of the said dismissal, but not more than six months. If, during that period, the employee has worked in a lower paid job, the employee shall be entitled to the difference between the wages. The same entitlement shall apply to an employee who has been wrongfully transferred to another, lower paid job. Where a wrongfully dismissed employee is reinstated to work and after reporting to the enterprise to take the work to which he or she has been reinstated, is not admitted to the execution of the said work, the employer and the blameworthy officials shall be jointly liable to the employee for payment of an amount equal to the employee's gross wages from the day of reporting to the day of actual admission to work.

### Special Tax Provisions And Severance Payments

Contractual and non-contractual (statutory) payments (including severance payments) are subject to taxation (e.g. social contribution, tax over the income – 10 % flat tax for year 2014).

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.



### Time Limits For Claims Following Termination

Labor disputes regarding termination of an employment contract shall be actionable within 2 months as of the termination date.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None.

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# Canada - Alberta

Canada - Alberta

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## 01. General Principles

**Forums For Adjudicating Employment Disputes**

There are a number of fora for the adjudication of employment disputes, depending on the nature of the claim, the size of the claim, and the nature of the industry in question.

Generally speaking, the law of employment is the law of contract. Contractual disputes are generally litigated and resolved within the superior courts of the province. The Court of Queen's Bench of Alberta is the superior court in which claims are litigated in the first instance. Claims of a value of $25,000 or less may be decided by the Small Claims Division of the Provincial Court.

The Alberta Labour Relations Code deals with unionized employment including the granting of collective bargaining rights, negotiation of collective agreements, strikes, and lockouts. All applications concerning union certification and other disputes arising in the unionized setting are decided by the Alberta Labour Relations Board.

The Alberta Labour Relations Code provides that all collective agreements must contain an arbitration mechanism. Such provisions typically contemplate the appointment of a private arbitrator to adjudicate disputes in respect of the interpretation and enforcement of the collective agreement.

In respect of those employees who are not unionized, the Employment Standards Code sets out minimum employment standards and entitlements. Employees may have claims under the Employment Standards Code adjudicated by the Director, whose decision is subject to an appeal to an umpire appointed under the legislation.

In respect of those employers involved in undertakings which are federal in nature, the Canada Labour Code is engaged. Disputes in the unionized sector are considered by the Canada Industrial Relations Board.
In non-unionized, federally regulated industries, wrongful terminations may be heard by an adjudicator appointed under Part III of the Canada Labour Code.

### The Main Sources Of Employment Law

In Alberta, the law of labour and employment is essentially the law of contract, subject to a legislative overlay of minimum employment standards (the Employment Standards Code), human rights (the Alberta Human Rights Act), collective bargaining rights (the Alberta Labour Code), privacy (the Personal Information Protection Act) and occupational health and safety (the Occupational Health and Safety Act, and the Workers Compensation Act).

The Employment Standards Code has application in the non-unionized sector. It sets out a number of minimum employment standards in respect of hours of work, minimum wage, vacation, and leaves. It also sets out minimum requirements which must be observed in the termination of the employment relationship.

The Labour Relations Code applies in respect of the unionized sector. This legislation deals with the acquisition and enforcement by unions of collective bargaining rights and the oversight of unionized labour relations in the province.

The Alberta Human Rights Act prohibits discrimination in hiring and employment on the basis of certain enumerated grounds.

The Workers' Compensation Act of Alberta sets out an insurance structure which compensates workers for industrial injuries and diseases. This program is funded by assessments on employers in the province.

The Occupational Health and Safety Act also contains provisions with respect to workplace health and safety.

Privacy rights of employees and obligations of employers are set out in the Personal Information Protection Act insofar as private sector employees in the province are concerned. The Personal Information Protection and Electronic Documents Act and the Privacy Act apply to employers which fall under federal jurisdiction

### National Law And Employees Working For Foreign Companies

Alberta law will apply to all employees earning wages in the province of Alberta. Where an employee receives wages outside of Alberta and is only working in Alberta temporarily, the law of the jurisdiction in which the contract was made is likely to apply.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Typically, Alberta law will not apply to employees of companies working outside of Alberta.



# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no legal requirements as to the form of an employment agreement. Often, employment contracts are oral and are of an indefinite duration. They may be in writing, but are not required to be. In respect of all employment contracts, the common law has implied certain terms, including an obligation on the part of the employer to provide reasonable notice to the employee of termination (unless the contract is being terminated for just cause). Where the parties have specifically addressed the manner by which a contract may be terminated and the notice of termination to which an employee will be entitled, the implied term of reasonable notice will not be imposed.

All contracts of employment, however, must meet the minimum standards set out in the Employment Standards Code, which includes a graduated notice entitlement of employees (from 1 week to 8 weeks depending on the length of the employee's service). If the notice of termination provided under any employment contract falls below the minimum standards set out in the Employment Standards Code, the notice provision in the contract will be unenforceable. In such an event, the common law obligation on the part of the employer to provide reasonable notice of termination (the implied term) will apply, to the extent that it is greater than the statutory minimums set out in the Employment Standards Act.

There is a requirement that collective agreements must be in writing.

### Mandatory Requirements:

#### Trial Period

At common law, there is no implied term to the effect that an employee is subject to a "probationary" period, but the parties may agree to one if they wish.

The Employment Standards Code provides that an employer may terminate an employee's employment in the first three months of employment without notice or pay in lieu of notice. This probationary period relieves the employer from providing the minimum notice under the Employment Standards Code. It does not relieve the employer from providing the notice which may be required by the terms of the contract of employment (express or implied).

#### Hours Of Work

The Employment Standards Code limits the number of consecutive hours that may be worked by an employee. Generally speaking, work is confined to a period of twelve consecutive hours in any given day. An employer must pay an employee overtime wages if the employer requires or allows an employee to work more than eight hours per day, or forty four hours per week. An employer may enter into an overtime agreement with employees that provides for time off with pay instead of overtime pay. An employer may also require or permit an employee to work a compressed work week, consisting of fewer work days in the work week and more hours of work in a work day paid at the employer's regular wage rate.

Certain employees are excluded from the minimum standards set out in the Employment Standards Act.

### Earnings

Employees must receive at least the minimum wage set by the government.

### Holidays / Rest Periods

Employees are entitled to 30 minutes of rest during each shift in excess of five consecutive hours pursuant to the Employment Standards Code. Employees are entitled to at least one day of rest in each work week, or two consecutive days of rest in each period of two consecutive work weeks, or three consecutive days in each period of three consecutive work weeks, or four consecutive days in each period of four consecutive work weeks. An employer must allow each employee at least four consecutive days of rest after each 24 consecutive work days.

The Employment Standards Code provides that employees have a vacation entitlement of two weeks after each of the first four years of employment and three weeks after five years of employment. There are a number of statutory holidays that are set out in the Employment Standards Code which the employee is entitled to take off work, or alternatively, be paid overtime if required to work. Certain employees, such as managers, are excluded from entitlement to the statutory holidays.

### Minimum/Maximum Age

The employment of a child under the age of 15 is only permitted under the Employment Standards Code if the child's parents or guardian provide consent. There is no compulsory retirement age.

### Illness/Disability

The Alberta Human Rights Act requires that an employer may not discriminate against an employee on the basis of disability. That is, an employee with a disability must be accommodated up to the point of "undue hardship".

Employers frequently have policies which provide that employees who are away from work on account of illness may be paid on such days. From time to time, insurance coverage is obtained by an employer, or an employee, to ensure that an employee is paid during a period of illness which qualifies for coverage under such insurance policy. In the absence of an insurance policy or sick leave policy, an employee who is absent from work due to illness is not entitled to pay.

### Location Of Work/Mobility

The ability of an employer to direct where an employee is to fulfil contractual duties depends upon the contract of employment or collective agreement. To the extent that the employment contract does not contemplate the ability of the employer to require the employee to move locations, an employee may contend that a unilateral directive on the part of the employer to change the place of work constitutes a breach of the employment contract giving rise to a claim. Where the directive is a reasonable one contemplated by the contract of employment (expressly or impliedly) the employee will be bound to comply.

### Pension Plans

Pension plans are not mandatory in Alberta. However, if an employer chooses to put such a plan in place, it will be governed by the Employment Pension Plans Act. As in other provincial jurisdictions, there are two mandatory federal plans which apply to all employees: the Canada Pension Plan and Old Age Security.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

Under the Employment Standards Code, an employee who has been employed for at least 52 consecutive weeks is entitled to maternity leave of 15 weeks without pay starting anytime during the 12 weeks immediately before the estimated delivery date. Parents (including adoptive parents who are employed for at least 52 consecutive weeks are entitled to 37 weeks of parental leave. The Employment Standards Code provides protection for those employees who may be on maternity or parental leave. The employer must reinstate the employee in the same or comparable position with no less pay than the employee was receiving immediately prior to the leave.

During the employee's permitted leave, employment is deemed to be continuous.



### Compulsory Terms

Collective agreements must be for a minimum of one year and must contain a dispute resolution process failing which the parties will be subject to statutorily imposed terms and conditions. While there are no compulsory terms with respect to contracts of employment in the non-union context, all contracts of employment must provide for at least the minimum standards set out in the Employment Standards Act. Parties may not contract out of the Employment Standards Act.

### Non-Compulsory Terms

Parties to an employment contract are free to contract on such terms as they may agree provided that the statutory minimum provisions set out in the Employment Standards Code are met.

## Types Of Agreement

Employment arrangements can take many forms. Contracts of employment may be oral or in writing. They may be for an indefinite term (terminable on reasonable notice) or of a fixed term. Collective agreements under the Alberta Labour Relations Code, where employees are represented by a union as their exclusive bargaining agent, are typically more exhaustive than employment agreements in the non-unionized sector.

## Secrecy/Confidentiality

All employees owe their employers a duty of honesty, loyalty, and good faith. Employees have a duty not to disclose confidential information or trade secrets learned in the course of their employment. The duty of confidentiality may continue even after the employment relationship has ended. Certain senior employees may be considered fiduciaries and held to a higher standard than others.

The parties may choose to enhance an employee's obligation by entering into a confidentiality agreement in respect of information acquired during employment. An employee who is not subject to a confidentiality or non-competition agreement may not take customer lists or confidential documents on departure from an employer but is otherwise at liberty to use information which has been acquired during employment.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Typically, inventions or innovations conceived or created by employees during the course of their employment are the property of the employer. The parties, however, can contract with one another in respect of such matters. Federal legislation governs the protection of intellectual property rights.

### Hiring Non-Nationals

Federal immigration laws apply within the jurisdiction of Alberta and contain strict rules about hiring non-nationals.

### Hiring Specified Categories Of Individuals

The Alberta Human Rights Act provides that an employer may not refuse to employ, or refuse to continue to employ, or discriminate against any person with regard to employment or condition of employment, because of the race, religious beliefs, colour, physical disability, mental disability, age, ancestry, place of origin, martial status, source of income, family status or sexual orientation unless that refusal, limitation, specification, or preference is based on a bona fide occupational requirement.

The Employment Standards Code also contains provisions which restrict the hiring of employees under 15 years old.

### Outsourcing And/Or Sub-Contracting

There are no specific rules about out-sourcing and/or sub-contracting. However, some collective agreements in the unionized sector may restrict the ability of an employer to contract out services which might otherwise be performed by employees who are covered by a collective agreement. Whether the individual to whom the work is "contracted out" becomes an employee will depend upon the intention of the parties and the nature of the relationship between the employer and that contracted party.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers may make changes to the employment contract. However, unilateral changes of a fundamental nature may amount to a breach of the employment contract. The employer may then be found liable to the extent there has been non-compliance with the termination provisions of the contract, including the implied term to provide reasonable notice. Generally speaking, unilateral changes to the contract of employment may only be imposed by the employer with reasonable notice to the employee.



### Change In Ownership Of The Business

The sale of all or part of a business or a substantial part of the assets of a business gives employees certain rights.. The vendor of the business will be liable to employees if their employment should come to an end as a result of the sale. The employees will be entitled to notice or pay in lieu as contemplated by their contracts of employment with the vendor. If the business carries on and the employees remain employed with the purchaser, any claim for wrongful dismissal (the failure on the part of the employer to give notice) will have been completely mitigated. Although an employee is not obliged to accept employment with the purchaser/employer, a failure to take such employment may be construed as failure on the part of the employee to take reasonable steps to mitigate damages flowing from the termination. The employee's claim for damages against the dismissing employer may be limited accordingly. The Employment Standards Code provides that where the employees of the vendor serve the purchaser, the employment will be treated as being continuous insofar as the Employment Standards Code entitlements are concerned.

In the unionized context, the Labour Relations Code allows collective bargaining rights to flow through changes in ownership so long as there is a continuation of the same business. If a union seeks to bind a successor employer to collective bargaining rights, the union must make application to the Labour Relations Board

### Social Security Contributions

Employers are required to remit Canadian Pension Plan and Employment Insurance contributions on behalf of employees. Employers are also obliged to participate in the Worker's Compensation scheme set out in the Worker's Compensation Act.

### Accidents At Work

The Workers' Compensation Act regulations contain rules relating to accidents at work. The Act governs no-fault insurance for injuries sustained at the worksite. The Occupational Health and Safety Act sets guidelines for and enforcement of occupational health and safety regulations. Significant penalties may be imposed upon an employer if the employer has created an environment which has contributed to a workplace accident.

### Discipline And Grievance

The ability of an employer to discipline employees in the non-unionized sector depends on the nature of the contract of employment. At common law, the ability to discipline has constraints. To the extent that any imposed discipline is inconsistent with the contract of employment, it may be seen as effecting a dismissal of the employee. In practice, progressive discipline is administered in the non-union context.

In the unionized sector, the ability of the employer to discipline for misconduct is set out in the collective agreement. Collective Agreements typically call for progressive discipline to be applied before termination of an employee will be justified.

If an employee in the unionized context considers discipline to have been unjustly applied, access to a grievance procedure is mandated. The grievance process usually ends with a decision of an arbitrator appointed by the parties who will decide whether discipline has been justified and fairly applied.

There is no grievance process at common law. An employee who has been unjustly disciplined may treat the contract of employment as having come to an end and seek damages for the failure of the employer to terminate in accordance with the terms of the agreement.

### Harassment/Discrimination/Equal pay

The Alberta Human Rights Act prohibits discrimination in employment on certain enumerated grounds. To the extent that there is any harassment rooted in those enumerated grounds, an employer may be found liable for breach of the Act, unless appropriate steps have been taken to prevent such acts or properly deal with such complaints.

Harassment which does not engage any of the enumerated grounds set out in the Alberta Human Rights Act may engage the Occupational Health and Safety Act to the extent that the employer can be said to have failed to provide a safe workplace.

Under the Alberta Human Rights Act, employees of both sexes performing the same or substantially similar work for an employer in an establishment, must be paid at the same rate of pay.

### Compulsory Training Obligations

There are no compulsory training obligations in Alberta, except for those as may be established by the contract of employment.

### Offsetting Earnings

An employer must not deduct, set off against or claim from the earnings of an employee any sum of money, unless allowed to do so pursuant to the Employment Standards Code. Offsetting earnings is permitted when required by an enactment or judgment, when authorized by a collective agreement, or when personally authorized in writing by the employee. An employer may not deduct from earnings a sum for faulty workmanship, or cash shortages, or loss of property if an individual other than the employee had access to the cash or property.



### Payments For Maternity And Disability Leave

Maternity and disability leave are not typically paid leaves unless the parties agree.

### Compulsory Insurance

Aside from Employment Insurance and Worker's Compensation Insurance, there is no compulsory insurance in Alberta.

### Absence For Military Or Public Service Duties

An employee who has completed at least 26 consecutive weeks of employment and is a "reservist", as defined by the Employment Standards Code, is entitled to reservist leave without pay. Such an employee is entitled to be reinstated to the position occupied before the reservist leave began or be offered alternative work of a comparable nature.

The Jury Act provides that an employer must allow an employee a sufficient leave of absence to serve as a juror when that person is summoned.

The Canada Elections Act provides that employees who are allowed to vote in a federal election are entitled to three consecutive hours to vote.

### Works Councils or Trade Unions

In Alberta, workers are entitled to unionize for the purpose of collective bargaining.

The Alberta Labour Relations Code governs the formation of trade unions and the process by which they may become certified bargaining agents for employees.

### Employees' Right To Strike

Unionized employees have the right to strike under the Labour Relations Code subject to certain conditions. Where an impasse arises in the negotiation of employment terms after good faith collective bargaining, a strike vote may be taken. After a successful vote, employees may strike after notifying the employer of their intention to strike. Likewise, an employer may lockout employees where such an impasse occurs, on appropriate notice.

Some employees are considered to provide essential services and may be restricted from striking.

### Employees On Strike

An employer may not fire employees who are on legal strike unless their actions during the strike amount to just cause for dismissal. Illegal strikes may give rise to the ability on the part of the employer to discipline and dismiss employees.

### Employers' Responsibility For Actions Of Their Employees

Employers are vicariously responsible for the actions of their employees where the employees are acting in the course of their employment.

# 04. Firing The Employee

### Procedures For Terminating the Agreement

The contract of employment must be terminated in accordance with its terms. Where a contract expressly provides for the manner in which termination may be effected, the provisions of the contract must be observed. Where a contract is not specific about the manner by which it may be terminated, the employer will be expected to comply with any terms implied by law, including an implied term to the effect that reasonable notice of termination must be given to an employee.

The termination must also comply with the Employment Standards Code and the Alberta Human Rights Act.

There is no requirement for approval by the Courts or any regulatory body before termination is effective.

### Instant Dismissal

Subject to the terms of the employment agreement, an employer may dismiss an employee at any time, for any reason other than those prohibited under the Alberta Human Rights Act. The Employment Standards Code defines certain minimum entitlements of the employee insofar as notice of termination is concerned. Reasonable notice is not required to be provided when an employee has given "just cause" for his dismissal. "Just cause" is conduct on the part of the employee which is so inconsistent with the continuation of the employment relationship that the employer is entitled to accept the conduct of the employee as bringing an end to the contractual relationship. Employees terminated for "just cause" may be dismissed without notice or payment in lieu thereof.

### Employee's Resignation

An agreement may be terminated by the employee's resignation. The resignation must occur in accordance with the terms of the employment agreement. The Employment Standards Code provides that an employee must give two weeks notice of resignation (one week if the employee is employed for less than two years). At common law, an employee is obliged to provide an employer reasonable notice of the employee's intention to terminate the employment agreement unless the manner by which the employee may resign is expressly set out in the employment contract.

### Termination On Notice

Either party may terminate the employment agreement by giving notice to the other party. Notice cannot be less than the minimum standards set out in the Employment Standards Code, which varies according to the length of employment. At common law, however, there is an implied that the notice of termination may exceed the statutory minimum. The employment agreement (including any implied term) must be observed in this respect.



### Termination By Reason Of The Employee's Age

The Alberta Human Rights Act prohibits an employer from discriminating against an employee on the basis of age. However, if an employer can prove that there is a bona fide age related reason that means that the employee cannot adequately perform his work, then an employee may be dismissed for that reason.

### Automatic Termination In Cases Of Force Majeure

An agreement may be terminated automatically in those cases where its performance by the parties is rendered impossible. No notice or compensation is required to be given or paid if work is impossible to perform because of unforeseen circumstances. In such circumstances, the contract is considered to be "frustrated". The parties are discharged from further performance. Bankruptcy, receivership, insolvency, or other adverse economic conditions do not constitute "frustration" of the contract.

### Termination By Parties' Agreement

Employment may be terminated by the parties by agreement at any time.

### Directors Or Other Senior Officers

There are no separate rules for firing directors or other senior officers. Directors and officers may be removed in accordance with the Business Corporations Act. Only to the extent that they are "employees" as opposed to directors and officers does a claim for wrongful dismissal arise.

### Special Rules For Categories Of Employee

There are no special rules which apply to different classes of employees within an organization. However, different rules may apply in respect of those who are in a unionized environment as compared to those whose employment is covered by a contract of employment. In the unionized context, the dismissal is typically governed by the terms of the collective agreement, which will include an arbitration process and will typically contemplate the possibility of an employee's reinstatement. At common law, reinstatement is not a recognized remedy. In respect of those employees in federally regulated industries who are covered by the Canada Labour Code, a wrongfully terminated employee may, in limited circumstances, seek reinstatement as a result of his wrongful termination.

### Specific Rules For Companies in Financial Difficulties

Terminated employees are entitled to the notice contemplated in their contract of employment (express or implied), which notice must be at least equal to the minimum statutory entitlement set out in the Employment Standards Code even where the employer is in financial difficulty. Where an employer seeks to terminate 50 or more employees, there is an obligation under the Employment Standards Code to advise the Director of Employment Standards.

Under the Alberta Business Corporations Act, directors of a corporation are jointly and severally liable to employees of the corporation for all debts not exceeding six months wages payable to each employee for services performed. Additionally, the federal wage earner protection program provides timely payment of eligible wages owing to workers who have lost their job because their employer has gone bankrupt or became subject to receivership. Eligible wages under the program include salaries, commissions, vacation pay, termination pay and severance pay.

### Restricting Future Activities

There are no statutory rules that encumber a departing employee's ability to work. However, the parties are free to enter into contractual non-competition and non-solicitation clauses. Such restrictive covenants may be enforced if they are reasonably required to protect the proprietary interests of the employer. The employer must establish that the covenants are reasonable, both from a temporal and geographical perspective. To the extent that such clauses are considered to be injurious to the public interest, they will not be enforced. In the absence of restrictive covenants, employees are free to work for other employers, even those who may be in competition with the dismissing employer. All employees are restricted from removing confidential information, including customer lists. There are certain employees who, by virtue of their senior positions, are considered to be "fiduciaries" who may be restrained, for a reasonable period, from soliciting customers of a former employer.

### Severance Payments

Other than the contractual (express or implied) terms, or statutory notice to which an employee is entitled, there are no other "severance" entitlements payable to an employee upon termination.

### Special Tax Provisions And Severance Payments

Severance payments are taxable.



### Allowances Payable To Employees After Termination

Where an employee is dismissed, there is no obligation on the employer to provide any further allowances to the employee after the termination. However, to the extent that the employee maintains a damage claim for the failure on the part of the employer to provide the employee reasonable notice of termination, the value of the employer's contribution to any benefit plans which would have accrued during the period of reasonable notice will form part of the damage claim of the employee. Where the employee continues employment under reasonable working notice, the obligations of the employer to make contributions to the benefit plans of the employee continue.

### Time Limits For Claims Following Termination

The time limit for commencing an action in Alberta for breach of an employment contract is 2 years from the date of the wrongful termination.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Alcohol and drug dependency are considered to be disabilities under the Alberta Human Rights Act and employers are obliged to accommodate all disabled employees, including those with dependency illnesses, to the point of undue hardship. Random drug and alcohol testing is not generally permitted in Alberta. Alcohol and drug tests administered may be administered by employers in those cases where an employer has reasonable grounds to suspect that an employee is affected by drug and alcohol, or where there has been a workplace incident to which alcohol and drug consumption may have contributed.

### Compassionate Care Leave

An employee who has completed at least 52 consecutive weeks of employment is entitled to compassionate care leave of up to 8 weeks to provide care or support to a seriously ill family member if the employee is the primary care giver. An employee may not be terminated while on a compassionate care leave.

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## 01. General Principles

**Forums For Adjudicating Employment Disputes**

Employees working in British Columbia ("BC") come under either federal (national) jurisdiction, or provincial jurisdiction, depending on the industry. For the most part, the forums for adjudicating employment disputes are different depending upon whether or not the employer is provincially or federally regulated.

### Provincially Regulated Employers

The majority of employees fall under provincial jurisdiction. For non-union employees, there are two statutes in BC which have their own specialized tribunals or forums for adjudicating employment disputes: the BC Employment Standards Act, and the BC Human Rights Code. For all employment disputes which are not required to be adjudicated by the tribunals established by these statutes, the courts of British Columbia have jurisdiction to hear such employment disputes. In addition, the courts also have limited jurisdiction to hear appeals from decisions from the above noted tribunals.

In a unionized workplace, the BC Labour Relations Code governs matters involving collective bargaining rights, negotiation of collective agreements, strikes, and lockouts. The BC Labour Relations Board adjudicates disputes between employers and unions regarding those matters. Disputes between individual unionized employees concerning the violation, application, or interpretation of collective bargaining agreements are adjudicated by private arbitrators, under the rules prescribed in the collective bargaining agreement between the employer, and the union representing the employees. The courts of British Columbia have limited jurisdiction to hear appeals from the decisions of arbitrators and the BC Labour Relations Board.

### Federally Regulated Employers

Employee disputes between employees who work in BC and their federally regulated employers are governed by federal legislation and federal courts. Federally regulated employers include banks, airlines, railway companies, shipping companies, and intra-provincial trucking companies. Most employment disputes are governed by the Canada Labour Code; claims are adjudicated by arbitrators and tribunals established by the Canada Labour Code. The Federal Court of Canada has limited jurisdiction to hear appeals from decisions from those forums.

### The Main Sources Of Employment Law

As noted above, employment and labour law in BC is derived from a combination of legislation, case law (from courts and tribunals). Besides the above noted legislation, there are other provincial and federal statutes which regulate privacy regarding the collection and use of private employee information, and pension plans. Also, private employment agreements (if entered into between employers and employees) or collective bargaining agreements for unionized employers, also affect the terms and conditions of the employee-employer relationship.

Finally, the BC Workers Compensation Act sets out requirements for occupational health and safety requirements in the workplace and also provides for a mandatory, employer funded scheme to compensate workers for employment-related injuries and diseases. The Workers Compensation Act applies to both provincially and federally regulated employers and has its own adjudication process and tribunals for disputes regarding occupational health and safety.

### National Law And Employees Working For Foreign Companies

If an employee works in BC but is employed by a foreign company, the employee will be governed by BC or federal employment law, unless that employee is receiving his or her wages outside of BC and is only working in BC temporarily.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Typically, BC (provincial or federal) employment law will not apply to employees of British Columbia companies who are working in another jurisdiction. (Note: certain other laws such as Canada's Income Tax Act may still apply to income earned outside of BC or Canada).

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# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

This section 2 discusses legal requirements for provincially regulated employers.

The BC Employment Standards Act provides for certain minimum standards (wages, hours of work, and the right to pregnancy/parental/family/bereavement/military service leaves) for all employment contracts and collective bargaining agreements. While collective bargaining agreements must be in writing, employment agreements between an employer and its non-union employees may be oral or in writing.

Most of employment contracts between an employer and its non-union employees are oral. The terms of oral employment contracts will be implied based on common law principles that have evolved over time. The terms of written employment agreements must provide the minimum standards set out in the Employment Standards Act; if it does not, those terms will not be enforceable.



### Mandatory Requirements:

#### Hours Of Work

- There are restrictions under the Employment Standards Act on the number of consecutive hours of work in a day and hours of work in a week, as well as when certain employees are entitled to overtime pay.
- An employer must pay an employee overtime wages if the employer requires or allows the employee to work more than 8 hours a day or 40 hours a week. Note that under strict conditions, an employer can enter into an averaging agreement with an employee under which the employee's hours of work are averaged over a period of time for the purpose of determining the employee's entitlement to overtime wages.
- An employer must ensure that no employee works more than 5 consecutive hours without a meal break, and that employees have at least 8 consecutive hours free from work between each shift worked.
- Generally speaking, an employer must either ensure that an employee has at least 32 consecutive hours free from work each week or pay the employee overtime wages for hours worked during this period.
- Generally speaking, an employer must either ensure that an employee has at least 32 consecutive hours free from work each week or pay the employee overtime wages for hours worked during this period.
- An employer must not require or allow an employee to work excessive hours or hours detrimental to the employee's health or safety.
- Certain types of employees including "managers", as that term is defined in the Employment Standards Act, are not subject to the usual restrictions relating to hours, breaks, and overtime.
- There are special provisions in the Employment Standards Act and its regulations relating to employees in particular lines of work or industry. For example employees who earn a large part of their income from sales commissions, who provide personal care services, employees who work and/or live in their employer's residence, young people or group hires in the entertainment industry, agriculture workers, and employees in the high technology sector or silvi culture industry are subject to special provisions.

#### Earnings

Employees must receive at least the minimum wage as set by the Employment Standards Act regulations, and must be paid at least semi-monthly. Employers must also ensure that employees who are paid by commission, solely or in part, are paid at least the equivalent of the minimum wage. If an employee's commission earnings during a pay period fall short of the minimum wage, the employer is required to pay the employee the difference and the amount paid cannot be deducted from an employee's future earnings.

#### Holidays/Rest Periods

Minimum standards for vacation and public holidays are as follows:

- Once employees have worked for an employer for at least 1 year, they must receive vacation an annual vacation of at least two weeks, and after 5 years of consecutive employment, the employee is entitled to three weeks annual vacation. Minimum vacation pay an employee is entitled to each year is 4% of total earnings in the previous year, and once an employee has had 5 years of consecutive employment, the employee is entitled to 6% of total earnings in the previous year.
- Employees must have public or statutory holidays off, or be paid overtime if they are required to work on these days. Certain employees such as "managers" are excluded from entitlement to the overtime statutory holiday pay.

### Minimum/Maximum Age

The employment of a child between the ages of 12 and 15 is only permitted under the Employment Standards Act if the child's parents or guardian provide written consent. If a child is younger than 12 years old they will only be able to work if the Director of Employment Standards gives permission. The Director may set out conditions of employment for the child which the employer must abide by. There are no mandatory requirements relating to hiring employees above any maximum age limit.

### Illness/Disability

There is no minimum number of sick days that an employer must provide. Customarily, employers provide 5 - 10 paid sick days annually. Under the Human Rights Code, an employer must accommodate employees with physical or mental disabilities recognized under the Code

### Location Of Work/Mobility

An employee can be posted to work anywhere in BC, although once hired, moving the location of the employee's work place by more than 50 km against their will may be deemed a breach the employment contact.

### Pension Plans

The Canada Pension Plan is a mandatory government pension plan which applies to all employees in Canada including BC. This plan is funded by deductions from employee pay (based on actual income), with matching contributions by the employer.

An employer is not required to offer any of its own pension plan for its employees. However, if an employer chooses to put a defined benefit pension plan in place, it is governed by the BC Pension Benefits Standards Act, and if an employer chooses to implement a group registered retirement savings plan for its employees, the Canada Income Tax Act governs the maximum limit of such contributions per year.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

The BC Employment Standards Act requires employers to provide the following unpaid leaves related to family life to employees:

- Pregnancy Leave: Pregnant employees, employees who request leave after giving birth to a child, and employees who are unable to return to work after pregnancy ends or is terminated, are all entitled to 17 weeks of unpaid leave.
- Parental Leave: Birth mothers are entitled to 35 weeks of parental leave which may be added to their pregnancy leave time off. Birth fathers and adoptive parents are entitled to 35 weeks of paid parental leave.
- Family Responsibility Leave: Employees are entitled to up to 5 days of unpaid leave annually to meet responsibilities regarding the care, health, or education of their immediate family.
- Compassionate Care Leave: Employees are entitled to take up to eight weeks of unpaid compassionate care leave to provide care and support to a family member in situations where the family member is gravely ill with a significant risk of death within 26 weeks.
- Bereavement Leave: An employee is entitled to up to 3 days of unpaid leave on the death of a member of the employee's immediate family.

If an employee takes any of these types of leave, an employer cannot terminate the employee or change a condition of employment without the employee's written consent. Once the leave has ended, the employer must place the employee back in the same or comparable position the employee held before taking the leave

During the leave, employment is deemed continuous for the purposes of calculating vacation entitlement, entitlements under pension, medical or other plans beneficial to the employee, and notice of termination or severance.

### Compulsory Terms

There are no compulsory terms which must be included in an agreement, subject to the minimum standards for wages, vacation, hours of work and overtime, and notice of termination as required by the Employment Standards Act.

### Non-Compulsory Terms

Parties are free to agree on all terms of an agreement, as long as such terms do not contravene the minimum standards of the Employment Standards Act, and are not otherwise unlawful.



## Types Of Agreement

BC does not have different rules for different types of agreements. The most common types of agreements include contracts for an indefinite term of employment, fixed term contracts, and contracts for services (for hiring an individual as an independent contractor rather than an employee).

## Secrecy/Confidentiality

All employees owe their employers a general duty of good faith and fidelity, which includes the duty not to disclose the employer's confidential information or trade secrets. The duty of non-disclosure can continue even after employment has ended.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Although inventions created by employees during work are deemed to become the employer's property, these matters are within the parties' right to contract.

## Hiring Non-Nationals

Federal immigration law (which covers persons working in BC) contains strict rules about hiring non nationals.

## Hiring Specified Categories Of Individuals

The Human Rights Code prohibits discrimination in hiring on the basis of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age, unless the limitation, specification or preference is based on a bona fide occupational requirement. Because of these laws, an employer should not publish an advertisement nor ask for information about or express a limitation, specification or preference about race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

A potential employer must not refuse to employ or discriminate regarding employment or any term or condition of employment, because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person unless the refusal, limitation, specification or preference is based on a bona fide occupational requirement.

## Outsourcing And/Or Sub-Contracting

There are no specific rules about outsourcing and/or sub contracting, although in unionized settings this is typically regulated under collective agreements.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers are allowed to make changes to the employment contract. However, fundamental changes to material terms in the employment contracts must be made by mutual agreement. If the employer unilaterally and fundamentally changes a material condition of employment, the employer will be deemed to have terminated the employment agreement without just cause, and the employer will be liable to provide the employee with damages in lieu of reasonable notice of termination (severance). This is known as "constructive dismissal".

### Change In Ownership Of The Business

Under the Employment Standards Act, if all or part of a business, or a substantial part of the assets of a business is disposed of, if no other changes occur to the employment terms, an employee's employment is treated as continuous. In the unionized sector, a collective agreement typically follows the business, so that the collective agreement will continue in effect as between the new owner and the employees.

If, because of a change in ownership of a business, the employees are terminated or the purchaser only offers employment on substantially different terms and conditions, employees will be entitled to severance under the Employment Standards Act. If the new employment terms offered by the purchaser are silent on this issue, the employees will be deemed to carry their pre-sale service with them for the purposes of calculating vacation and severance entitlements.

### Social Security Contributions

There are compulsory social security enrolment and contributions by the employer and/or the employee under federal law. Employment Insurance and Canada Pension Plan benefits are funded by contributions by both employees and employers. The Workers Compensation Act is a mandatory program which insures employees for loss of income due to injuries and disabilities arising out of and in the course of employment. Premiums for Workers Compensation is funded 100% by employers.

### Accidents At Work

The Workers' Compensation Act and its regulations contain rules relating to accidents at work. Generally, these rules relate to the reporting of accidents, making claims, and assessing, evaluating and preventing the risk of accidents and injuries.



### Discipline And Grievance

There is no requirement to discipline employees. However, it is advisable for an employer to practice "progressive discipline" to warn an employee about his or her shortcomings in order to justify a termination for just cause, where a single act of misconduct is not egregious enough to constitute sufficient justification.

In unionized workplaces, a grievance can be filed when there has been a violation of the employee's rights on the job. The grievance is adjudicated by an arbitrator chosen by the parties or by the Labour Relations Board.

### Harassment/Discrimination/Equal pay

Under the Human Rights Code, an employer cannot terminate or discriminate against persons regarding employment or any term or condition of employment on the basis of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation, and conviction unrelated to employment, unless the refusal, limitation, specification or preference is based on a bona fide occupational requirement.

An employer must pay equal pay between the sexes for similar or substantially similar work. Any difference in the rate of pay between employees of different sexes based on a factor other than sex will not violate the Human Rights Code so long as the difference is reasonably justified.

Since 2009, an employer cannot discriminate against its employees by requiring them to retire from their employment at a given age.

### Compulsory Training Obligations

There are no compulsory training obligations on BC employers, unless they form part of collective agreements in the unionized sector. Note however that employers have a legal obligation to ensure a safe workplace which includes the obligation to ensure that its employees are trained in all procedures, and have the skills required to perform the work in a safe manner. Failure to ensure a safe workplace can result in fines under the Workers Compensation Act.

### Offsetting Earnings

It is difficult to make deductions from employees' pay. Under the Employment Standards Act, an employer must not directly or indirectly withhold, deduct or require payment of all or part of an employee's wages for any purpose, except where the employee has given written authorization, the withholdings are for statutory deductions required by law such as income tax, Canada Pension Plan and Employment Insurance, or a court order to garnishee an employee's wages.

An employer must not require an employee to cover any of its business costs as this is the responsibility of the employer. Uniforms or other special clothing which is required by the employer must be provided to its employees for free. The employer must also pay the cost of maintenance of special clothing unless the employees agree in writing otherwise.

### Payments For Maternity And Disability Leave

Maternity and disability leave are unpaid. However, the employee may be entitled to receive payments under Employment Insurance for such leave.

### Compulsory Insurance

Workers' Compensation premiums must be paid by the employer and are compulsory. All residents of British Columbia must register for and pay premiums for health care, and while some employers choose to pay these premiums on behalf of its employees, it is not compulsory that employers do so.

### Absence For Military Or Public Service Duties

Employees who are members of the reserve force are entitled to unpaid leave under certain circumstances.

An employer is required to provide an employee with unpaid leave for jury duty.

If an employee takes any of these types of leave, an employer cannot dismiss the employee or change a condition of employment without the employee's written consent. Once the leave has ended, the employer must place the employee back in the position the employee held before taking leave or in a comparable position.

During the leave, employment is deemed continuous for the purposes of calculating vacation entitlement, entitlements under pension, medical or other plans beneficial to the employee, and termination.

### Work Councils Or Trade Unions

There are rules relating to works councils or trade unions, under the Labour Relations Code.

### Employees' Right to Strike

Unionized employees have the right to strike where, after full and good faith collective bargaining, an impasse exists regarding the terms of employment, a positive strike vote has been taken by affected employees, and the union has notified the employer of its intent to strike. Some employees are considered to be essential (for example, certain health care workers), in which case the Labour Relations Board will designate the number of employees who must continue to provide services to the clients of the employer.

### Employees' On Strike

An employer cannot fire employees who are on strike unless their actions amount to just cause for dismissal. Employees who are in a union may not apply to decertify the union during the currency of the strike.



### Employers' Responsibility For Actions Of Their Employees

Employers can be held indirectly responsible for the harm or damages arising from the negligent actions of its employees under the principle of "vicarious liability", provided that the employee's negligent actions occurred in the lawful discharge of his or her employment.

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# 04. Firing The Employee

### Procedures For Terminating the Agreement

There are no rules relating to the specific form for terminating the agreement, except, for provincially regulated employers, if the termination constitutes a "group termination" under the Employment Standards Act or, for federally regulated unionized employers, where the employer is bound by a collective agreement.

In terms of procedure, for provincially regulated employers subject to the Employment Standards Act, if an employee has worked at least three consecutive months, employers must prove "just cause", or they will be liable to pay an amount which varies according to the employee's length of service. This liability is discharged if the employee is given written notice, pay in lieu of notice, resigns, retires, or is dismissed for just cause.

Note that a provincially regulated, unionized employer may or may not be subject to the provisions of the Employment Standards Act which deal with termination of employment. If the collective agreement includes a termination provision, the Employment Standards Act does not apply. However, if the collective agreement contains no termination provision, the Employment Standards Act provisions are deemed to be incorporated into the collective agreement.

Under the Employment Standards Act, "just cause" is not a defined term. Instead, the test developed in the courts of common law is used. In determining what constitutes just cause, the employer may show that it has taken steps to exercise "progressive discipline" on its employee. However, just cause can also result from a single act.

For federally regulated employers, the Canada Labour Code includes similar, but not identical, provisions to the Employment Standards Act.

Approval from a court or other regulatory body is not required before termination is effective.

### Instant Dismissal

Under both the Employment Standards Act and Canada Labour Code, an employer may terminate an employee, without cause, without providing any notice or severance in lieu of notice, if the termination takes place before the employee has completed 3 consecutive months of employment. However, if there is a written employment agreement (or, for unionized employees, a collective agreement) between the employer and employee which provides for notice or severance in lieu of notice prior to the employee completing 3 consecutive months of employment, the employer must abide by the terms of the agreement. Note that if there is no written employment agreement governing termination of the employee, it is still open to the Court to award damages to the employee even if the employer has no obligation to provide the employee with notice or severance in lieu of notice under the applicable statute.

An employer may terminate an employee for just cause resulting from a single act where the act is wilful, deliberate, inconsistent with the continuation of employment, and prejudicial to the employer's interests. However, only the most egregious single acts may constitute just cause for termination and extreme caution must be exercised before making a decision to terminate an employee for cause for a single act.

### Employee's Resignation

Employment can be terminated by the employee's resignation. Resignation is subjective and objective. The subjective element requires a true intention to resign. The objective element requires that the employee act in a way which confirms their intention to resign.

### Termination On Notice

An employer may terminate an employee at any time without cause so long as the employer provides the employee with, at minimum, the notice or severance pay in lieu of notice required by the applicable statute (Employment Standards Act for provincially regulated employers; Canada Labour Code for federally regulated employers) or, for unionized employers, the collective agreement. If there is a written employment agreement between the employer and employee which provides for more notice or severance in lieu of notice than is required by the applicable statute, the employer must abide by the terms of the contract.

If there is no written employment agreement governing termination of the employee, the employer's common law obligation to provide the employee with notice or severance in lieu of notice is not limited to the minimums established by the applicable statutes. Instead, the employer is obliged to provide the employee with "reasonable notice" or severance in lieu of "reasonable notice". The meaning of "reasonable notice" has received extensive judicial consideration and is determined by reference to a number of different factors, including the employee's age, length of service, gender and position.



An employee who resigns from employment should also provide notice to the employer. There is no statue that establishes the minimum amount of notice that an employee must provide. Some written employment agreements include provisions which establish the amount of notice the employee must provide. At common law, there is a requirement that an employee provide "reasonable notice" of termination to the employer, although the "reasonable notice" an employee must provide is much shorter than the "reasonable notice" that an employer may be required to provide to an employee. Termination By Reason Of The Employee's Age.

### Termination By Reason Of The Employee's Age

The BC Human Rights Code, which applies to provincially regulated employers, prohibits discrimination based on "age", which is defined as an age of 19 years or more. However, if an employer can prove that there is a bona fide age related reason that means that the employee cannot adequately perform his or her work, then an employee may be dismissed for that reason. Mandatory retirement at 65 or above is not permissible, except in statutorily mandated mandatory retirement schemes.

The Canadian Human Rights Act (which applies to federally regulated employers) also protects against discrimination on the basis of age (but does not include any definition of "age"), although there is an exception for employees subject to age restrictions created by law or statute.

### Automatic Termination In Cases Of Force Majeure

An agreement can be terminated automatically in cases of force majeure (ie. where the performance of the contract is rendered impossible). No notice or severance in lieu of notice is required if work is impossible to perform because of unforeseeable circumstances, other than bankruptcy, receivership, or insolvency. Adverse economic conditions are insufficient.

### Frustration of the Employment Agreement

Where an employee, due to illness or disability, is unlikely to be able to perform their duties for an extended period of time, and is unlikely to be able to return to their duties for the foreseeable future, the employer may treat the employment agreement as frustrated. Since frustration does not result in a true termination, the employer is not required to provide the employee with any notice of termination or severance in lieu of notice.

### Directors Or Other Senior Officers

There are no separate rules for firing directors or other senior officers.

### Special Rules For Categories Of Employee

There are no special rules which apply to different classes of employees within an organization, but there are different remedies available to terminated employees who belong to a union or work for a federally regulated employer. Unionized employees (through their union) have a right to file a grievance through the collective agreement's grievance process, and federally regulated employees may file a complaint pursuant to the Canada Labour Code. In both cases, the grievance or complaint will be dealt with in an arbitration, and one of the remedies available to the arbitrator is to reinstate the employee to his or her former position. (All other employees must bring either an action in the BC courts, or a complaint pursuant to the Employment Standards Act, and reinstatement is not an available remedy in either of those forums).

Also, union "shop stewards" or representatives may be afforded more protection from disciplinary action, in insubordination cases.

### Specific Rules For Companies in Financial Difficulties

If a business experiences financial difficulty, the legal requirements for termination must still be followed. In addition, for provincially regulated companies subject to the Employment Standards Act, there are special provisions for terminating the employment of 50 or more people at a single location within any 2-month period. These include the requirement for the employer to give written notice of group termination to a number of parties, the content of the written notice, and the time frame in which the notice must be given.

If wages are not paid to employees, the Employment Standards Act imposes a statutory lien for the unpaid wages without requiring steps from any party. The lien is imposed on the real and personal property of the employer at the time wages were earned, and automatically attaches to any property the employer may subsequently acquire. Examples of the types of property that can be subject to a lien include: land, buildings, vehicles, equipment, stocks, bonds, and bank accounts.

The Employment Standards Act also provides that officers and directors can be personally liable for up to two months unpaid wages for each employee.

### Restricting Future Activities

There are no statutory rules that restrict future activities. Contractual non-competition or non-solicitation clauses must be reasonable, considering the employer's proprietary interests, time and spatial restrictions, their breadth, and whether the clauses are injurious to the public interest.



### Severance Payments

Whether a dismissed employee is entitled to any payment depends upon whether the employee was dismissed with or without "just cause". As stated above, "just cause" is determined using tests developed in the courts of common law.

If there was just cause for the employee's dismissal, then no notice or payment is required.

If the employee was dismissed without just cause, then the amount of the notice or equivalent payment depends upon whether the employee is subject to the relevant provisions of the Employment Standards Act or Canada Labour Code, the terms of a contract, and/or the entitlement to "reasonable notice".

### Special Tax Provisions And Severance Payments

Severance payments are taxable. If the severance payment constitutes a "retiring allowance" under the Canada Income Tax Act, it is subject to a withholding tax rate which varies depending on the amount of the payment.

Damage awards obtained for human rights violations are not taxable.

### Allowances Payable To Employees After Termination

Where the employee continues working for a period of time after termination (referred to as "working notice"), the contributions continue. However, if the employee is offered a salary continuance or a lump sum payment, the employer must determine which benefits are included in the offer. There is no "COBRA" type legislation as in the United States.

### Time Limits For Claims Following Termination

In a non-union setting, a complaint regarding termination by a provincially regulated employer must be delivered to the Employment Standards Branch within 6 months after the last day of employment. For federally regulated employers, the employee must file a complaint with the Labour Program within 90 days from the date of the dismissal. In a union setting, the time limit is set by the collective agreement. The time limit for commencing an action in the BC courts for breach of the employment contract is 2 years for claims arising on or after June 1, 2013 Claims arising before June 1, 2013 will retain the benefit of the 6 year limitation period afforded under the old Limitation Act.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

## Provincially Regulated Employers

BC businesses are subject to privacy laws, which regulate the type of employee information an employer can collect, use and disclose. The specific privacy statute that a business will be bound by will depend upon whether the business is provincially or federally regulated, and whether the business operates in the private or the public sector.

BC's Personal Information Protection Act applies to provincially regulated private sector businesses, whereas BC's Freedom of Information and Protection of Privacy Act applies to provincially regulated public sector businesses. Some business in BC which collect, use and disclose personal information across borders may be subject to privacy laws under the federal Personal Information Protection and Electronic Documents Act if they operate in the private sector, or the federal Privacy Act if they operate in the public sector. A business's transactions can be subject to both provincial and federal privacy legislation.

Common to all of these privacy statutes is the principle of reasonableness. A business should only collect, use or disclose personal information if the purpose is considered reasonable given the circumstances. This principle is intended to balance individual privacy rights with the needs of businesses to collect, use, and disclose personal information.

Privacy legislation applies to the following activities that businesses may wish to engage in with respect to its employees:

- pre-employment collection of information;
- transfers of employee information to a third party for storage or processing;
- monitoring employee computer use;
- overt and covert video surveillance;
- employee drug and alcohol testing; and
- employee medical privacy.

In many instances, employee consent is required before an employer can collect, use, or disclose information about its employees. There are limited circumstances under which employee consent is not required.



## Whistle Blower" Provisions

A number of statutes have "whistle blower" provisions including the Employment Standards Act, Workers' Compensation Act, Labour Relations Code, Personal Information Protection Act, Freedom of Information and Protection of Privacy Act, and Human Rights Code. These protect employees from harassment or discriminatory action because the employee has reported a breach of the statute or has exercised a right under the law.

For instance, it is a violation of the BC Human Rights Code for a person to intimidate, impose a penalty on, deny a benefit to, or otherwise discriminate against another because they filed a human rights complaint or assisted with a complaint.

## Restrictions on Use of Cellular Phone While Driving

Many employers provide their employees with communication tools such as cellular phones and personal digital assistants as part of their employment. In BC, employers face the risk of vicarious liability for accidents caused by employees who violate the restrictions regarding hand held devices while driving.

With respect to a hand-held electronic communication device such as a cellular phone, a person who is driving a vehicle must not hold, operate or watch the screen of the device, or send or receive text messages or electronic email. A driver is permitted to use a hands-free telephone provided certain requirements are met, including the requirement that the device is not operated by the hand, the device is voice-activated, or requires only one touch in order to initiate, accept or end a call.

## Restrictions on Smoking

In BC, there are restrictions on smoking in workplaces (which includes work vehicles) under the Tobacco Control Act. This Act prohibits smoking in all workplaces that are in any buildings, structures, vehicles or any other places that are fully or substantially enclosed, meaning places with a roof or other covering and places where more than 50% of the nominal wall space is enclosed by any material that does not permit air to flow easily through it. Smoking is also prohibited within 3 meters of any doorway, window or air intake of a workplace just described. There are some exemptions for patios used in conjunction with public places.

Signage to indicate that smoking is not allowed is not specifically required under BC law. However, employers are required to take reasonable steps to ensure that employees do not smoke in restricted areas.

Local governments in BC are permitted to pass bylaws regarding tobacco control, including bylaws that prohibit smoking in certain places.

There are also restrictions regarding smoking and other environmental workplace requirements under occupational health and safety legislation in BC.

## Criminal Record Checks

Under the BC Criminal Records Review Act, every person hired for employment involving work with children or vulnerable adults must undergo a criminal record check/verification. It is the obligation of the employer to ensure that the requirements of the Act are met.

There is no statutory bar prohibiting employers whose work does not involve children or vulnerable adults from requesting or obtaining criminal record checks from current or prospective employees. However, under the BC Human Rights Code, employers may not discriminate against a current or prospective employee on the basis of a criminal record that is unrelated to the employment or to the intended employment of that person.

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# Canada - Ontario

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

In a non-unionized context, most employment disputes are litigated in the courts, with the exception of workplace injuries, claims pursuant to provincial employment standards or human rights legislation, or claims under the Canada Labour Code.

In the case of workplace injuries, injured workers must bring their claims to the Workplace Safety & Insurance Board, if indeed the employer is covered by the legislation. With respect to employment standards, such as claims relating to unpaid overtime or hours of work, complaints can be made to the Ministry of Labour, provided that the employer is covered by the legislation. If the employee is employed in an industry in which the Federal Government has jurisdiction, such as broadcasting, telecommunications, banking, etc., then the complaint would be made to an adjudicator within the Federal Ministry of Labour.

In a unionized context, any disputes must proceed to arbitration before an arbitrator pursuant to the Collective Agreement.

### The Main Sources Of Employment Law

All employment arrangements in Canada are governed by common law principles of contract law. In some instances, the government has passed legislation that overrides the common law. This legislation governs, among other things, (i) minimum standards of treatment for employees, (ii) matters relating to Collective Agreements and the right to strike and (iii) workplace safety.

### National Law And Employees Working For Foreign Companies

National law will apply to workers who work within the jurisdiction regardless of whether the company is foreign. However, in some circumstances, the employer and employee may specify which law governs the employment contract. Non-national workers, including workers without a valid work permit, are usually covered by labour relations laws.



### National Law And Employees Of National Companies Working In Another Jurisdiction

Generally, national law will not apply to employees of national companies working in another jurisdiction. Most statutory rights apply only when the employee is working in Canada. However, contractual obligations may apply in certain cases.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no legal requirements as to the form of an employment agreement. Employment contracts may be either oral or in writing. However, Collective Bargaining Agreements must be in writing.

### Mandatory Requirements:

#### Trial Period

There are no mandatory requirements for a "trial" or "probationary" period of employment, and there is no common law probationary period. The Ontario Employment Standards Act allows an employer to terminate the employment during the first 3 months without notice and without termination pay, but that 3 month period may be waived by the employer. In addition, a longer probationary period may be used, so long as the employer provides the appropriate statutory notice or pay in lieu of notice.

#### Hours of Work

With certain exceptions (which includes emergency services and many professionals), an employee is generally required to work no more than 8 hours a day and 48 hours per week. These maximum hours may be exceeded in extraordinary circumstances, but only to the extent necessary to prevent serious interference with the ordinary working of the industrial establishment or to machinery, or other unforeseen or unpreventable circumstances. The requirement to fill rush orders during a busy period would not qualify as an exceptional circumstance in this regard.

In Ontario, if the employer establishes a work day of more than eight hours for the employee, the weekly limit still cannot exceed 48 hours, except in circumstances where the parties make an agreement to exceed those hours and the employer receives an approval from the Director of Employment Standards.

#### Earnings

The responsibility for enacting and enforcing minimum wage rates in Canada rests with the 10 provinces and 3 territories. Each province and territory has its own minimum wage rate. These minimum wages are adjusted from time to time and some provinces set different rates for different categories of job, such as liquor servers. In Ontario, there are different wage rates for students, liquor servers, hunting and fishing guides and home workers.

#### Holidays / Rest Periods

Employees in Ontario are statutorily entitled to a minimum of 2 weeks paid holiday per year. They are also generally entitled to 9 statutory holidays, as follows:

- New Year's Day
- Family Day (the third Monday in February)
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- Boxing Day

Employees are entitled to a certain number of hours free from having to work each day. In most cases, an employee must receive at least 11 consecutive hours off work daily. Employees must also receive at least 8 hours off work between shifts if the total time worked on both shifts is greater than 13 hours.

An employee must not work for more than 5 consecutive hours without a ½ hour eating period free from work. This mandatory eating period can be split into two eating periods within the 5 hour timeframe, subject to agreement between the employer and employee. The eating period is typically unpaid unless the employer agrees otherwise. Whether paid or unpaid, however, eating periods which are free from work are not counted towards the employee's overtime entitlement. In exceptional circumstances, such as an emergency or urgent repair work, an employee may be required to work during an eating period. Employees are not entitled to any other breaks in the workday apart from the ½ hour eating period mentioned above.

### Minimum/Maximum Age

Restrictions on the employment of children and young persons can be found in a variety of statutes, such as employment standards legislation, occupational health and safety legislation and education acts. Restrictions are also found in an assortment of provisions relating to vocational training and child welfare legislation and laws governing establishments where liquor is sold.

In Ontario, the minimum working age is normally 14 years for most types of work. However, young persons aged between 14 and 17 are not to be employed during school hours unless they have been excused from school attendance in accordance with the regulations under the Education Act. In addition, some regulations under the Education Act specify a higher minimum age for certain types of work.

There is no legislated maximum age for work. Such a limit could be found to be a violation of the employee's human rights.

### Illness/Disability

Under federal and provincial human rights legislation, no employer may discriminate against an employee on the basis of a disability. Employers are under a positive obligation to accommodate disability up to the point of undue hardship.

Further protections are afforded ill or disabled employees under provincial standards legislation t. In Ontario, employees who work for employers who regularly employ 50 or more employees are eligible for personal emergency leave. An employee who is entitled to personal emergency leave may take up to 10 days of unpaid leave for reasons of personal illness or injury, or for reasons related to the death, illness, injury, medical emergency or urgent matter relating to close family members.

Moreover, under the Ontario Workplace Safety & Insurance Act, an employer is obligated to re-employ an injured worker until the earliest of: 2 years after the date of the worker's injury; 1 year after the date the worker is medically able to perform the essential duties of the pre-injury job; or the date the worker reaches age 65.

### Location Of Work/Mobility

There are no mandatory requirements relating to an employee's normal place of work. However, in some cases, where an employee's normal place of work is moved a significant distance from the old place of work, this change may result in a constructive dismissal.

### Pension Plans

There are no mandatory requirements imposed on an employer to offer a pension plan to an employee, and there is no requirement that employers contribute to such plans. However, once the pension plan is offered, there are rules as to the administration of the plans.



### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A number of family-based rights exist under provincial and federal legislation, including pregnancy leave and parental leave, together with job protection during such leaves. Employees who qualify will be entitled to certain statutory benefits.

The Ontario Employment Standards Act provides eligible pregnant employees, or employees who are new parents (including adoptive parents), with the right to take unpaid time off work without the risk of losing their employment. The federal Employment Insurance Act, on the other hand, provides eligible employees with maternity and/or parental benefits (i.e. payment) during the maternity or parental leave.

A pregnant employee will qualify for 17 weeks of unpaid pregnancy leave as long as she was hired at least 13 weeks before the date the baby is expected to be born. Pregnant employees are entitled to pregnancy leave whether they are full-time, part-time, or contract employees.

Birth mothers who take pregnancy leave are entitled to take a further 35 weeks of parental leave. All other new parents (which include fathers and adoptive parents) are entitled to take up to 37 weeks of parental leave. Again, eligible parents include full-time, part-time, and contract employees.

At the time of publication, the basic benefit rate for parents on pregnancy or parental leave was 55% of the person's average earnings, up to a yearly maximum amount $26,728.

### Compulsory Terms

There are no compulsory terms which must be included in an employment agreement. However, where the terms of the employment agreement do not meet certain minimum statutory standards, the court will impose, at the very least, the minimum standards prescribed by legislation.

### Non-Compulsory Terms

The employer and the employee are free to agree to any provision in the contract of employment, again provided that the contract meets the minimum statutory standards prescribed and provided that such terms are not contrary to public policy.

## Types Of Agreement

Employees may be employed pursuant to a fixed-term contract or an indefinite term contract. Under a fixed term contract, the employer agrees to employ the employee until a pre-determined date, at which time the employment will be terminated. Under an indefinite term contract, the employee is employed indefinitely, subject to termination by one of the parties.

There are no unique rules for different types of employment agreements. The minimum standards apply and are the same for each type of agreement.

### Secrecy/Confidentiality

The common law imposes on employees certain obligations to protect intellectual property and other confidential information belonging to the employer.

All employees are under an implied obligation at common law not to disclose an employer's confidential information which was acquired during the course of the employment relationship. This confidential information may include clients' lists and trade secrets, but would not include information of a trivial nature or information which is accessible to the public.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The ownership of inventions or other intellectual property rights are prescribed by legislation, unless such rights have been altered by contractual terms, which the parties are free to do.

### Hiring Non-Nationals

Non-nationals often require a work permit to work in Canada. However, under certain free trade agreements, certain workers do not require a work permit. Some of the exceptions include temporary workers such as students working on campus, performing artists, military personnel, diplomats and official representatives, air show performers, rodeo contestants, members of a traveling circus, athletes and coaches, convention organizers, news reporters and their crews, correspondents, journalists, clergy, guest speakers, expert witnesses, civil aviation inspectors, health care students, foreign crew members and emergency service providers.

It is the employer's responsibility to ensure that the employee is legally entitled to work in Canada.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain dangerous work. Children and people with certain disabilities may not carry out hazardous work-related activities.

### Outsourcing And/Or Sub-Contracting

Subject to the terms of Collective Bargaining Agreements or employment contracts, there are no specific rules with respect to outsourcing and/or sub-contracting.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

The employer may not alter the terms of an employee's employment contract unless the employee consents to, or unless the employee is given reasonable notice of, the change.

### Change In Ownership Of The Business

The general principle at common law is that upon the sale of an employer's shares, there is no change in the corporate identity of the employer and, therefore, no resulting termination of employment of the existing employees. However, upon the sale of an employer's assets, there is generally a change of corporate employer and, therefore, a resulting termination of employment of the employees.

There is an exception to this principle in the Ontario Employment Standards Act. The legislation provides that if an employer sells a business or part thereof and the purchaser employs the employee, the employment of the employee shall be deemed not to have been terminated or severed for the purposes of the employee's statutory entitlements. That is, the employee's employment with the seller shall be deemed to have been employment with the purchaser.

Subject to mitigation requirements, employees are allowed to refuse employment with the new employer. If employees refuse the new employment they risk being dismissed with notice or payment in lieu thereof.

### Social Security Contributions

Both employers and employees are required to make social security contributions at source.

### Accidents At Work

In Ontario specifically and Canada more generally, employees have rights that protect them against health and safety hazards at work. Generally, workers have the right to refuse work that they believe is dangerous and to stop working in certain circumstances. These rights may be guaranteed by provincial legislation, federal legislation or by union contracts.

The Ontario provincial government provides benefits through the Workplace Safety & Insurance Board, including Loss of Earnings benefits, to qualifying employees who have been injured while in the course of employment.

### Discipline And Grievance

In a non-unionized context, there are no statutory rules respecting discipline. However, an employer's discipline procedure and sanctions cannot violate the minimum standards prescribed under employment legislation or under human rights legislation. It should be noted that the Employment Standards Act prohibits employers from asking or requiring their employees to take a lie detector test.

In a unionized context, the discipline and grievance process is typically set out in the Collective Bargaining Agreement which is binding on both the employee and employer.

### Harassment/Discrimination/Equal pay

Human rights legislation protects employees from discrimination in employment on the basis of prohibited grounds, which are: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same sex partnership status, family status and disability. New prohibited grounds, gender expression and gender identity, were recently added to the Ontario Human Rights Code.

Human Rights legislation sets out a number of exceptions to the prohibition against discrimination. Exceptions have been established to allow special programs of positive discrimination to serve the needs of historically disadvantaged communities or on the basis of other legitimate circumstances.

Any affected employee may make a human rights complaint to the Ontario Human Rights Tribunal or to the Canadian Human Rights Commission. The Canadian Human Rights Commission provides dispute resolution services in cases of alleged discrimination by federally regulated organizations.

Amendments to the Occupational Health and Safety Act in Ontario have increased the protection afforded to workers against workplace harassment. Workplace harassment no longer has to be related to any of the prohibited grounds under human rights legislation. In fact, any course of "vexatious conduct against a worker in a workplace that is reasonably known to be unwelcomed" constitutes workplace harassment.

Legislation in Ontario requires employers to develop written policies with respect to workplace harassment and to review those policies at least once a year. An employer must also develop and maintain programs to implement the policies and to deal with complaints of workplace harassment.

The Pay Equity Act of Ontario requires that employers evaluate jobs in their workplace. Work mostly performed by women is to be compared to work mostly performed by men. If the jobs are of comparable value, then the women must be paid at least the same as the men performing the comparable jobs. The Pay Equity Act does not apply to employees of the federal government, federal agencies or federally regulated companies. The Canadian Human Rights Act has pay equity sections with relate to these employers.



### Compulsory Training Obligations

Almost every worker, supervisor, employer and workplace in Ontario is governed by the provisions of the Occupational Health and Safety Act and its regulations. The only exclusions relate to work done in a private residence or workplaces that fall under federal jurisdiction (e.g., post offices, airlines and airports, banks, etc.).

Under the provisions of the Occupational Health and Safety Act, an employer has an obligation to instruct, inform and supervise workers to protect their health and safety. Such employers are also required to appoint competent persons as supervisors in the workplace. These supervisors must be qualified through knowledge, training and experience to organize the work and its performance, as well as know about any actual or potential danger to health and safety in the workplace. Employers are under a positive obligation to inform their employees about any hazard in the work and to train such employees in the handling, storing, using, disposing and the transporting of any equipment, substances, tools and material.

### Offsetting Earnings

Offsetting an employee's earnings against the employee's debts by the employer is not permitted at common law, unless the employee explicitly consents in writing. However, set-off is permitted under the Ontario Employers and Employees Act, if the set-off does not exceed the employee's claim for wages.

### Payments For Maternity And Disability Leave

There is no requirement for employers to make payments for maternity and disability leave. However, the federal government provides certain maternity and disability benefits to employees who qualify under the legislation.

To be entitled to maternity, paternal or sickness benefits, an employee must show that his or her regular weekly earnings have been decreased by more than 40% and that he or she has accumulated a certain number of insured hours (i.e. working hours) in the last 52 weeks before the claim or since the employee's last claim. The basic statutory benefit rate is 55% of the employee's average insured earnings for a maximum of a year.

### Compulsory Insurance

Pursuant to the Workplace Safety & Insurance Act, affected employers in Ontario who employ workers (including family members and sub-contractors) must register with the Workplace Safety & Insurance Board within 10 days of hiring their first full or part-time employee. Registering with the Board provides workplace insurance coverage for all of the employer's workers and gives the employer access to experts in health and safety relating to the employer's business sector.

### Absence For Military Or Public Service Duties

An employee in Ontario is entitled to a leave of absence without pay if the employee is a military reservist and will not be performing the duties of his or her position because:

a) the employee is deployed to a Canadian Forces operation outside Canada; or

b) the employee is deployed to a Canadian Forces operation inside Canada that is or will be providing assistance in dealing with an emergency or with its aftermath, or other prescribed circumstances apply.

With respect to jury duty, employers are required by law to allow employees time off to attend jury selection and to serve as jurors. However, there is no requirement that employers pay their employees lost wages whilst on jury duty.

The government does allow travel expenses and a small daily fee in certain circumstances for those persons participating on a jury.

### Work Councils Or Trade Unions

Any trade union (or "labour union", as called in Canada), must be certified with the labour board. Once certified, the union becomes the exclusive bargaining agent for all employees in the bargaining unit, whether they are members of the union or not. The employer cannot settle wages, working conditions or other employment matters directly with the employees.

It is an unfair practice for employers to attempt to interfere with the formation or selection of a union.

There are many other statutory rules relating to labour unions in Canada.

### Employees' Right to Strike

Unionized employees cannot lawfully strike unless a vote to strike by secret ballot is taken within 30 days or less before the Collective Agreement expires, or at any time after the Collective Agreement expires and more than 50% of those voting by secret ballot are in favour of the strike. All employees in a bargaining unit are entitled to participate in such a ballot.

Certain categories of employees are never entitled to strike. For example, employees of hospitals and nursing homes do not have the right to strike as their services are deemed necessary and essential. Instead, the union and employer must submit their unresolved bargaining issues to binding arbitration.

### Employees' Right to Strike

The employer cannot legally dismiss employees who are on a legal strike.



### Employers' Responsibility For Actions Of Their Employees

As a matter of law in Canada, every individual who is not under a disability (such as a minor or an emotionally disturbed person) is personally liable for the acts he or she commits. Similarly, an employee is also personally liable for the acts he or she commits whilst acting for himself / herself in the course of his/her employment. However, common law has developed the principle of an employer being vicariously liable for the tortious conduct of an employee when the employee acts in the course of employment. Accordingly, the courts have used the principle of "vicarious liability" and have ruled that an employer is to compensate persons for harm caused by an employee acting in the course of his / her employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

There is no specific procedure for terminating the employment agreement, unless provided for in the contract of employment. However, if an employee has been continuously employed for three months or more and the employer wishes to give the employee working notice, the notice of termination must be in writing. If there is an interruption in wages, the employer must issue a Record of Employment.

### Instant Dismissal

An employer can terminate an employee by instant dismissal if the employee's conduct amounts to "just cause" for termination.

Conduct constituting "just cause" would include serious dishonesty, such as fraud and theft, serious breach of trust, subordination which is not trivial, or engaging in sexual harassment or violence in the workplace.

In Ontario, even where there is just cause for dismissal, an employer must still provide the dismissed employee with statutory notice of termination or pay in lieu of notice, unless there has been "wilful misconduct".

### Employee's Resignation

An employment agreement can be terminated by the employee's resignation. There are no legislative provisions requiring the employee to give notice to the employer. However, a notice period may be stipulated in the employment contract.

In the absence of an express agreement about an employee's notice, the employee is obliged to give the employer reasonable advance notice of resignation. In virtually all cases, this notice will be substantially less than the notice period which would be required of the employer in the event of dismissing the employee. As a practical matter, however, an employer presented with advance notice of resignation will often prefer the employee to leave immediately.

### Termination On Notice

The parties can terminate an employment agreement on notice. However, the employer must give the employee reasonable notice which is prescribed by legislation and under the common law, respectively, unless the employee's entitlement to common law notice has been displaced by contract. An employee who is terminated for just cause is not entitled to notice unless the employee has not also engaged in wilful misconduct, in which case the employee will be entitled to the minimum entitlements to notice under the Employment Standards Act.

### Termination By Reason Of The Employee's Age

Generally, it is a violation of human rights legislation to dismiss an employee on the basis of his or her age. "Age" is a prohibited discriminatory ground under both the federal and provincial human rights legislation.

Requiring an employee to retire because he or she has attained a certain age is prima facie discriminatory. However, if there is a bona fide occupational requirement for the mandatory retirement, the retirement will be permitted and will not constitute a discriminatory practice. This exception may permit mandatory retirement based on age if it is established that a worker's age, not necessarily age 65, would significantly affect the worker's ability to perform the duties of the job and the employer cannot accommodate the employee without undue hardship, taking into consideration factors such as costs and health and safety issues.

### Automatic Termination In Cases Of Force Majeure

An agreement can be terminated automatically in cases of force majeure. An employment contract is "frustrated" when surrounding circumstances make it impossible for the parties to perform the employment contract. Disability cannot be the basis of a frustrated contract under the Employment Standards Act, and true instances of force majeure are rare.

### Termination by Parties' Agreement

The parties can terminate the employment agreement on any grounds they choose. However, such grounds will not be enforceable if they do not meet the minimum employment standards or are contrary to legislation or public policy.

### Directors Or Other Senior Officers

There are no separate legal rules for dismissing senior officers from employment. Directors may only be dismissed in accordance with company law, which often requires a vote of shareholders.



### Special Rules For Categories Of Employee

There are categories of employees for whom special rules apply on termination.

The termination of unionized employees, for example, is governed by the Collective Agreement.

The traditional position regarding government employees is that an employee of the Crown (i.e. government) is employed at the pleasure of the Crown. This means that the employee may be dismissed without cause or notice. Rapid extension of public service in Canada, coupled with the fundamental unfairness of dismissal without cause or notice, has caused the Canadian courts to generally require Crown employees be given notice of termination.

### Specific Rules For Companies in Financial Difficulties

There are specific rules which apply when a business is in financial difficulty. For instance, an employer's directors may be personally liable for unpaid wages.

Recent federal legislation in Canada, the Wage Earner Protection Program Act, was introduced to provide compensation to workers who are owed unpaid wages or other forms of compensation by employers who have declared bankrupt or are subject to a receivership. The Wage Earner Protection Program reimburses eligible workers for unpaid wages, vacation pay, severance pay or termination pay they are owed when their employer refuses or neglects to pay such monies as a result of bankruptcy or receivership.

### Restricting Future Activities

Canadian law favours free competition and there are few restrictions placed on the future activities of a departing employee. Non-competition clauses are very difficult to enforce, unless they are sufficiently limited in both geographical scope and time. Non-solicitation agreements are easier to enforce, but again only in circumstances where they are subject to a reasonable time period. Any employee who owed a fiduciary duty to their employer will also be liable at common law if he/she breaches those duties.

### Severance Payments

The term "severance pay" can sometimes cause confusion. Under the Employment Standards Act, termination pay (i.e. payment in lieu of notice) is distinguished from severance pay (i.e. compensation for loss of seniority and job-related benefits).

In every day parlance however, the term "severance" refers to not only compensation for an employee's loss of seniority, but also the required payment in lieu of notice. Thus, a "severance package" will include termination and severance pay, as well as other benefits and perks.

There are common law rules which apply to termination and severance packages. An employer must pay an employee "severance" if the employer does not have "just cause" to dismiss the employee. The size of the package is related to several factors which include length of service, the employee's age, the nature of the position, and the employee's ability to find alternative employment in the marketplace.

### Special Tax Provisions And Severance Payments

Severance payments are generally considered to be income and are subject to the customary taxation, unless they are identified as "retiring allowances" under the Income Tax Act, in which case there is typically a lower percentage of tax withholding.

### Allowances Payable To Employees After Termination

If the employer contributes to an insurance scheme on the employee's behalf, then the employer may be required to continue making benefit payments for a set period of time following the employee's dismissal.

### Time Limits For Claims Following Termination

There are time limits for claims following termination. Claims for "wrongful dismissal" in the civil courts must be brought within 2 years after the employee is dismissed. Claims for "unjust dismissal" under the Canada Labour Code must be brought within 90 days of dismissal. Legislation governing human rights and workplace injuries have their own unique time limitations.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Canada is a bi-juridical country. It is generally a common law jurisdiction. However, the province of Quebec is governed by a civil code (Code Civil) which defines civil law in the province.

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# Canada - Quebec

# Canada - Quebec

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

In Quebec, claims concerning minimum employment and labour standards are filed by non-unionised employees before the "Commission des normes du travail" (Labour Standards Board) and these claims can eventually be referred to the "Commission des relations du travail" (Labour Relations Board) if they are not settled.

The Labour Standards Board can also initiate legal proceedings before the civil courts to recover any amount owing to an employee or a group of employees which is payable under the provisions of the Labour Standards Act, such as salary, vacation pay, and statutory notice of termination. In the case of wrongful and illegal dismissal complaints, as well as psychological harassment complaints, it may provide free legal representation to a dismissed employee and represent him before the Labour Relations Board. Except for cases of psychological harassment, the right to parental leave and the right to work past the normal retirement age, the Labour Standards Board will not represent claims from senior executives, who will have to present claims arising out of their employment contracts before the courts of civil jurisdiction.

Other claims, including claims for wrongful dismissal where the plaintiff is only requesting damages in lieu of reasonable notice, must be instituted before the Superior Court or the Civil Division of the Quebec Court, depending on the amount in dispute. It is illegal to contract out of the jurisdiction of the courts of Quebec in any matter concerning a dispute arising out of a contract of employment (section 3149 Civil Code of Quebec).

Grievances arising out of the application of a collective agreement must be resolved through binding arbitration.

Claims regarding discrimination related to employment, such as discrimination on the grounds of race, sex, pregnancy, sexual orientation, civil status, age, religion or handicap, may be instituted before the "Tribunal des droits de la personne" (Human Rights Tribunal).

The "Commission des lésions professionnelles" (Professional injury Board) is the forum for claims regarding work injuries and occupational diseases.



### The Main Sources Of Employment Law

The Civil Code of Quebec contains general rules concerning the contract of employment which apply to most employment situations (sections 2085 to 2097).

The Labour Standards Act has standards which apply to all employees except senior executives. The latter are nevertheless covered by the psychological harassment protection provided in the Act. Individual contracts of employment and collective agreements may add contractual obligations to these minimum standards.

The relationships between unions, unionized employees and employers are regulated by the Quebec or the Canada Labour Code, depending on the activities of the employer.

The Act Respecting Occupational Health and Safety establishes the rights and obligations of employees and employers in order to eliminate dangers to the health, safety and physical well-being of employers.

### National Law And Employees Working For Foreign Companies

For Quebec provincially regulated undertakings, the Labour Standards Act may apply to the employee who performs work both in Quebec and outside Quebec for an employer whose residence, domicile, undertaking, head office or office is in Quebec.

The individual contract of employment may provide that it is governed by the laws of the Province of Quebec or from another jurisdiction, but the parties cannot contract out of public order protections (Article 3118 of the Civil Code of Quebec). Most labour and employment legislation in Quebec is considered to be of public order.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The Labour Standards Act applies to any employee domiciled or resident in Quebec who performs work outside Quebec for a provincially regulated employer whose residence, domicile, undertaking, head office or office is in Quebec.

The individual contract of employment may provide that it is governed by the laws of another jurisdiction subject again to the principle that the parties cannot contract out of public order protections (Article 3118 of the Civil Code of Quebec).

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

An employment agreement can be verbal or written and is for a fixed term or an indeterminate term.

## Mandatory Requirements:

### Trial Period

There is no obligation to provide trial periods. However, according to Section 82.1 of the Labour Standards Act, an employee with less than three months of uninterrupted service is not entitled to receive the statutory written notice of termination.

### Hours Of Work

For the purposes of computing overtime, the regular work week is 40 hours. Any work performed in addition to the regular work week entails a premium of 50% calculated on the hourly wage paid to the employee, according to Sections 52 and 55 of the Labour Standards Act.

### Earnings

There are minimum wage restrictions. The minimum wage payable to an employee is determined by regulation of the Government and an employee is entitled to be paid a wage that is at least equivalent to the minimum wage, according to Section 40 of the Labour Standards Act.

Also, no employer may remunerate an employee at a lower rate of wage than that granted to other employees performing the same tasks in the same establishment for the sole reason that the employee usually works less hours each week according to Section 41.1 of the Labour Standards Act. This does not apply however, to employees remunerated at a rate of pay which is more than twice the rate of the minimum wage.

Under Section 87.1 of the Labour Standards Act, it is illegal to give a lesser standard (wages, vacation, etc.) on the sole basis of the date of hiring.

### Holidays / Rest Periods

There is a minimum requirement of two (2) weeks of holidays for employees with one (1) to five (5) years of uninterrupted service and of three (3) weeks for employees with more than five (5) years of uninterrupted service, according to Sections 68 and 69 of the Labour Standards Act. An employee with less than one year of uninterrupted service is entitled to holiday at the rate of one working day for each month of uninterrupted service up to two weeks, according to Section 67 of the Labour Standards Act.

Employees are entitled to a weekly minimum rest period of 32 consecutive hours.

### Minimum/Maximum Age

No employer may have work performed by a child under the age of 14 years without first obtaining the written consent of the holder of parental authority, according to Section 84.3 of the Labour Standards Act.

An employee is entitled to continue to work notwithstanding the fact that he has reached or exceeded the age or number of years of service at which he should retire pursuant to a general law or special Act applicable to him, or pursuant to the common practice of his employer, according to Section 84.1 of the Labour Standards Act.

In addition, Section 122.1 of the Labour Standards Act stipulates that no employer may dismiss, suspend or retire an employee, practice discrimination or take reprisals against him on the ground that he has reached or passed the age or the number of years of service at which he should retire pursuant to a general law or special Act applicable to him. On the same subject, the Quebec Charter of Human Rights and Freedoms prohibits to discriminate on the grounds of age.



### Illness/Disability

An employee who is credited with three months of uninterrupted service is entitled to be absent from work, without pay, for a period of not more than 26 weeks over a period of 12 months in the event of sickness or accident, according to Section 79.1 of the Labour Standards Act. Upon the return from such absence, the employer must reinstate the employee in his former position, with the same benefits to which he would have been entitled had he remained at work.

Discrimination against an employee suffering from a handicap (including dependence to alcohol or narcotics) is prohibited by the Quebec Charter of Human Rights and Freedoms.

### Location Of Work/Mobility

According to Section 57 of the Labour Standards Act, an employee shall be remunerated for the time he is travelling when travel is required by the employer. In that case, the employer shall reimburse reasonable expenses incurred by the employee (Section 85.2 of the Labour Standards Act).

### Pension Plans

There is no legal obligation for an employer to set up a pension plan. If one is in place, it is subject to the Pension Benefits Standards Act.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

For the mother, the Labour standards Act provides for a maternity leave of maximum 18 weeks (Section 81.4) and a parental leave of a maximum of 52 weeks, for a possible total amount of 70 weeks leave without remuneration. Maternity leave shall not end later than 18 weeks after the week of delivery.

According to the Act Respecting Occupational Health and Safety, a mother-to-be shall benefit from precautionary cessation of work if her employment represents a potential risk to her health or the baby's health.

The father, is entitled to a paternity leave of a maximum of 5 weeks (Section. 81.2) and a parental leave of a maximum of 52 weeks (Section 81.10 of the Labour Standards Act), for a possible total amount of 57 weeks leave without remuneration. Paternity leave shall not end later than 52 weeks after the week of delivery.

The parental leave from which both parents may benefit shall end no later than 70 weeks after the birth or the moment when an adopted child was entrusted to the employee (Section. 81.11 of the Labour Standards Act).

Parents of an adopted child may only benefit from the 52 weeks of parental leave, in addition to 5 days at the occasion of the adoption.

The leaves of absence may be compensated by benefits from the Quebec Parental Insurance Plan.

### Compulsory Terms

There are implicit legal obligations arising out of the Civil Code of Quebec concerning the obligation for an employer to take any measures consistent with the nature of the work to protect the health, safety and dignity of the employee (Article 2087) and the obligation for an employee to act faithfully and honestly and not use any confidential information he may obtain in carrying on or in the course of his work (Article 2088). Also, an employee may not renounce his right to obtain compensation for any prejudice resulting from insufficient notice of termination or where the manner of termination is abusive (Article 2092).

As previously stated, the Labour Standards Act is deemed to be public order legislation, and as such, any agreement that contravenes its dispositions or that is inferior to them is deemed null (Section 93 of the Labour Standards Act).

### Non-Compulsory Terms

Non-compulsory terms can be agreed between an employer and employee provided the provisions are no less favourable to the employee than the Labour Standards Act. Most frequently such provisions will deal with remuneration, job title/job description, non-competition, non-solicitation and confidentiality issues as well as the duration of the agreement (indeterminate duration or fixed term).

### Types Of Agreement

According to Section 2090 of the Civil Code of Quebec, a contract of employment is tacitly renewed for an indeterminate term where the employee continues to carry on his work for five days after the expiry of the term, without objection from the employer.

### Secrecy/Confidentiality

There is a general obligation in this regard during employment and for a reasonable time after cessation, even if there is no specific provision in the employment contract. This obligation is stipulated in Section 2088 of the Civil Code of Quebec and is implicit in all employment agreements.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any provision in the employment contract, Section 13 (3) of the Copyright Act states that where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright.

### Hiring Non-Nationals

Generally, the employer must demonstrate that no Canadian could perform the duties envisaged for the non-national employee. In certain situations, such as those falling under the Free Trade Agreement, more generous access to work in Quebec may apply for specific categories of workers.

Non-nationals employees must have a work permit delivered by the Canadian immigration authorities or have the right to work under a specific treaty.

### Hiring Specified Categories Of Individuals

The employer may choose to create an Equal Access Employment Program enabling the victims of discrimination to obtain priority in employment. Such programs are deemed non-discriminatory.

### Outsourcing And/Or Sub-Contracting

Section 95 of the Labour Standards Act states that an employer who enters into a contract with a subcontractor is responsible jointly and severally with that subcontractor for the pecuniary obligations fixed by the Labour Standards Act or its regulation. Section 45 of the Labour Code was amended to prevent the application of successor legislation to subcontracting.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

A non material change may be made unilaterally by the employer without notice. A material change must be accepted by the employee or be preceded by a reasonable notice period before it is enforced, otherwise any such change will constitute constructive dismissal.

### Change In Ownership Of The Business

Subject to any contractual provisions to the contrary, the employment contract is not terminated as a result of the sale of a business. It is binding upon the new employer, according to Article 2097 of the Civil Code of Quebec and Section 97 of the Labour Standards Act.

In the absence of continuation of employment the former employer must fulfil all its obligations arising out of a termination of employment. The new employer is jointly liable with the former employer for any claim arising from the application of the Labour Standards Act which was not paid at the time of the change of ownership (Section 96).

In the case of unionised employees, the transfer of the collective agreement will most frequently be assumed by simple operation of the law, the whole according to Section 45 of the Labour Code.

Section 76.11 of the Pay Equity Act stipulates that the sale of a business or the modification of its legal structure shall have no effect upon obligations relative to adjustments in compensation, a pay equity plan or a pay equity audit, which shall be binding on the new employer.

Finally, Section 34 of the Industrial Accidents and Occupational Diseases Act provides that where an establishment or part of it is sold or transferred otherwise than by judicial sale, the new employer assumes the obligations of the former employer under the Act toward the worker and, in respect of payment of the assessment due at the time of the alienation or transfer, toward the “Commission de la santé et de la sécurité du travail” (Occupational health and security Board).

According to Section 45 of the Labour Code in the case of unionised workers, the new employer shall be bound by the certification or collective agreement as if he were named therein and becomes ipso facto a party to any proceeding relating thereto, in the place and instead of the former employer.

Any new employer having a place of business in Quebec with at least one (1) employee, must be registered with the “Commission de la santé et de la sécurité au travail” in order to benefit from this insurance against dangers to the health, safety and physical well-being of workers.

### Social Security Contributions

Contributions are made to the "Régie des rentes du Quebec" (The public Quebec Pension Plan), to the Quebec Parental Insurance Plan and for Employment Insurance.

### Accidents At Work

The Occupational Health and Safety Act and the Industrial Accidents and Occupational Diseases Act contain provisions dealing with accidents at work, for which an employee can present a claim to the "Commission de la santé et de la sécurité du travail" (Occupational health and security Board). Any disputes arising from those claims may be settled by the "Commission des lésions professionnelles" (Professional injury Board).

### Discipline And Grievance

For unionized employees, this is usually dealt by the provisions of the collective agreement.

For non-unionized employees, progressive discipline applies except for egregious conduct (theft, fraud, or sexual harassment). Non-disciplinary sanctions are subject to progressive measures also.

### Harassment/Discrimination/Equal pay

Every employee is protected against discrimination on the ground of race, colour, sex, pregnancy, sexual orientation, civil status, age, religion, political convictions, language, ethnic or national origin, social condition, and handicap.

Also, every employee has the right to work in an environment free from psychological harassment. Sections 10 and 10.1 of the Quebec Charter of Human Rights and Freedoms states that every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap. Furthermore, no one may harass a person on the basis of any of these grounds.

Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it. This implies that an employer can be held liable for harassing behaviour of one of his employee.

### Compulsory Training Obligations

Section 3 of the "Act to Promote Workforce Skills Development and Recognition" stipulates that every employer whose total payroll for a calendar year exceeds the amount fixed by regulation of the Government is required to participate for that year in workforce skills development by allotting an amount representing at least 1% of his total payroll to eligible training expenditures.



### Offsetting Earnings

Section 49 of the Labour Standards Act stipulates that no employer may make deductions from wages unless he is required to do so pursuant to an act, a regulation, a court order, a collective agreement, an order or decree or mandatory supplemental pension plan. The employer may make deductions from wages if the employee consents to it in writing, for a specific purpose mentioned in the writing. The employee may at any time revoke that authorisation except where it pertains to membership in a group insurance plan, or a supplemental pension plan.

### Payments For Maternity And Disability Leave

#### Benefits during maternity/paternity/ parental leave

The eligible recipients of Quebec Partental Insurance Plan can choose between a Basic plan and a Special plan (s. 18 of the Act respecting Parental Insurance).

The Basic plan provides for a benefit equivalent to 70% of the weekly insurable salary for the 18 weeks of maternity, the 5 weeks of paternity, the first 7 weeks of parental and for the first 12 weeks of adoption benefits. Then, the recipients receive 55% of the weekly insurable salary for 25 weeks of parental benefits or adoption benefits.

The Special plan provides for a benefit equivalent to 75% of the weekly insurable salary for 15 weeks of maternity, the 3 weeks of paternity, 25 weeks of parental and for the 28 weeks of adoption benefits.

Provincial law provides that an employee on maternity leave, subject to certain conditions, may receive either 70% of the base average weekly salary (subject to a statutory maximum salary cap currently of $67,500) for a period of 18 weeks or 75% of base average weekly salary for a period of 15 weeks. If the leave is shared with the spouse (paternity leave) the percentages may vary.

Other similar rules apply in the case of adoption. An employee on parental leave, subject to certain conditions, may receive either 70% of the base average weekly salary for the first 7 weeks of leave and 55% of the base average weekly salary for the subsequent 25 weeks or 75% of base average weekly salary for a period of 25 weeks.

#### Disability leave

Employees covered by a group insurance plan will receive benefit payments for short term and long term disability according to the terms of the group insurance plan.

Employees who are not covered by a group insurance plan may receive Employment Insurance Sickness Benefits for a maximum period of 15 weeks.

### Compulsory Insurance

There is no obligation for an employer to set up or provide group insurance. However, if such a plan is offered, there are specific rules in the Civil Code of Quebec concerning group insurance policies.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

The Quebec Labour Code does not regulate the setting up or internal constitution of a Work Council or a Trade Union. These entities are governed by their own internal regulations and by-laws. These regulations and by-laws must conform to the general rules concerning non profit organizations contained in the Civil Code and the Professional Syndicates Act. However, the Labour Code does regulate the conditions under which a Trade Union may be certified with a particular employer as well as the rules dealing with collective bargaining and the exercise of the right to strike.

### Employees' Right To Strike

Unions have the right to declare a legal strike and employers have the right to declare a legal lock-out. For private sector unions, these rights will generally be acquired 90 days after the notice to start bargaining was served on the other party. Once it is acquired, there is no requirement to provide the other party or the authorities with any notice of intent for the strike or lock-out to be legal. However, the party which declared a strike or lock-out must notify the Minister in writing within 48 hours following the declaration of the strike or lock-out and indicate the number of employees comprised in the bargaining unit concerned (Section 58 and 58.1 of the Quebec Labour Code). During this period, the employer cannot hire replacement employees and can generally only use management employees hired prior to the bargaining period to replace the striking employees. These rules are stipulated in Sections 106 to 109.1 of the Quebec Labour Code.

In the public and para-public sectors, the right to lock-out employees does not exist. The right to strike is severely limited and the "Conseil des services essentiels" (Essential Services Council) must approve the list of employees who will be authorized to strike prior to the launching of any strike.

### Employees On Strike

An employee who is legally on strike or lock-out remains an employee for the full duration of the conflict. He may only be terminated for a just and sufficient cause other than the fact that he is legally on strike. Accordingly, participation in an illegal strike may be cause for discipline including termination. At the end of a strike or a lock-out, any employee who has been on strike or has been locked out is entitled to recover his employment by priority over any other person unless the employer has good and sufficient reason for not recalling such employees, according to Section 110.1 of the Labour Code.



### Employers' Responsibility For Actions Of Their Employees

Employers are liable for the actions of their employees by virtue of the Civil Code of Quebec. However, the employer will not be held liable if the employee has acted outside the scope of his duties (see Article 1463 of the Civil Code).

## 04. Firing The Employee

### Procedures For Terminating the Agreement

There are no special procedures for terminating an agreement, unless the collective agreement or the employment agreement provides otherwise. Some agreements may provide for some form of due process. However, special damages can be claimed where a termination was executed in an abusive manner.

However, according to Section 82 of the Labour Standards Act, the employer must give written notice to an employee before terminating his contract of employment or laying him off for more than six (6) months. The written notice can be replaced by an indemnity in lieu of the written notice (see subsequent section).

In addition, the provision of the statutory written notice or payment in lieu thereof, an employer shall always give reasonable notice when terminating an indeterminate term contract, pursuant to Article 2091 of the Civil Code (see subsequent section).

There are special rules dealing with mass termination where 10 or more employees are let go in the same establishment in the course of two consecutive months (Sections 84.0.1 to 84.0.15 of the Labour Standards Act).

There are certain minimum steps which must be followed before termination to avoid a claim for unjust dismissal, such as giving administrative or disciplinary notice and following progressive sanctions.

### Instant Dismissal

However, written notices are not necessary when terminating an employee who has less than three months of uninterrupted service or when his contract for a fixed term or for a specific undertaking expires. The written notice is also not necessary for an employee who has committed a serious fault, or in the case of an employee for whom the end of the contract of employment or the layoff is a result of an act of God.

An employer who does not give the notice prescribed by section 82 of the Labour Standards Act, or who gives insufficient notice, must pay the employee a compensatory indemnity equal to his regular wage, excluding overtime, for a period equal to the period or remaining period of notice to which he was entitled.

### Employee's Resignation

There are no rules in the Labour Standards Act dealing with an employee's resignation. However, the Civil Code imposes on the employee the duty to provide reasonable notice of his impending resignation. The length of this notice will depend on the employer's capacity to replace the employee. Typically, unless the employee occupies a very specialised position, notice periods given by employees vary between one week and one month.

### Termination On Notice

Both parties can terminate on notice. However, under the Labour Standards Act, a variety of special statutory recourses may provide for the reinstatement of an employee who has been illegally terminated (without just and sufficient cause, harassment, etc…).

Reasonable notice under the Civil Code includes the statutory notice provided under the Labour Standards Act. Notice periods may vary from a minimum of three months to a maximum of 24 months. If notice is not given, the employee will be entitled to an indemnity in lieu thereof. The indemnity is to be calculated on the whole remuneration (salary, benefits, bonus, shares, options, pension plan) paid to the employee.

If the employer terminates the employment, he must at civil law provide adequate advance notice of such termination (reasonable notice), and which will be evaluated taking into consideration the age, position, salary and continuous service of the employee amongst other criteria.

### Termination By Reason Of The Employee's Age

As a general rule, an agreement cannot be terminated by reason of the employee's age. This is prohibited by the Labour Standards Act and the Charter of Human Rights and Freedoms. In the case of certain specific occupations (for example, airline pilot, fire-fighter), it may be provided that an employee must resign at a certain age.

### Automatic Termination In Cases Of Force Majeure

Certain conditions apply in cases of termination brought about by force majeure. In cases of individual termination, this does not include an employer's economic difficulty. In cases of collective dismissal, in certain specific instances, unforeseen economic circumstances may relieve the employer from its obligation to provide notice.

### Termination By Parties' Agreement

The employer may terminate the agreement in cases where there is an economic reason but he must give a reasonable notice or pay an indemnity in lieu thereof.

In cases of mass terminations, the terminations must be notified to the Minister of Employment.

### Directors Or Other Senior Officers

As a general rule, most directors are not employees of the corporation. Senior officers are employees of the corporation.



### Special Rules For Categories Of Employee

Different rules apply to certain categories of employees.

Firstly, senior executives (cadres supérieurs) are not covered by most of the provisions of the Labour Standards Act.

Secondly, mid-level managers may not be unionized under the Labour Code.

Thirdly, unionized employees are not entitled to the Civil Code's reasonable notice or the indemnity in lieu thereof.

### Specific Rules For Companies in Financial Difficulties

Directors may be held personally liable for the employees' wages earned in the previous six (6) months.

### Restricting Future Activities

The parties may stipulate in writing and in express terms that, even after the termination of the contract, the employee may neither compete with his employer nor participate in any capacity whatsoever in an enterprise which would then compete with his former employer.

To be valid, such a stipulation shall be reasonably limited as to time, place and type of employment. The reasonability is appreciated in function of what is strictly necessary for the protection of the legitimate interest of the employer. The burden of proof that the stipulation is valid is on the employer (Article 2089 of the Civil Code). Such a provision cannot be enforced where the termination is without cause (Article 2095 of the Civil Code). Elimination of a position as a result of a restructuring is not just cause under Quebec law.

Non solicitation covenants are also frequent and are enforceable if properly drafted. The Civil Code of Quebec also imposes a duty of loyalty on employees which duty survives termination of employment for a reasonable period (Section 2088).

### Severance Payments

Indemnities payable in lieu of notice (there are no statutory "severance" payments other than the written notice of termination provide by Section 82 of the Labour Standards Act) are calculated by taking into consideration the criteria listed above.

Even though twelve (12) months once constituted a maximum period, recent decisions have increasingly granted more than that under the right set of circumstances (up to 24 months). Indemnities granted in lieu of reinstatement under various statutory remedies have also provided for higher limits.

### Special Tax Provisions And Severance Payments

Indemnities in lieu of notice are subject to special tax rates and may, on certain conditions, be transferred tax free into the employee's RRSP.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Claims for damages arising out of a wrongful dismissal (termination without cause) can be filed before the courts of civil jurisdiction within a three (3) year delay following the termination. Claims for unpaid wages, vacations and other benefits arising out of the Labour Standards Act must be filed within one (1) year from the date at which the payment should have been made. Complaints for wrongful dismissal or illegal dismissals must be filed within forty-five (45) days of the termination before the Labour Standards Board. Complaints for psychological harassment must be filed no later than ninety (90) days from the last occurrence of psychological harassment before the Labour Standards Board. Claims for damages under the Charter of Human Rights and Freedoms must be filed within two (2) years of the discriminatory act.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Quebec has a unique set of laws when it comes to employment matters. Here are a few examples:

1. The Quebec Civil Code provides that the Court has the power to declare unenforceable and “abusive” stipulation in a contract. This power has been applied numerous times to quash provisions of employment agreements.
2. The Quebec Civil Code also empowers the Court to set aside a contractual notice period contained in an employment agreement where the Court is of the opinion that the notice is insufficient having due regard to applicable case law.
3. A non-unionized employee or manager may challenge his wrongful dismissal and seek reinstatement into his former position.
4. The Charter of the French Language requires every business with over 50 employees in Quebec to adopt a francisation plan.
5. Every business with more than ten employees is subject to the provisions of the Pay Equity Act. More stringent obligations applied to business with more than 50 employees.
6. Once a legal strike or lock-out is declared, it is illegal to hire replacement workers.

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# Chile

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Labour Courts are the forum for adjudication of all labour disputes. In general, arbitration of employment disputes is not permitted in Chile.

### The Main Sources Of Employment Law

The Labour Code is the main source of employment law in Chile. Notwithstanding the foregoing, there are additional statutes and regulations which complement the labour legislation, e.g. Law No 16,744 regarding labour accidents and work-related illnesses; Decree Law No. 3,500 and its amendments, regarding the private pension system; Law No. 19,728 regarding unemployment insurance.

Individual and collective contracts are also a source of employment obligations.

### National Law And Employees Working For Foreign Companies

All employees working in Chile are protected and subject to Chilean Labour Law, regardless of their nationality. In companies with more than 25 employees, at least 85 percent of the employees hired by one employer must be Chilean, with this percentage calculated as a fraction of their total labour force in Chile. Nevertheless, this restriction does not apply, among others, to foreign technical experts.

### National Law And Employees Of National Companies Working In Another Jurisdiction

As a general rule, Chilean law is not enforceable in other jurisdictions. Normally, when an employee is expatriated, their Chilean employment contract is terminated or suspended by mutual consent of the parties. However, in case a Chilean employee performs temporary work abroad, in accordance with his employment contract, the labour relationship will remain in force in Chile.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

All employment contracts have to be evidenced in writing within a period of 15 days as from the first day of his or her employment. In case of employment contracts for less than 30 days or whose duration is determined by the temporary work for which the employee was hired, the period is 5 days.

If no written contract is signed within the referred to 15-day term, or 5 day-term, as the case may be, the employer could be normally subject to fines of up to approximately USD $370 per employee. In case there is no written contract, then the law presumes that the stipulations of the contract are those alleged by the employee. The employment contract has to include certain mandatory provisions and any amendment must be set forth in writing and signed by the parties on the back of the employment contract or in a separate appendix.

## Mandatory Requirements:

### Trial Period

In general, trial or probationary periods do not exist under Chilean Labour Law. The only exception is a two-week period term provided for domestic employees.

### Hours Of Work

The maximum permissible working week is 45 hours, distributed over no fewer than five and no more than six days. Ordinary work per day cannot exceed 10 hours. There is no limitation on whether the distribution of the 45-hour working schedule is during day or night shifts. There are some cases where due to the nature of work, such working schedule limitations do not apply.

### Earnings

Employees are entitled to a minimum wage, which is fixed by law every year. Current minimum monthly wage is approximately USD$400. Overtime work is calculated at a rate of 1.5 times the ordinary hourly salary.

In addition, companies that make net profits during the fiscal year are required to establish a profit sharing plan, which may be either: (i) by distributing 30% of all profits pro rata to employees; or (ii) by paying to each employee an amount equivalent to 25% of the total annual remuneration of such employee, capped at 4.75 monthly minimum salaries per year, unless the parties have agreed to a higher amount.

### Holidays / Rest Periods

Employees with one or more years of service in the company are entitled to 15 working days of paid vacation or holiday once a year. After the first 10 years of work for one or more employers, annual vacation is increased by one day after every 3 additional years of employment with the current employer.

As a general rule, Employees cannot work on public holidays or Sundays, with certain exceptions, such as: (i) employees who work in retail and directly attend or serve the public; (ii) those who work in ports or on ships; (iii) those who provide services that require continuity due to the nature of the services, technical reasons, or to avoid damage to the public interest or to industry; and (iv) those who repair damages caused by force majeure if work cannot be delayed.

### Minimum/Maximum Age

Minors under 18 can be engaged in labour activities only with parental authorisation. Chilean Labour Code does not provide maximum age limits.



### Illness/Disability

According to Chilean social security regulations, all employees must pay approximately 7 per cent of their salary towards health insurance. These contributions are withheld by the employer from the employee's monthly salary and then paid directly to the health-care institutions ("FONASA" or "ISAPRE").

Under Chilean Labour Law, employees are entitled to sick leave based on physician's orders. During this absence, the employee will generally receive an amount equivalent to his or her salary, paid by the respective health insurance provider. Absences due to work related accidents or professional diseases will be paid by a special entity in charge of such accidents ("Mutuales de Seguridad").

According to this system, health care institutions will pay incapacity allowance starting on the fourth day of absence if the medical leave is for less than 10 days. If the medical leave is for more than 10 days, the health care institution will pay incapacity allowance starting on the first day.

### Location Of Work/Mobility

The location of the employee's work must be mentioned in the respective employment contract. As a general rule, the employer can change the place where duties must be performed, under the condition that the new place is located in the same city.

### Pension Plans

According to Chilean social security regulations, all employees must pay approximately 13 per cent of their salary to a pension fund, which accumulates those savings in an individual account. These mandatory contributions are withheld by the employer from the employee's monthly salary.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

Pregnant women cannot be fired during pregnancy or in the 12 months following maternity leave, unless the dismissal is previously approved by a court decision.

Female employees are entitled to paid maternity leave starting 6 weeks before childbirth and continuing 12 weeks thereafter. Also, there is an additional period of 12 weeks, in order to make a 24 full-time leave after childbirth.

Said leave after childbirth can be extended up to 30 weeks if the mother decides to take such additional leave on a part-time basis. During this absence, health care institutions are responsible of paying the mother´s remunerations with a legal cap of 72.3 UF (approximately USD$3,100).

During the first month after childbirth, fathers are entitled to 5 working days of paid leave.

In case mothers die while giving birth or during the maternity leave, this period or the remainder will correspond to the respective father or to whom the child custody has been granted.

In cases of adoption, either women or men enjoy similar benefits as those available for biological parents.

Chilean Labour Law also contemplates other nursery and child feeding permits.

### Compulsory Terms

The compulsory terms which must be included in employment contracts are:

The place and date of the contract; identity of the parties; nature of work and place where it will be performed; details of salary and other benefits; duration and distribution of the working week; and term of the contract.

### Non-Compulsory Terms

The parties are free to agree other non-compulsory provisions providing they do not conflict with statutory labour rules.

### Types Of Agreement

Chilean Labour Law includes, among others: (i) fixed-term contracts; (ii) specific task contracts; (iii) indefinite-term contracts; (iv) part-time contracts; and (v) apprenticeships contracts.

Fixed-term contracts cannot be executed for more than 1 year. In case of managers or individuals who have obtained a professional or technical degree granted by a state-recognized institution, the maximum term is 2 years. Please note that these contracts may only be renewed once. If the employee continues rendering services after the expiration of the term or its renewal, the employment contract becomes one of indefinite-term. The same effect occurs upon the second renewal of a fixed-term employment contract.

Fixed-term and specific task contracts do not require severance in the event of termination, unless they are terminated unilaterally by the employer before the termination date or completion of the task provided in the contract, in which case the employer must pay the employee all remunerations up to that date.

### Secrecy/Confidentiality

There are no express rules relating to secrecy and/or confidentiality, therefore it is advisable to include an express provision in employment contracts. However, in some cases it is an obligation for the employee to keep the secrecy and/or confidentiality of certain information that he or she has become aware during an employment relationship. This may be considered as an implied term in the employee's contract.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In general terms, inventions, objects or other creations subject to intellectual property rights produced or created by the employee during his or her employment, belongs to the employer. However, parties may agree otherwise in the corresponding employment contract.

### Hiring Non-Nationals

In companies with more than 25 employees, at least 85 percent of the employees hired by one employer must be Chilean, with this percentage calculated as a fraction of their total labour force in Chile. This restriction, however, does not apply to foreign technical experts who are therefore excluded from the percentage mentioned above. For these purposes, those foreign nationals whose husband, wife, or children are of Chilean nationality (or who are a widow or widower of a Chilean citizen) are considered Chileans. Similarly, foreign nationals with residence in Chile for more than 5 years are also considered Chileans for the purposes of this rule.



### Hiring Specified Categories Of Individuals

There are no specific categories of individuals in the Chilean Labour Code.

### Outsourcing And/Or Sub-Contracting

There are no restrictions on employers outsourcing and/or subcontracting. The owner of the place where the work is carried out will remain joint and severally responsible for labour obligations of the sub-contractors. Personnel supply activities are highly restricted. Services therein are limited to a short period of time, normally not exceeding 90 or 180 days. Supply of personnel companies require special governmental approvals and have to issue certain guaranties regarding their compliance with labour obligations.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

In general terms, any change in the employee's work conditions have to be mutually agreed by the parties. However, employers can unilaterally vary the nature of the services or the place of work provided that: (i) the new service is similar in nature; (ii) the place of work must be within the same city; and (iii) the employee does not suffer any detriment due to this changes.

Also, employers are entitled to vary the work-day distribution up to 60 minutes, either by anticipating or deferring the time that employees must start the work day.

### Change In Ownership Of The Business

Under Chilean Labour Law, any change in the ownership of the business, whether through sales, mergers, spin-offs or any other form, is irrelevant to employees, whose rights under individual or collective contracts with the employer are binding for the new owners of the business. Accordingly, the continuation of the rights and obligations of the employees, in the event that all or part of the business is transferred, occurs by operation of law.

For this reason, according to the Labour Authority, it is not necessary to execute a new employment contract or amend existing contracts.

### Social Security Contributions

According to Chilean social security regulations, all employees must pay 7 percent of their salary towards health insurance. These contributions are withheld by the employer from the employee's monthly salary and then paid directly to public or private health-care institutions ("FONASA" or "ISAPRE").

In addition and as explained above, all employees must pay approximately 13 per cent of their salary into a pension fund, which accumulates those savings in an individual account. These mandatory contributions are deducted from the employee's monthly salary by the employer.

Employers must provide insurance for labour accidents and professional diseases. These contributions are as follows: a basic contribution of 0.95 percent of the employee's salary; plus an additional contribution (which varies based on the company's activity and associated risk, limited to 3.4 percent of the employee's salary).

Unemployment insurance is also mandatory, which both the employer and the employee must contribute as follows: (i) employees must contribute with 0.6 percent of his or her salary, and (ii) the employer must pay 2.4 percent of the employee's salary.

### Accidents At Work

A special law regulates work related accidents and who is responsible. There is legal insurance to cover employment accidents and labour illness risk.

### Discipline And Grievance

It is mandatory for a company who has 10 or more employees to have a handbook ("Internal Rules of Order, Hygiene and Safety"). This handbook must be written in Spanish and must contain discipline and grievance procedures and other regulations regarding certain matters such as: leave of absence, conflict resolution, substance abuse and sexual harassment. This document must also contain a special chapter with rules and instructions on accident prevention and health and safety guidelines to be observed by all employees.

### Harassment/Discrimination/Equal pay

Sexual harassment has been incorporated in the Chilean Labour Code as (i) base for dismissal of an employee acting improperly with no right to severance payment; and (ii) permits an affected employee to unilaterally terminate his or her employment contract in case of infringement, with the right to claim all severances with up to 80% of increase. A procedure to investigate sexual harassment has also been included in the Chilean Labour Code.



Labour harassment practices are prohibited in the workplace. Such practices are considered as: (i) base for termination of employment contract, without any severance (previously, only sexual harassment was considered for these purposes); and (ii) permits an affected employee to unilaterally terminate his or her employment contract in case of infringement, with the right to claim all severances with up to 80% of increase.

The Chilean Labour Code provides regulations for equal pay between male and female employees who performed the same duties. Differences in the payment to male and female employees performing the same duties may be considered discriminatory if such difference is not based on abilities, qualifications, responsibilities or productivity of the employee.

Discrimination in employment is prohibited by Law. Several examples of discrimination are included in the Labour Code. Employees cannot be discriminated against on account of race, colour, sex, age, civil status, religion, public opinion, nationality and social origin, provided that the employer must guarantee equal opportunities for all employments.

Also the law contemplates several remedies against discrimination giving place to special damage indemnities.

All distinctions which are not based on employee's capacity and suitability for a particular job are considered as discrimination.

### Compulsory Training Obligations

There are no compulsory training obligations imposed on employees or employers. However, certain jobs require special training in order to avoid labour accidents or to spread professional diseases. Such training requirements will be required in order to protect an employee's health.

Some sectors have their own regulations which require special training, abilities or knowledge in order for employees to perform their duties.

### Offsetting Earnings

An employer is permitted to offset an employee's earnings against his or her debt, subject to certain limitations. As a general rule, non-mandatory deductions cannot exceed 15 per cent of employee's monthly wages.

### Payments For Maternity And Disability Leave

Social security institutions should pay an equivalent salary to the female employee during maternity and disability leave for the periods and legal caps mentioned above.

### Compulsory Insurance

Health cover insurance, life, labour accidents and professional diseases and unemployment insurance are required by law. With the exception of labour accidents and professional diseases, all insurance must be financed by employees.

### Absence For Military Or Public Service Duties

When an employee is absent from work for military or public service duties, the employer must keep the employee's position open.

### Works Councils or Trade Unions

There are no work councils in Chile. Labour unions exist on a voluntary basis. In Chile there are strong regulations on trade unions. Trade union authority has been increased by the latest amendments to the Labour Code.

Only company unions (which represent employees from a single company) have the authority to call for collective negotiations. Other types of unions may also ask for collective negotiations but is up to the company to accept or reject such requests.

### Employees' Right To Strike

All steps of collective bargaining have to be exhausted in order for a strike to be legal. There are certain employees who cannot go on strike, in which case the dispute must be submitted to arbitration (e.g. employees from electricity, water and other primary services and those working on activities where stoppage can create a severe damage to health and supply of goods, the country's economy or to the national security).

### Employees On Strike

As a general rule, employees cannot be dismissed during strike. Employers are allowed to replace such employees with the conditions provided in Chilean Labour Code.

### Employers' Responsibility For Actions Of Their Employees

As a general rule, employers will be responsible for their employee's actions performed during their contractual duties, unless an employee acts improperly and beyond the control of the employer or engages in illegal activities.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

The Chilean Labour Code provides several regulations regarding termination of employment contracts. Terminations must be based on any of the grounds provided in the Labour Code.

However, there are some specific cases where termination of employment contracts occurs automatically, for example (e.g. in case of employee's death, conclusion of work and expiration of the fixed-term contract).

Upon the termination of an employment contract, the employer must give notice to the employee, explaining the reasons for the dismissal within the 3 working days following the termination. A copy of that letter has to be sent to Labour Authority for their records within the same term.

Furthermore, a recently enacted law (August, 2013), establishes a 10 working-day term (counted from the date the former employee ceases to render services for the company), within which the employer shall make available to the employee a termination and release agreement along with any outstanding amounts owed due to the termination of the employment contract. For these purposes, the employer shall pay the employee any amounts owed arising from the termination of the employment relationship and must execute the termination and release agreement before a Notary Public.

### Instant Dismissal

As a general rule, employers can instantly dismiss employees in certain cases; (i) on the grounds of "needs of the company", by giving a prior notice; (ii) in case of gross misbehaviour or dishonesty; or (iii) in case employees breaches the employment contract, among others. Nevertheless, the employer will need to obtain the Labour Court's approval before being able to dismiss certain employees. This will be the case of employees who are on strike, pregnant women, employees on maternity leave, maternity period of protection, members of labour unions and others few cases provided in the Labour Code.

### Employee's Resignation

The employment contract can be terminated by the employee's resignation. This resignation must be signed before a Notary Public or Labour Bureau Inspector, among other authorities.

### Termination On Notice

To terminate the employment contract by the grounds of the "needs of the company", the employer must give the employee a 30-day notice before dismissal, unless the employer agrees to pay the employee compensation equivalent to 30 days of work in lieu of notice in addition to any other severance payment that is due to the employee. The remuneration considered for these purposes is capped at approximately US$4,000. If termination is due to gross misbehaviour or breach of contract by the employee, no such previous notice is requested.

### Termination By Reason Of The Employee's Age

In Chile, dismissal by reason of an employee's age is not permitted. In case of any claim, Labour Courts could deem such dismissal as illegal and discriminatory.

### Automatic Termination In Cases Of Force Majeure

In cases of force majeure termination of the employment contract is justified without severance payment.

### Termination By Parties' Agreement

The parties can terminate the employment relationship by mutual agreement. This agreement must be signed before a Notary Public or other persons specifically authorized, such as a labour union's director, labour inspectors, etc.

### Directors Or Other Senior Officers

The Chilean Labour Code provides the same treatment than any other employee to directors and other senior officers who work in a relation of subordination and dependence with the employer.

In case directors and other senior officers do not work in of the premises of subordination and dependence with the employer, labour regulations will not apply and terminations will be subject to the corresponding agreements, if any.

### Special Rules For Categories Of Employee

There are no special categories of employees in the Chilean Labour Law.

### Specific Rules For Companies in Financial Difficulties

In case of bankruptcy, severance payments to employees have certain priority over other company debts. Sometimes, the bankruptcy administrator appointed by the Court can, with the creditor's approval, keep running the company as well as the employment contracts.



### Restricting Future Activities

Parties may agree to restrict employee's future activities. With regard to these restrictions, there are two important moments or stages to consider. The first is while the employee is employed and the second is after the employment relationship is terminated. If an employee breaches a non-compete covenant included in the contract while still in employment, the employer can terminate the contract without having to pay severance. After an employment relationship ends, the enforcement of a non-compete covenant may be difficult given the absence of specific statutory rules and, more importantly, because the Chilean Constitution guarantees all individuals the freedom to work, to be hired freely and to select their work. Labour Courts tend to protect these rights.

Moreover, there is a recent amendment to the Labour Code, which expressly includes the freedom to work as a "fundamental labour right" of employees. Therefore, it is possible that these types of restrictions may be declared invalid in case of claims filed before Labour Courts.

### Severance Payments

If the employment is terminated by the employer on the grounds of the needs of the company (such as those required for the rationalisation or modernisation of systems, a fall in productivity or changes in market conditions or the national economy that make the loss of one or more employees necessary), unless a higher severance payment is agreed by the parties, the employee will be entitled to a legal severance for an amount equal to 1 month salary for each year worked or a fraction thereof if there is a remainder of more than 6 months, with the following limitations: the severance is capped at 11 months (i.e., 11 years of service); and the remuneration considered for these purposes is capped at approximately US$4,000 per month. In addition, the employer must give the employee a 30-day notice before dismissal, unless the employer agrees to pay the employee compensation equivalent to 30 days of work in lieu of notice with the same cap.

If an employee is dismissed without any cause or if he or she considers that the dismissal is not sufficiently justified, the employee is entitled to file a labour lawsuit before Labour Courts and could claim a compensation in lieu of prior notice amounting to severance payments and damages for wrongful termination of up to 100 percent of the legal severance.

### Special Tax Provisions And Severance Payments

If an employee´s sole income source comes from an employment contract and if he or she has a relation of subordination and dependence with the employer, the employee's monthly salary will be subject to the Second Category Tax, which is progressive and is based on the employee's gross income. The tax rate ranges from 0 to 40 percent depending on the taxable basis.

Normally severance payments will be tax free, provided they do not exceed the rule of one month salary per year of work.

### Allowances Payable To Employees After Termination

Upon termination of the employment contract, the employer must pay any pending labour benefit to the employee (e.g. holidays, overtime, remunerations, social security contributions and severance payments, if any). Therefore, there are no other allowances payable to employees after the termination of the employment contract.

### Time Limits For Claims Following Termination

Employees have 90 days, from the date of dismissal, to make a claim for improper dismissal. Employees have six months to claim other labour benefits and five years to claim social security contributions and indemnities where the employee has suffered an accident or professional illness at work.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The private social security system is a unique feature of our Labour Law. The pension plan depends on the amount of money the respective employee has saved in his individual account. Social security is mostly supported by employees with an obligation for employers to withhold money from employees' salaries, having to deposit that amounts in private and strongly regulated social security organisations called "pension funds administrators".

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# People's Republic of China

# People's Republic of China

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

In the People's Republic of China (PRC), adjudication of a labour dispute must generally first be heard by a labour dispute arbitration committee. The labour dispute arbitration committee at the place where the labour contract is performed, and the labour dispute arbitration committee at the employer's registered location, both have jurisdiction over the labour dispute. If the parties apply to both committees the labour dispute arbitration committee at the place where the labour contract is performed will take precedent.

Parties can generally appeal an arbitration decision with the competent people's district court, which conducts a de novo review. Only employees have the right to appeal arbitration decisions related to certain types of disputes, such as claims for medical expenses for occupational injuries. District court decisions may be appealed to intermediate court for a final review.

Disputes not deemed as labour disputes, such as disputes relating to recruitment, may be filed directly in court.

In order to reduce the number of disputes being handled by labour arbitration and courts, employers are encouraged to establish mediation committees. The establishment of such committees is not compulsorily and parties are not required to submit disputes to the committees or other mediation organisations.

### The Main Sources Of Employment Law

China has different levels of labour laws. At the national level, there are laws enacted by the National People's Congress and its Standing Committee. Regulations and rules are issued by the State Council and the central government labour administrative authorities. At the local level, there are laws enacted by the provincial and municipal people's congresses and their standing committees. Regulations and rules are also issued by the provincial and lower-level government authorities. Generally speaking, local legislation clarifies national legislation by providing more details.



The main sources of employment law at the national level includes the Labour Law, the Labour Union Law, Labour Contract Law, the Employment Promotion Law, the Labour Disputes Mediation and Arbitration Law, the Rules on Paid Annual Leave of Employees Working in Enterprises, and the Interim Rules on Payment of Salary.

Starting January 1, 2014, decisions of intermediate and higher level courts are required to be published on the internet. Some district courts are also beginning to publish decisions. Unlike common law jurisdictions, case decisions are not formally used as precedents. However, the Supreme People's Court does issue interpretations that lower courts are instructed to follow.

### National Law And Employees Working For Foreign Companies

In general, PRC labour laws apply to all individuals directly employed by foreign-invested enterprises.

By contrast, a representative office of a foreign company is not permitted to directly employ PRC citizens, but must employ individuals through a qualified employment agency. The agencies are the legal employers, but the representative offices may have labour law obligations imposed through service contracts with the agencies.

Foreign national employees employed by offshore employers and seconded to work for foreign-invested enterprises or representative offices of foreign companies will generally be subject to the governing laws of their employment contracts with their offshore employers.

### National Law And Employees Of National Companies Working In Another Jurisdiction

In general, PRC law will apply to employees employed by PRC companies who are seconded to work in another jurisdiction, subject to the arrangements between the home entity, host entity and the employee.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

Full-time employees must have written employment contracts. The written employment contract must be concluded within 30 days when the employee gets on-board. Part-time employees can be employed under written or oral contracts.

## Mandatory Requirements:

### Trial Period

It is not a legal requirement to provide an employee with a trial period, usually called a "probationary period". However, it is common practice to do so. The maximum length of the probationary period depends on the length of the employment contract. No probationary period is allowed where the employment is for less than three months. An employer may stipulate only one probationary period per employee.

### Hours Of Work

China has three working hours systems: standard working hour system; flexible working hour system; and comprehensive working hours system. The standard working hour system is eight hours per working day and 40 hours per working week. The flexible working hour system and comprehensive work hours system are limited to specific positions that are not suitable for the standard working hours system. Labour bureau approval is required for an employer to adopt an alternative working hours system.

### Earnings

An employee's salary must be no less than the minimum salary standards set by the local governments. The rates depend on the work location and the type of employment, e.g. full-time employees and part-time employees.

### Holidays / Rest Periods

All employees are entitled to enjoy statutory public holidays. An employee who has worked continuously for at least one year is entitled to paid annual leave of five to fifteen days. Paid annual leave entitlement is based on an employee's total working service in the workforce.

Employees under the standard working hour system must be provided with at least one rest day per working week. As for employees under an alternative working hour system, employers must provide rest through measures such as shifts and flexible working hours.

### Minimum/Maximum Age

Employees must be at least 16 years old, provided that approval may be granted to employ children under the age of 16 for performing art, sports and specialty-skill work. There are no maximum age limits for an employee to work, although statutory retirement ages may apply.

### Illness/Disability

An employee suffering from non-occupational illness or injury is entitled to statutory medical treatment leave of between 3 and 24 months. The length of the leave will depend on the employee's total number of years in the workforce and the years accrued at the current employer. Local regulations may apply in regards to the length of the medical treatment leave. When an employee is in statutory medical treatment leave, the employer may terminate the employee only for cause.

Employees suffering from occupational injuries or illnesses are entitled to fully paid medical treatment leave. Employees can usually take up to 12 months leave depending on the status of the illness or injury. When an employee is in medical treatment leave, the employer may terminate the employee only for cause.

### Location Of Work/Mobility

The place of work must be specified in the employment contract. An employer may reasonably adjust an employee's place of work based on business requirements, provided that a mobility clause has been included in the employment contract.

### Pension Plans

Employers are obligated to contribute to pension insurance administered by the local labour authorities. Supplementary pension plans are encouraged, but not required.



### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

Female employees are entitled to medical examination leave during pregnancy. Employees are usually entitled to 98 calendar days for maternity leave, and one hour per day for nursing leave during the first year after giving birth. Male employees are entitled to paternity leave in a few jurisdictions. The specific leave for parental rights may vary around the country.

### Compulsory Terms

The following terms must be included in an employment contract:

(a) the name, domicile and legal representative or main person in charge of the employer;

(b) the name, domicile and number of the resident ID card or other valid identity document of the employee;

(c) the term of the employment contract;

(d) the job description and the place of work;

(e) working hours, rest and leave;

(f) compensation;

(g) social insurance;

(h) labour protection, working conditions and protection against occupational hazards; and

(i) other items that laws and statutes require to be included.

### Non-Compulsory Terms

An employer may agree with an employee on other terms, such as a probationary period, training, confidentiality, non-competition and supplementary insurance. An employer and employee may not agree to termination grounds that are not set forth in the Labour Contract Law.

## Types Of Agreement

Employment contracts are divided into fixed-term employment contracts, open-term employment contracts, and project-based employment contracts.

A fixed-term employment contract is an employment contract with an expiration date. An open-term employment contract is a contract without an expiration date. A project-based employment contract expires upon complete of a specific job assignment.

## Secrecy/Confidentiality

Although secrecy and confidentiality is implicit in the employment relationship, it is common practice for the employer to include confidentiality clauses in employment contracts or enter into separate confidentiality agreements. Confidentiality clauses generally concern the protection of trade secrets and intellectual property of the employer. It is advised to specify that the confidentiality obligation will cover the employment term and remain in force after employment has ended.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

The default rule for patents is that the ownership lies with the employer for "service inventions or creations". The Implementing Regulations for the Patent Law set forth statutory compensation rates that must be paid to employee-inventors upon grant of a patent and the use and license of the patent. These rates, however, would not apply if compensation is separately set forth in contract or employer rules.

Generally speaking, while the Copyright Law provides that employees are authors of works, employers have the right to use such works.

### Hiring Non-Nationals

Non-nationals who are directly employed by PRC entities require work authorization before they can work in China. Generally speaking, non-nationals who are employed and paid offshore may perform services in China without work authorization up to 90 days in a calendar year. In some jurisdictions, issuance of work authorization requires applicants to meet work experience and education requirements.

Residents of Hong Kong, Macao, and Taiwan also require work authorization to be employed in China.

### Hiring Specified Categories Of Individuals

Restrictions are stipulated on who can be employed to carry out specific work in certain industries e.g. the food service, the financial industry or the education industry (where employees will have contact with children).

### Outsourcing And/Or Sub-Contracting

Use of labour dispatch is capped at 10% of the total workforce and limited to temporary, auxiliary, and substitute positions.

There are no specific national regulations regarding outsourcing or sub-contracting. In the case of outsourcing and/or sub-contracting, there is no automatic transfer of employees.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

In general, an employer may not change terms of an employment contract without the employee's consent. An employer may make unilateral changes in very limited circumstances, such as when the employee is "incompetent" or in poor health. Any alteration of the employment contract generally must be executed in writing. An employer may be deemed to have breached a contract if the employer changes a material term without the consent of the employee.

### Change In Ownership Of The Business

A change in the ownership of the employer does not affect existing employment contracts. If the business is subject to a merger or a division, existing employment contracts also remain effective.



Employment contracts may not be transferred between employers. Thus, in an asset or business transfer, there is no automatic transfer of employees to the new owner. In order to transfer employees in such a situation, employees must terminate contracts with the first employer and sign contracts with the new employer.

An asset and business transfer may be grounds for the vendor to terminate employment contracts.

### Social Security Contributions

Both employers and employees are required to make contributions to social insurance funds including pension, medical, and unemployment insurance. The employer is also required to contribute to occupational injury insurance and maternity insurance. Contributions made by employees must be withheld by employers from employee salaries.

### Accidents At Work

An employer must provide all employees with safe working conditions in compliance with PRC law. Employees who are suffer occupational injuries or illnesses may be entitled to compensation from occupational injury insurance.

Employers are also responsible for accidents caused by the acts of their employees when the employees were acting in the course of their employment.

### Discipline And Grievance

PRC law is silent on the process of discipline and raising grievances. An employer may introduce an internal policy setting out discipline and grievance procedures. As a discipline and grievance policy will directly affect the interests of employees, the employer must introduce such a policy through statutory employee consultation procedures.

### Harassment/Discrimination/Equal pay

The Employment Promotion Law specifies that employees shall not be discriminated against on the grounds of ethnicity, race, gender, religion, disability or the status as a migrant worker from a rural area. In general, employers cannot refuse to employ a person because the person is the carrier of an infectious disease. Employees alleging discrimination may bring actions in court and demand compensation from employers.

The Law on the Protection of Women's Rights and Interests prohibits sexual harassment against women. Victims are entitled to lodge a complaint with an employer or the authorities. At the national level, no definition of harassment is provided. Some local regulations define sexual harassment and require that employers prevent and prohibit sexual harassment in the workplace.

The principle of equal pay for equal work is established under PRC law. However, no clear standard has been provided to implement the principle.

### Compulsory Training Obligations

Although employers have a general obligation to provide training to all employees, this requirement is not enforced in practice. Employees at risk of occupational disease, however, must be provided training before they commence work and periodically throughout employment. Training is compulsory for certain positions in certain industries, such as in finance.

### Offsetting Earnings

Where an employee causes losses to the employer, the employer may offset the losses against the employee's salary, provided that the employee has agreed to such action in writing. However, the monthly deduction may not exceed 20% of the employee's monthly salary and the balance, after the deduction, may not be less than the local minimum salary.

### Payments For Maternity And Disability Leave

A female employee is entitled to full pay during maternity leave. Part of the employee's salary will be paid by the maternity insurance fund as a birth allowance. The difference between the birth allowance and the employee's basic salary must be paid by the employer. A female employee's right to pay during maternity leave may be subject to compliance with family planning requirements.

During statutory medical treatment leave for non-work related illness or injury, the employee's salary may not be less than 80% of the local minimum salary. Additional requirements stipulated by local regulations may also apply.

### Compulsory Insurance

Employers are required to make contributions to pension insurance, medical insurance, unemployment insurance, occupational injury insurance, and maternity insurance. Employers are also required to deduct amounts from employee compensation for pension insurance, medical insurance, and unemployment insurance. Insurance requirements may vary by location.

The statutory social insurance programs are managed by the labour authorities.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties. When an employee exercises the right to vote or participates in certain union activities, the employee is deemed to still be working.

The employer is obligated to keep the employee's job position open when the employee is on leave for military service.



### Works Councils or Trade Unions

Strictly speaking, PRC law does not require that trade unions be established. Employees have the right to choose whether to establish a trade union within the employer. The employer may not obstruct the employees from establishing a trade union. Establishment of a trade union must be approved by the higher-level trade union. Only unions affiliated with the All-China Federation of Trade Unions are permitted. In practice, many employers come under heavy pressure by the higher-level union authorities to establish unions.

If there is a trade union, the employer must contribute an amount equal to 2% of total payroll to the trade union. When an employer wants to unilaterally terminate an employee, the employer must notify the union. Trade union committee members are also afforded additional protection with regard to their employment period and termination of employment.

While trade unions are defined as the day-to-day representative of employees, employers are coming under increased pressure to also establish employees' representative congresses ("ERCs"). ERCs are responsible for approving collective contracts and should be consulted when employers intend to take actions affecting the "significant" interests of employees, such as adopting or amending company rules.

### Employees' Right To Strike

PRC law does not explicitly grant employees the right to strike or explicitly prohibit strikes.

### Employees On Strike

There are no specific rules regarding the termination or reduction of salaries for employees on strike. If an employee on strike commits gross misconduct, the employer may immediately terminate the employee's employment.

### Employers' Responsibility For Actions Of Their Employees

When employees cause injuries to others when carrying out their work duties, the employer will be liable for any compensation due. Where the injuries are intentionally committed or the result of negligence, the employee will be jointly and severally liable with the employer.

# 04. Firing The Employee

**Procedures For Terminating the Agreement**

In general, all terminations, including termination by the employee, should be made by serving a written termination notice to the other party.

If the termination is initiated by the employer, the employer should specify the legal basis for the termination in the notice. In addition, the employer must give the trade union prior notice of the termination. The trade union has the right to provide its opinion regarding the grounds for the termination and be notified in writing of the employer's action regarding the termination.

Prior approval from a government authority is not required by law. However, the required notification to the labour bureau for mass layoffs may in effect constitute an approval procedure.

**Instant Dismissal**

An employer can instantly dismiss an employee if the employee:

- does not satisfy the required conditions for employment during the probationary period;
- materially breaches the employer's rules or regulations;
- seriously neglects the employee's work duties which causes substantial damage to the employer;
- works for another employer that materially affects the employee's job, or the employee refuses to rectify the situation when it is brought to the employee's attention by the employer;
- commits fraud when entering the contract; or
- has been found guilty of a criminal offence.

**Employee's Resignation**

An employee may resign by serving 30 days' prior written notice to the employer, provided that only three days' notice is required for resignation during a probation period.

**Termination On Notice**

An employer may dismiss an employee by giving 30 days' prior written notice to the employee for the following reasons:

- after the statutory period of medical treatment for a non-work related illness or injury, an employee cannot return to work, either to the employee's original job or to an alternative position arranged for the employee by the employer;
- the employee is incompetent and is still incompetent after training or adjustment of the employee's position by the employer; or
- a material change in the objective circumstances at the time of the conclusion of the employment contract which makes performance of the contract impossible and, after consultations, the employer and the employee are unable to reach agreement on amendment of the employment contract.

**Termination By Reason Of The Employee's Age**

An employment contract will automatically end when the employee reaches statutory retirement age or starts to enjoy statutory pension insurance benefits. The retirement age for males is 60 years old. The retirement age for females is 50 years old (or 55 years old for certain management positions).

**Automatic Termination In Cases Of Force Majeure**

An employment contract automatically ends when: (i) the employee dies, or is declared dead or missing by a People's Court; (ii) the employer is declared bankrupt; or (iii) the employer's business licence is revoked, the employer is ordered to close down or dissolved, or the employer decides to dissolve itself.

**Termination By Parties' Agreement**

An employer and an employee may agree to terminate an employment contract.

**Directors Or Other Senior Officers**

There are no specific rules relating to the dismissal of directors or other senior officers. Senior officers and directors with managerial positions will be subject to the labour laws. Termination of employment does not automatically bring to an end the directorship or corporate governance. Separate steps will be required to bring the directorship or corporate governance to an end (pursuant to the company's articles of association).

Directors that do not assume managerial positions are not treated as employees and accordingly are not subject to labour laws.

**Special Rules For Categories Of Employee**

Certain categories of employees may be afforded greater protection from dismissal. In general, unless an employee seriously violates the rules and regulations of the employer, the employee can not be dismissed if the employee: (i) contracts an occupational injury or illness; (ii) is pregnant, on maternity leave, or in the statutory nursing period; or (iii) has been working for the employer for more than 15 years on a consecutive basis and is less than 5 years away from his/her legal retirement age.

Employees on a part-time basis may be terminated at any time without cause.

### Specific Rules For Companies in Financial Difficulties

There is no explicit legal basis for an employer to terminate employee because the employer is experiencing financial difficulties. Instead, financial difficulties could be grounds for a mass layoff if the employer can show that the employer has (i) "serious difficulties in production and/or business operations"; or (ii) there exists a "major change in the object economic circumstances relied upon at the time of conclusion of the employment contracts, rendering them unperformable".

Mass layoffs apply to terminations of at least 20 employees or less than 20 employees if the employees terminated account for at least 10 percent of the workforce. In order to effect a mass layoff, the employer must discuss the situation with its trade union or all employees at least 30 days prior to the proposed layoff. The employer is also required to provide a workforce reduction plan to the labour bureau.

In a mass layoff, the employer is required to give priority to retaining the following employees: (i) those who have entered into fixed-term contracts with relatively long terms or entered into open-term contracts; or (ii) those who are the only ones in their families to be employed and whose families have an elderly person or a minor for whom they need to provide for.

As a practical matter, mass layoffs are rare. Employees are generally terminated by mutual agreement.

### Restricting Future Activities

PRC law permits post-termination non-compete restrictions to be applied to employees who are senior managers or senior technicians, or who otherwise have access to confidential information. A post-termination non-competition period may not exceed two years. Monthly non-compete compensation must be paid to the employee during the term of the non-compete obligation. The default national compensation standard is 30% of the employee's prior salary. An employer is permitted to waive enforcement during the non-compete term with the payment of three months' compensation. Some local jurisdictions permit employers during employment to waive non-compete obligations (and thus avoid paying any compensation).

PRC law does not prohibit non-solicitation or non-disparagement clauses effective after termination of employment.

### Severance Payments

In general, an employee is entitled to severance if terminated by notice, terminated by mutual agreement, or terminated in a mass layoff. An employee is also entitled to severance if the employee terminates employment due to the fault of the employer.

Severance is based on the number of years that the employee worked with an employer. The rate is one month's "average compensation" for each full year worked. Employment of more than six months but less than one year is counted as one year.



The severance pay payable to an employee for any period of less than six months is one-half of the employee's average monthly compensation. The average monthly compensation is determined by taking the total amount of salary, bonuses, allowances, and subsides from the final 12 months of employment, and dividing the total by 12. The amount of severance is subject to a statutory cap.

If the employee is terminated on notice after completion of the statutory period for medical treatment, the employee in some cities may be entitled to a medical subsidy amounting to six months' salary. Employees suffering from severe diseases or terminal diseases will be entitled to additional medical subsidies.

### Special Tax Provisions And Severance Payments

The portion of a severance payment that is less than three times the average local annual salary will be tax-free. Payments above this level will be subject to reduced tax in accordance with special rules.

### Allowances Payable To Employees After Termination

Employers are not required to pay allowances to employees after termination.

### Time Limits For Claims Following Termination

The time limit to file an application for arbitration of a labour dispute is one year from the date when the party knew or should have known that there was a dispute. However, if the dispute arises from a delayed payment of labour compensation, the time limit to file a claim is one year from the date of termination of the labour relationship.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

At-will employment is not allowed. An employee may be terminated only on grounds expressly set forth in PRC law.

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# Colombia

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Labour Courts and Tribunals, and the Labour Chamber of the Supreme Court have exclusive jurisdiction over labour law claims.

### The Main Sources Of Employment Law

The main sources of employment law are labour contracts; Collective Bargaining Agreements; Internal Working Rules; Colombian Labour Code; Colombian Procedural Labour and Social Security Code; and Court Decisions.

### National Law And Employees Working For Foreign Companies

Colombian labour law applies to national or foreign residents working in Colombia. A person is considered a Colombian resident when he or she has intention to settle down in Colombia.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The law governing the labour relationship will be determined by the place of residency of the employee, as well as by the place where the employer is located. Colombian labour law will not be applicable to employees of Colombian companies working and having established its residency abroad.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Labour contracts can be written or verbal. The parties to an employment contract may agree to additional rights and obligations, but they must comply with statutory obligations; the type of contract, description of the nature and place of work, the amount and manner of compensation (for example, by unit of time, work performed, piece work, etc.), the frequency of wage or salary payments, and the benefits provided to the employee, the domicile of the parties, the date and place where the contract was executed, and the place where the employee was hired. Colombian custom is to receive bi-weekly payments for salary. It is permitted to pay staff in cash form and it is permitted to add a transfer clause in the agreement.

## Mandatory Requirements:

### Trial Period

An employer may hire an employee for a trial period, during which the employer may assess the aptitude of the employee, and the employee may assess the conditions of work. Either party may terminate the employment contract during the trial period, without notice and without incurring liability for any statutory severance compensation.

The trial period must be established in a written agreement between the parties. For employees hired for an indefinite term, the trial period may not exceed two months. For employees hired for a fixed term, the trial period may not exceed one-fifth of the contract's duration, and in any case may not exceed two months.

It is worth mentioning that the Constitutional Court has stated in its rulings that the employer party should make an objective analysis of the inconsistencies, inabilities and/or failures of the Employee before using the legal faculty of the trial period and terminating the labour contract unilaterally.

### Hours Of Work

The working schedule may be agreed by the parties. If the parties fail to agree the daily shift, Colombian labor law establishes a maximum working schedule of (i) eight daily hours; or (ii) forty-eight weekly hours.

The daily working shift goes from 6 a.m. to 10 p.m. The nightly working shift goes from 10 p.m. to 6 a.m.

The following employees are excluded from the daily working shift hours (i) executive, management or trust employees; and (ii) security guards that live in the place of work.

Employers and employees may freely agree on the working shifts in accordance with the ones established in the law.

Extra hours are the amount of working time that exceeds the ordinary working shift o the maximum legal shift. Extra hours are limited to a maximum of two daily hours and twelve weekly.

In the event that that working hours exceed the above mentioned limits, the employer must request a special authorization from the Colombian Ministry of Labour.

Employees are obliged to keep a record of (i) name of the employee; (ii) number of authorized extra hours; and (iii) salary basis.

The forty eight-hour work week is usually worked in six eight-hour days, although a longer work day with Saturdays off is not uncommon. Rest periods are required during the day, but a two-hour lunch usually satisfies this requirement. The rest periods are not included as part of the work day for purposes of calculating wages.

### Earnings

Colombia enforces a national minimum monthly salary, which is established each year by the National Labor Council or by the government. The parties may agree upon a salary stated in foreign currency instead of Colombian pesos, but the salary must be paid in Colombian currency. If the salary is stated in foreign currency, the employee may require payment at the rate of exchange for Colombian pesos on the day of payment.

According to Colombian law, there are two types of salaries:

1. Ordinary: only pays the rendering of services from the employee;

2. Integral Salary: Pays beforehand any surcharges for supplementary work, night work, benefits, work or rest on Sundays and holidays, interests on severance payment, extralegal bonus. It does not include any payments for vacations and social security.

   Integral Salary (i) must be agreed by writing, (ii) only applies to employees that earn more than ten legal minimum monthly wages; and (iii) social security payments will only be charged over 70% of the salary.

In addition, employees who earn an ordinary salary are entitled to the following the payments:

1. Severance aid: it is worth one monthly salary for each year or fraction of a year worked. Employer must liquidate the severance aid for each year (or year fraction when applicable), and transfer the corresponding amount to the severance aid fund by February 14.



2. There is a possibility that the employer performs severance aid partial payment in the events established under law that in any case requires an authorization issued by the Ministry of Labour.

3. Interests over Severance Aid: Interests related to severance aid payments are paid in a rate of 12% per year.

4. Services Bonus: It is equivalent to a 15 working day wage, and it is paid on a semiannual basis. Payments related to this bonus must be performed during June and the first 20 days of December.

### Holidays / Rest Periods

The employer is obliged to grant a weekly day-off for each one of its employees. In addition, the employer must grant a paid day-off during religious or civil holidays established by law.

There are eighteen paid legal holidays in Colombia. In addition, Colombian law establishes the minimum amount of paid vacation to which employees are entitled.

The wage established for a labored day-off is of an additional 75% of the ordinary salary (and depends on the hours worked).

The calculation of the working Sundays depends on whether the work is done on an occasional o habitual basis.

### Minimum/Maximum Age

Minors over 15 years old can be hired, previous authorization from the Ministry of Labour. There are no restrictions on working after normal retirement age.

### Illness/Disability

Employees on sick leave have special protection. However, the leave has a maximum of 180 days renewable to another 180 days. After that time the employee must apply for a disability ruling.

Labour agreements of personnel with disability or during sick leave cannot be terminated without authorization from the Ministry of Labour.

### Location Of Work/Mobility

Employees who earn less than two minimum legal monthly wages, are entitled to receive a transport aid. It is equivalent to a sum established by the Colombian Government for each year. In lieu of paying the transportation allowance, an employer may provide daily transportation to the employees.

Furthermore, in case the employer made the employee change its residency, it has to pay the travel expenses of the employee and his family.

### Pension Plans

Colombian Social Security System has three different types of pensions: (i) retirement pension; (ii) disability pension; and (iii) survivors pension.

Regarding retirement pensions, there are two regimes. The public regime, in which retirement age is 57 years for women and 62 years for men. The private regime is managed by private pension funds management companies, which does not set forth an specific age for retirement. In this case, retirement depends on the amount saved in the workers account.

Employee is entitled to a disability pension when he/she lose 50% or more of his working capacity.

Survivors pension is recognized to the employee's family members who are beneficiaries according to the social security laws.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

During paternity and maternity leave labour agreement cannot be terminated, unless there is authorization from the Ministry of Labour. Paternity leave is 8 days after the birth of the child, and maternity leave is of 14 weeks, 2 of which must be taken before the expected child's birth.

Pregnant women are also entitled to special protection; their agreement cannot be terminated unless there is special permission from the Ministry of Labour.

| Compulsory Terms | Non-Compulsory Terms |
| --- | --- |
| There are no compulsory terms established by Colombian law. | Parties are free to agree non-compulsory terms, provided these provisions are not less favourable to employee than the law or the relevant Collective Bargaining Agreement |

### Types Of Agreement

The following are the different types of employment contracts:

1. Fixed term Contract: must be in writing and must clearly set forth the length of employment. Although there is no minimum duration for a fixed-term contract, the maximum duration of such a contract is three years.

   Generally, a fixed-term contract may be renewed any number of times. On its expiration, a fixed-term contract is automatically renewed for a term equal to the original term, unless the employer or the employee gives the other party thirty days notice of termination of the contract or renewal under different terms.

   Special rules apply to fixed-term contracts with duration of less than one year. These contracts may be renewed up to three times for increments equal to or shorter than the original term. If the parties renew a fourth time, however, the renewal is automatically for a one-year period.

2. Indefinite Term Contract: Is used to hire personnel for an extended period of time, providing the employee the greatest sense of job security. A term is not specified and its duration is not determined by the task or the nature of the job contracted, nor does it refer to an occasional or temporary job. The employer can only cancel this contract if there is just cause defined by the law.

3. Temporary Contract: Written contracts are also required for temporary or casual employment. This type of employment encompasses occasional or temporary work done outside the normal course of the employer's business. The maximum term for a contract of temporary or casual employment is one month; the temporary contract would then need to be renewed.

   A temporary contract can be cancelled at any time without any required explanation. An employer and an employee may also enter into a contract for a specific project. The term of this contract is determined by the time required to complete the project.



### Secrecy/Confidentiality

Employees are required to maintain confidentiality even if no express term is included in the contract.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Intellectual property rights belong to employees unless the parties agree otherwise.

### Hiring Non-Nationals

Hiring non-nationals requires working visa (TP-4).

### Hiring Specified Categories Of Individuals

Authorization from the Ministry of Labour is required to hire employees working in their homes and employees under 18 years of age. Additionally women and employees under 18 years of age are neither allowed to work at night nor in certain dangerous activities.

### Outsourcing And/Or Sub-Contracting

Sub-contracted employees should have the same treatment as ordinary employees. Outsourcing employees can only be hired to perform extraordinary activities and for maximum of 1 year.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Contracts entered into the employer and the employee cannot be changed unilaterally by any of the parties. For this purpose, mutual consent is required.

### Change In Ownership Of The Business

Labour contracts are not transferred automatically to the new owner.

In case there is a change in the ownership of the business, labour contracts can be (i) definitively terminated (in this case authorization from the Ministry of Labour is required); (ii) terminated in order to be replaced by a new contract with the new owner or (iii) transferred unmodified to the new owner.

In the event that their contracts are terminated due to the change in the ownership, this would not be just cause according to Labour Code, thus employees must be compensated.

### Social Security Contributions

There are compulsory contributions to the social security system by employer and employee, as follows:

1. Healthcare system: equals to 12.5% of the salary, of which the employer must assume 8.5% and the employee 4%.
2. For employees who earn less than 10 minimum legal monthly wages, employer is exempt from paying the 8.5%.
3. Pensions system: equals to 16% of the salary, of which the employer must assume 12%, and the employee 4%. If the salary exceeds an amount equal to 4 minimum legal wages the employee has to pay an additional 1 to 2%.
4. The labour risks payment is assumed entirely by the employer, and ranges the 0.522% and 6.960% of the salary, depending on the type of risk where the company is classified.

The base to calculate the contributions to Integral Social Security System cannot exceed the amount equivalent to 25 monthly minimum legal wages. In the cases of integral salary the mentioned percentages are applied over 70% of the employee's remuneration.

Employers that fail to comply with the obligations set forth under the Integral Social Security System regulations will be liable, and thus, must (i) cover any risks; (ii) make delay contribution payments, together with the corresponding interests; and (iii) pay any penalties set out by the Colombian Ministry of Labour, as well as any other social security authorities.

### Accidents At Work

Accidents at work are assumed by the labour risks manager to which the employees are affiliated to. In order for the labour risks manager to make the relevant payments the employees are entitled after a working accident occurs, this has to be reported to the entity and employer must have paid all labour risks contributions due to the date of the accident.

Employees who have had accidents at work are entitled to have a disability leave until they recover from the harms caused by the accident. In case the accident cause the employee a disability equal to or more than 50% of his working capability, employee will be entitled to a disability pension according to labour risks laws. In case of death, employee's beneficiaries will be entitled to a survivors pension.

Employers that fail to comply with affiliation and contribution payments to the labour risks system will be liable, and thus, must cover all risks and relevant payments.



### Discipline And Grievance

In order to impose disciplinary measures to the employee, employer must follow a disciplinary procedure granting the employee's right of defence. In this sense, employee must verify the employee's breach to his/her labour obligations in a discharges hearing made to the employee. Afterwards, according to employees' explanations, employer may impose reasonable sanctions to the breach as set forth in the Internal Working Rules.

In addition, grievance or complaints from the employee must be made to the coexistence committee, in order for the latter to make the relevant investigation and take the relevant measures.

### Harassment/Discrimination/Equal pay

The Labour Code includes a non-discrimination principle according to which no distinction should be made by reason of the type of the work performed or the salary earned. Additionally, the National Constitution includes a prohibition concerning discrimination based on gender, race, origin, language, religion and political or philosophical opinions.

Furthermore, labour law rules labour harassment, establishing preventive, corrective and sanctioning measures.

### Compulsory Training Obligations

There are no compulsory training obligations for the employer.

### Offsetting Earnings

Offsetting earnings are limited by law. For social security contributions they cannot exceed 40% of the total earnings of the employee.

In addition, salary paid in kind cannot exceed 50% of the total salary.

### Payments For Maternity And Disability Leave

Disability, maternity and paternity leave payments are assumed by the healthcare entity to which the employee is affiliated at the time of the leave.

For maternity and paternity leaves, the payment is equal to the salary basis of the contributions made to the healthcare system by the employee.

Disability leave payment is equal to 2/3 of the salary basis, unless the disability is caused by a work accident or disease in which case the payment is equal to the salary earned by the employee.

### Compulsory Insurance

Employers must affiliate their employees to the labour risks system, in order to insure them against death or illness caused while working.

### Absence For Military Or Public Service Duties

In case the employee is required for military or public services duties, the labour contract has to be suspended during the military or public services term. The Employee may return within six months after the military or public service duties are finished.

### Works Councils or Trade Unions

In order to operate, work councils or trade unions require a minimum 25 members. On the initial meeting of incorporation of any union, an "incorporation minutes" must be entered into among the founders, in which their name, identity cards and the purpose of the association are provided. Every union must be registered with the Ministry of Labour.

### Employees' Right To Strike

The Constitutional Court has recognized the importance of the right to strike as a valid mechanism in order to achieve a major balance and justice in the labour relationships. Although it is not a constitutional right, it can reach said nature when it violates the constitutional rights to work and union association. The right to strike can only be excluded in the events of essential public services. Therefore, it is not an absolute right, its limitation only proceeds in the event of essential public services.

The right to strike allows the employees to suspend or cease work as a mechanism for pressuring the employers in order to solve the collective work dispute in favour of the employees' interests.

### Employees On Strike

Employees on strike do not have labour privileges, unless for the following members of trade unions, who are protected for a limited period of time in which event employers would require a judicial authorization:

1. Union founders, who are privileged for a period of 2 months after the union's registration, in any case without exceeding 6 months.
2. Employees who join the union before its registration with the Ministry of Labour, who have the same privilege period for founders.
3. Members of the union's board of directors, who are privileged during the period appointed as member.
4. Two members of the grievance commission.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for actions of their employees, except when the employee acted beyond the scope of his/her duties.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

Colombian law establishes strong job-security protections that limit the circumstances in which an employee may be terminated and create financial disincentives to dismissals that do not satisfy those legal grounds. Labour Code draws a difference between fair and unfair termination. Although different rules apply to each form of termination, In any case, employers must give to employees a liquidation sheet including a reference of the amounts due and paid upon termination.

In Colombia, an employment contract may terminate for any of the following reasons:

1. Death of the employee.
2. Mutual agreement.
3. Expiration of the agreed term of the employment.
4. Completion of the activity or work for which the contract was made.
5. Liquidation or closure of the company.
6. Suspension of activities by the employer for more than 120 days with prior authorization from the Ministry of Labor.
7. The occurrence of an event that is legally recognized as due cause for termination.

In addition, Colombian Labor Code identifies the following circumstances constituting just cause for the unilateral termination of the labor agreement by the employer:

1. An employee's falsification of documents to obtain an unmerited advantage;
2. Any act of violence, insult, ill-treatment, or lack of discipline by the worker against the employer, members of the employer's family, directors of the enterprise, or co-workers;
3. Intentionally causing material damage to the employer's property;
4. Serious negligence involving danger to the safety of persons or things;
5. Immoral or unlawful acts by an employee in the workplace;
6. Revealing technical or commercial secrets, or disclosing confidential matters that damage the employer;
7. Inadequate job performance, taking into consideration the ability of the employee, the average efficiency of employees in similar jobs, and the employee's failure to remedy the inadequate performance within a reasonable time period after being formally warned by the employer;

8. Any habitual vice of the employee that impairs the discipline in the work place;

Some of the examples of due cause identified in the Labor Code allow an employer to terminate the offending employee's labor agreement immediately. Others, however, permit termination only after the employer has given fifteen days advance notice of termination. In all cases of termination for due cause, the reasons for termination must be set forth in a letter of notification, that includes factual information describing the events constituting due cause.

When the dismissal obeys to any of the just causes above mentioned, employer must follow a disciplinary procedure but no compensation is paid to the employee.

**Instant Dismissal**

When the termination of the labor agreement is an unilateral decision of the employer, the latter must (i) notify by writing the termination; (ii) pay the corresponding legal indemnification, that will vary depending on the time worked and the salary, as follows:

| Salary | Term | Indemnification |
|---|---|---|
| Less than 10 minimum legal monthly wages | Less than 1 year | 30 days |
| | More than 1 year | 30 days for the first year of service, and 20 days for each of the following years. |
| More than 10 minimum legal monthly wages | Less than 1 year | 20 days |
| | More than 1 year | 20 days for the first year of service, and 15 days for each one of the following years. |

In fix term labor agreements, the indemnification will be equal to the sum of the monthly salaries that would have been caused until the end of the term of duration of the agreement.

For specific work or task labor agreements will be equal to the sum of the monthly salaries that would have been caused until the end work or task, but under no circumstance it may be less than 15 days.



**Employee's Resignation**

There are no special requirements for employee's resignation. He/she can waive to the labour contract at any time without giving previous notice.

Labor Code identifies the following circumstances constituting just cause or the unilateral termination of the labor agreement by the employee, entitling him/she to receive the relevant compensation payment:

1. Having been deceived by the employer regarding employment conditions.
2. Any act of violence, insult, ill-treatment, or lack of discipline by the worker against the employee, his/her family members by the employer or its representatives.
3. Any act from the employer or its representatives that lead the employee to perform an illegal act or against its political or religious beliefs.
4. Any circumstance that cannot have been foreseen by the employee that may risk his/her health or safety.
5. Any damage caused intentionally by the employer.
6. Employer's continuous breach to its labour obligations.
7. Employer's demand, without valid reason, to render employee's services in a different place to the one agreed.

**Termination On Notice**

Employers may terminate fixed term contracts on a minimum 30 days' notice prior to the expiration of the contract's term and without having to compensate the employee. Additionally, a 15 days' notice must be given by employers when terminating the contract for certain just causes as set out in the Labour Code.

**Termination By Reason Of The Employee's Age**

Labour Code provides retirement age as just cause of termination of the labour contract. In this sense, retirement age is 62 for men and 57 for women.

**Automatic Termination In Cases Of Force Majeure**

In cases of force majeure, the agreement cannot be terminated. It will be automatically suspended, except in the event of the employee's death or where there is a total cessation of the employer's activities.

**Termination By Parties' Agreement**

Labour contract can be terminated by mutual consent of the parties.

**Directors Or Other Senior Officers**

There are no special rules for hiring or firing directors or other senior officers.

### Special Rules For Categories Of Employee

Labour privileges for special personnel are provided by law. Authorization from the Ministry of Labour is required when terminating the following labour contracts:

1. Personnel with disability.
2. Employees in maternity/paternity leave.
3. Pregnant women.
4. Union members expressly privileged by law.

### Specific Rules For Companies in Financial Difficulties

Labour and tax payments prevail over any other type of debt or payment obligation. Contracts might be terminated subject to compensation of the employees.

### Restricting Future Activities

Labour law prohibits restricting future activities to the employee. Any agreement entered between the parties, or any employer demand restricting future activities is expressly forbidden. Thus they are unenforceable, since they are against the constitutional right to work.

### Severance Payments

One of the social benefits provided by law is the severance aid, under which employers must pay to employees one month's pay per year of service or proportionally.

In addition, unfair dismissal must be compensated according to the length of service and the employee's salary.

### Special Tax Provisions And Severance Payments

When the employee's salary exceeds 10 minimum monthly wages, a 20% tax rate will apply to the indemnification payment.

### Allowances Payable To Employees After Termination

Employers are not required to make any allowances payments to employees after termination.

### Time Limits For Claims Following Termination

Colombian labour statute of limitations is of three years following termination. However such statute does apply for pension contribution payments, which can be claimed at any time.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

No specific matters apply to Colombian jurisdiction, different from those mentioned above.

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# Costa Rica

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are specialized Labor Courts within the Judicial System for Adjudicating Employment Disputes.

Employment Disputes can also be solved through a conciliation or mediation process. If the process of conciliation / mediation fails to facilitate an agreement between the parties, the possibility still exists that the employee files a law suit through the judicial authorities.

If the conciliation reaches a partial settlement, a resolution is passed to end the labour process on the points on which an agreement has been reached and it is executed immediately. On the other points, where no agreement has been reached, it follows the normal process set out by the Ministry of Labour or the case is taken to the courts.

### The Main Sources Of Employment Law

The main sources of employment law are the Constitution, International Agreements of the ILO duly ratified by the Congress, the Labor Code, opinions of the Labor Secretary, regulations, collective conventions, individual contracts, court decisions and local practice.

### National Law And Employees Working For Foreign Companies

The National Law applies to all residents of Costa Rica, for any kind of business (with the exception of diplomats).

### National Law And Employees Of National Companies Working In Another Jurisdiction

The National Law does not apply to employees of national companies working in other jurisdictions. National law only applies when the employee is based in Costa Rica and renders certain services to foreign countries.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

A written contract must be signed with each employee, indicating the employer, employee, salary and obligations. However, in practice, this usually does not happen.

## Mandatory Requirements:

### Trial Period

Trial periods are only applicable where an employee is employed under an indefinite-term employment agreement. Under specific work or fixed-term agreements, the employer cannot subject the employee to a trial period in order to assess if the worker has the conditions and skills required to perform the work needed by the employer.

A trail period can last up to 3 months, which starts to run from the date on which the employee actually starts working. For domestic employees the trial period cannot exceed 1 month. If at the end of the trial period the worker is not suitable, the employer can dismiss the worker without being liable to pay severance pay or payment in lieu of notice. The employer is only obliged to pay the employee for accrued holiday leave and the mandatory Christmas bonus, on a proportional basis, as well as for any portion of the salary unpaid at the time of dismissal.

During the trial period the employer and employee are required to observe the same rights and obligations granted by law to employees and employers formally employed. For example, Social Security, minimum salary, occupational hazards insurance, enjoyment of holidays, etc apply to employees working a trial period.

The trial period is indirectly established in the Labor Code, which provides that the payment in lieu of notice and severance pay take effect after the first 3 months of work. The Ministry of Labor has set out that such trial periods are also effective when there is a change in the employee's position, e.g. when an employee is promoted. During the 3 month trial period the employer can decide if the employee has the requisite skills and expertise to hold such a promotion. The employee also has the right to decide whether or not he/she wants to hold such a new position.

If the employee rejects the promotion, he/she shall have the right to go back to his/her former position under the same conditions, including, obviously, the salary that the worker received before the promotion trial period.

It is important to be advised that when a recently hired worker becomes pregnant, you cannot dismiss her, even during the trial period, in accordance with the provisions of Article 94 bis of the Labor Code.

### Hours Of Work

The number of work hours per day depends on the type of work performed by the employees and their work schedule (night, day or mixed shift). Such number of hours are known as daily work hours, and there are two types: regular hours fixed by law as the maximum number of working hours that the employee is required to work under normal conditions; and extraordinary work hours, better known as "overtime", when work is performed beyond the daily or weekly limits or else as agreed upon between the employer and the employee. Overtime shall be compensated at a higher rate than regular work hours.

For regular work hours and depending on the work schedule, the maximum number of hours an employee can work are:

- Between 5:00 a.m. and 7:00 p.m., 8 hours per day; 48 hours per week. This is known as the day shift.
- Between 7:00 p.m. and 5:00 a.m., 6 hours per day; 36 hours per week. This is known as the night shift.
- When the schedule includes day and night hours, between 12:00 noon and 10:30 p.m., 7 hours per day; 42 hours per week. This is known as the mixed shift.
- Likewise, schedules that include day and night hours between 1.30 a.m. and 12 noon, 42 hours per week. This schedule is also known as the mixed shift.

In jobs that are not unhealthy or dangerous, the law authorizes the parties to extend the regular work hours by up to 10 hours and the mixed shift by up to 8 hours, provided these work days do not exceed 48 or 42 hours per week respectively. The Labor Code prohibits extensions to the night shift. The maximum number of work hours per night shift is always 6 hours or 36 hours per week.

The law provides that the employer can require employees to work overtime where the work is not unhealthy or dangerous. However, such overtime added to the regular work day cannot exceed 12 hours per day.

Any time required by the worker to correct any mistakes made during the regular work day shall not be considered overtime, provided that such worker is responsible for such mistakes.

### Earnings

Earnings are subject to a statutory minimum, which is regularly reviewed and increased (it applies to both the public and private sectors).

### Holidays / Rest Periods

Employees are entitled to 1 day of rest after 6 days of work. The employee is only paid for his rest day when he works in a commercial company, or his salary is paid monthly. Employees are entitled to an annual vacation of two weeks after being employed for 50 weeks. In addition, there are certain specified public holidays and detailed rules governing whether or not they are paid in particular circumstances.

The employer cannot require employees to work during holidays.

All public holidays, except for August 2 and October 12, shall be paid to employees. They are entitled to be paid their normal salary for such days. Employees paid monthly are not entitled to additional pay for such holidays as the monthly salary already includes payment of all days of the month, including holidays. August 2 and October 12 are not mandatory holidays. This means if employees are given leave on these days the employer is not required to pay the employees. Employers cannot discount such days from employees' salary when they are paid monthly. In commercial employment, even if employees are paid on a weekly basis, employers cannot deduct pay for the non-mandatory holiday days from the weekly salary.

This means that the employer can only deduct payment for August 2 and October 12 from the salary of the workers involved in non-commercial activities, such as agriculture, and provided payment is weekly and not monthly.

For employees working a regular work day, the law provides for a rest period of at least half an hour. Workers who work up to 12 hours per day, due to the nature of their job, are entitled to a rest period of one and a half hours.

Generally employers are not required to pay employees for rest periods. Only when the rest period is equal to or less than half an hour per work day is the employer required to pay for such a rest period. Payment is due because it is assumed that the work day is continuous and the employee is permanently available to work. Rest periods that exceed 30 minutes are considered to be the employee's free time and as such are not paid for by the employer. However, the courts have ruled that the rest period may be extended up to one hour without resulting in a fractioned work day, mainly when this period of time does not allow workers to go home for meals and do not have any other way to have his/her meals near the workplace. In this case the employer would be required to pay for this rest period.

Domestic workers, when working 12-hour days, are entitled to at least one hour of rest.

### Minimum/Maximum Age

Employers cannot employee anyone under the age of 15 years old. There is no maximum age, although women can retire at the age of 60 and men at the age of 65.

### Illness/Disability

During the first 3 days of disability the employee is entitled to money or subsidy equal to 50% of his/her salary. However, this amount is not considered to be salary. The right to receive this subsidy only arises if the employee has worked for the employer for more than 3 months.

From the fourth day of disability, the subsidy is paid directly by the Costa Rican Social Security Administration. If an employee suffers a second disability before 30 days from when the first disability was established, the Costa Rican Social Security Administration shall pay the subsidy to the worker from the first day of the second disability. The subsidy to be delivered by the Costa Rican Social Security Administration shall be 60% of the average amount of the employee's salary based on the 3 months immediately prior to the disability.

An employer can dismiss a disabled worker only 3 months after he became disabled. Such a dismissal would mean that an employer would be liable to pay the employee all legal benefits he / she would be entitled to (severance pay, payment in lieu of notice of, vacations and mandatory Christmas bonus).

The employee must give the employer evidence of the illness or accident that has rendered him/her unable "for the normal performance of his/her duties". Notice of the worker's absence and evidence of the disability shall be provided without delay in accordance with the internal regulations of the company. The Courts of Justice have ruled that the employee should provide notice within 2 days of being absent.

### Location Of Work/Mobility

The employer can change the employee's work location only if such a change does not cause undue inconvenience to the employee or prevent the employee from continuing normally with his/her duties.

### Pension Plans

The Employer must contribute 1.50 % of the employee's salary to the pension plan for Social Security.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

If an employee is pregnant she is entitled to paid maternity leave 1 month before childbirth and 3 months after. In order to enjoy this right, the employee has to produce supporting documents which must be issued to the Costa Rican Social Security Administration indicating the probable date of delivery.

### Compulsory Terms

None of the essential rights of the employee can be changed in an agreement.

### Non-Compulsory Terms

The parties are free to agree to other non-compulsory provisions.

### Types Of Agreement

In Costa Rica there are employment agreements (as governed by Labor Law) and professional services agreements (as governed by Commercial Law).

What the labor doctrine calls "legal subordination" does not exist in a professional services agreement. This allows employers to exercise powers of authority and direction over employees and even enforce disciplinary sanctions. The individual engaged to provide professional services is not required to meet any work schedule or perform the work at any specific location or explain to the contracting party how the work is being performed, etc. This type of agreement depends on the type of work involved and the working conditions required by the employer.

The different types of agreement are indefinite-term, fixed-term and specific work agreements.

A labour relationship between employer and employee exists according to the Labour Code when the following requirements are established: a scheduled, salary and legal subordination.



Therefore only the agreements that contain these three requirements would be considered employment agreements. Thus professional services agreements and outsourcing agreements are not a proper employment agreement according to Costa Rican law.

The types of employment agreements that exist in Costa Rica are indefinite-term, fixed-term and specific work agreements.

### Secrecy/Confidentiality

There are rules imposed on employees to maintain secrecy/confidentiality in the course of the employment relationship. Such obligations are set out in the Labor Code, as well as in the Law of Non-Disclosed Information.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

There are no rules about ownership of inventions or other intellectual property (IP) rights in the Labor laws, but there are IP laws effective in Costa Rica.

### Hiring Non-Nationals

All non-nationals need a work permit that allows them to work in Costa Rica. Employees and employers must comply with Immigration regulations.

### Hiring Specified Categories Of Individuals

There are specific rules which relate to the hiring of specified categories of individuals. For example, minors and women cannot work in dangerous places. Disabled people have the right to require adjustments/adaptations to their work environment taking in consideration their condition.

### Outsourcing And/Or Sub-Contracting

There are no specific rules about outsourcing and/or sub-contracting.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers are allowed to make changes to the contract, but such changes are limited to justified and temporary situations. Employers should respect the existing rights of the employee. Employers cannot change the employee's hours of work or the place of work without a justified reason and such change should preferably be on a temporary basis. The employee's position and the salary cannot be decreased.

### Change In Ownership Of The Business

There are rules which apply when there is a change in the ownership of the business. A change in the business ownership will not affect the rights of the workers. The seller of the business will remain liable for claims from the employees for 6 months and the buyer assumes responsibility for the employees from the purchase date.

Employees are not allowed to refuse such a change, but if any change in the ownership affects the employees' rights they are entitled to terminate the contract and to receive compensation from the employer.

### Social Security Contributions

The employer and the employee are required to make compulsory social security contributions. The company must pay a sum equivalent to 26.17% of the gross salary for each employee. (Except if the company has less than 6 employees). Each employee must pay 9.17% (which is deducted from the salary by the employer and paid on the employee's behalf).

Employers are also required to contribute towards allowances payable to employees during their employment in cases of maternity and illness.

### Accidents At Work

If the employee suffers an accident at work or an occupational illness and is not insured the employer is liable. If the employer failed to comply with the obligation to have the employer insured with the Costa Rican Social Security Administration and the National Insurance Institute ("Instituto Nacional de Seguros" - INS), the employer will be liable to the employees, the Costa Rican Social Security Administration and INS for all medical and health care, rehabilitation and cash given to the employee by the respective entity. It is, therefore, important for employers to comply insurance obligations.

Every employer is required to insure their employees against occupational hazards with the National Insurance Institute. Occupational hazards include accidents and illnesses of employees which occur to them or are acquired by them when performing their work or as a consequence of such performance, as well as the deterioration of an illness suffered by the employee before performing the work, as a direct, immediate and unquestionable consequence of work.

### Discipline And Grievance

There are rules relating to discipline and grievance in the Labour Code and in the bylaws of each company.

### Harassment/Discrimination/Equal pay

The employer has to avoid all kinds of discrimination, in relation to sex, age, religion, race, etc. There is also a principle of equal payment.



### Compulsory Training Obligations

There are no compulsory training obligations.

### Offsetting Earnings

Offsetting on an employee's earnings is permissible but it subject to certain limitations. When offsetting an employee's salary the employee cannot receive less than the minimum salary, except for Alimentary Obligations). Only a proportion of the exceeding income can be offset. It is not possible to offset any sums on termination.

### Payments For Maternity And Disability Leave

There are payments for maternity and disability leave, but not for childcare.

During maternity leave, the employee is entitled to receive compensation equal to 100% of her average salary based on the 3 months before the leave or the delivery. The employer is required to pay 50% of this salary directly to the employee. The remaining 50% shall be covered by the Costa Rican Social Security Administration.

See above for details of an employee's right to payment for disability leave.

### Compulsory Insurance

The Employer must provide Risk Labor Insurance.

### Absence For Military Or Public Service Duties

An employee is not entitled to leave for military or public service duties since the army in Costa Rica was abolished in 1949.

### Works Councils or Trade Unions

The Constitution establishes the right of the employee to join a trade union. The Labor Code sets out the detailed regulations.

### Employees' Right To Strike

The right to strike is a constitutional entitlement of the employees, except for certain Public Services. Employees can strike to improve or defend their economic or social rights.

### Employees On Strike

An employer cannot fire employees who are on strike. However, if the strike is declared illegal and the employee continues to strike, the employer can fire the employees without incurring any liability.

**Employers' Responsibility For Actions Of Their Employees**

Employers are responsible for actions of their employees, except when the employee acted beyond the scope of his/her duties.

**Employers' Responsibility For Actions Of Their Employees**

Employers are responsible for the actions of its employees. There is indirect and civil responsibility.

# 04. Firing The Employee

**Procedures For Terminating the Agreement**

There are rules which set out the specific way of terminating an employment agreement. In certain situations (for example in the case of minors and pregnant women), the employer needs an official authorization from the Ministry of Labor. In all other cases, it is mandatory for the employer to give the employee a dismissal letter.

With a few exceptions employers can dismiss employees at any time subject to paying the employees the labour benefits that they are entitled to by law. This situation is known as dismissal with employer's liability: the employer decides to terminate the employment relationship even though the employee has not failed to comply with his/her duties or committed any fault that would form the grounds for termination. For this reason, the law protects the employee, requiring the employer to pay him/her certain amounts that would allow the employee to survive whilst he/she finds a new job. The types of benefits to be paid by the employer to the employee depend on the type of agreement in question (indefinite-term, fixed-term or specific work agreement).

Under an indefinite term agreement, the employer shall pay the following to the employee:

- Proportional mandatory Christmas-bonus.
- Vacations not yet enjoyed.
- Severance pay.
- Payment in lieu of notice.

Vacations and the mandatory Christmas bonus are considered vested rights of the employer. Payment in lieu of notice and the severance pay are considered to be legal expectations, created to help the employee survive when the employment relationship is terminated unfairly or for reasons beyond the employee's will, as occurs in a dismissal with employer's liability.



With regard to vacations, the employer shall compensate in cash those days accrued by the employee. If dismissal occurs before the employee has completed 50 weeks of work, then the employee is entitled to take vacation time, the employer shall pay 1 day of vacation for each month of work.

The mandatory Christmas bonus is an annual benefit that every employee is entitled to receive. The bonus is equal to one month of salary after the employee has completed one year of work. If the dismissal without liability takes place before November 30, the benefit shall be paid in proportion to the number of months worked by the employee.

All payments due to the employee on termination are paid on the last day of employment. An unjustified delay provides grounds to a claim by the employee for damages in Court, as occurs whenever there is a failure to comply with any other obligation.

If the employee is dismissed and the employer is liable under a fixed-term agreement or a specific work agreement, the employee shall receive compensation for any specific damages demonstrated, to be assessed depending on the following:

- The effectiveness of the termination.
- Importance of the work performed.
- Difficulty faced by the employee to find a similar position or job.

Furthermore, upon termination of the agreement, the worker shall be paid an amount equal to one day of salary for every 7 days of continuous work performed or fraction thereof, if such period of time has not been reached yet. This amount cannot be less than 3 days of salary in any case. When the term of effectiveness of the agreement is 6 months or longer, or else when the performance of the work, in view of its nature or significance, is going to take this term or longer, said additional compensation shall never be less than an amount equal to 22 days of salary.

As mentioned above, there are certain employees that fall into special categories, for which the law forbids employers to dismiss them even with employer's liability. These categories are:

- Employees during the first 3 months of disability.
- Employees that report sexual harassment.
- Employees protected as members of a trade union.
- Employees in the midst of a social or financial collective labour conflict.
- Pregnant or nursing workers.

**Instant Dismissal**

An employer can terminate an agreement by instant dismissal at any time provided there is a just cause. In such a situation the employer only has to pay the Christmas bonus and vacations. If there is no just cause, the employer must also pay the "cesantía" (severance payment) and the "preaviso" (notice pay).

### Employee's Resignation

The employee can quit at any time, but must do so on notice. The employee will not be entitled to additional severance payment or payment in lieu of notice, but will still receive proportional Christmas Bonus and vacations.

### Termination On Notice

The employer is under a duty to give the employee notice that a decision has been taken to dismiss the employee. Such notice should be given so that the employee has time to look for a new job. The amount of notice due depends on the employee's length of service. If the employee has worked for:

- Less than 3 months (trial period): no notice needs to be given.
- 3 to 6 months: notice of one week must be given.
- 6 months to a year: fifteen days notice should be given.
- Over 1 year: one month's notice should be given.

During this notice period, the employer is required to grant the employee one day off per week to find another job.

However, if for any reason the employer prefers not to give such prior notice to the employee, the employer shall pay the employee payment in lieu of notice.

Notice of termination should be given in writing, unless the employment agreement was verbal, in which case notice can be verbally given but before two witnesses.

### Termination By Reason Of The Employee's Age

An agreement cannot be terminated by reason of the employee's age, except in case of retirement.

### Automatic Termination In Cases Of Force Majeure

An agreement cannot be terminated automatically in cases of force major. In such circumstances, the contract is merely suspended.

### Termination By Parties' Agreement

Employment can be terminated by the parties' agreement. Only if the relationship is terminated because of a justifiable cause will the employer be able to avoid the payment of severance and notice pay.

Approval from a court or other regulatory body is required before termination is effective in the case of pregnant women, teenage workers and others. In such cases, the employer needs the authorization of the Ministry of Labor.

### Directors Or Other Senior Officers

There any no separate rules for firing directors or other senior officers.



### Special Rules For Categories Of Employee

Only for representatives of a Labor union do special rules apply on termination.

### Specific Rules For Companies in Financial Difficulties

Financial difficulties are considered force majeure, and so the agreement is merely suspended. If the situation is non - recoverable, the employer or employee can terminate the contract (the employer will remain liable). In the event of insolvency, the employee ranks above other creditors.

### Restricting Future Activities

There are no written laws about clauses which restrict future activities. However, the Courts have said that if the employee is financially compensated after termination, it is possible to include a non-competition clause in the contract for future activities for a limited period of time.

### Severance Payments

Payment varies according to the length of service (calculations are based on the average earnings of the previous six months). Severance is paid for a maximum of 8 years, even if the length of the service provided exceeds 8 years.

### Special Tax Provisions And Severance Payments

Severance payments are tax free.

### Allowances Payable To Employees After Termination

Employers are not required to contribute towards any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

The deadline for submitting a labour law suit is one year, and the process of conciliation / mediation interrupts this term. If no agreement is reached between the parties, once the process of conciliation / mediation concludes, the employee has one year to file the labour law suit in court.

There are time limits for claims following termination. For the employee it is 1 year from the termination date and for the employer 1 month.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

There are no specific matters which are important or unique to this jurisdiction.

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# Cyprus

# Cyprus

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are specialised labour courts that regulate labour disputes and for some matters, such as redundancy issues, that may have exclusive jurisdiction. The Labour Disputes (Settlement, Arbitration and Research) Law, Cap.187 states that it is possible to file a claim at the District Courts instead of the Labour Courts subject to conditions.

### The Main Sources Of Employment Law

Cypriot law is a combination of common law and statute law. Standard contract law principles govern employment relationships with statutory rights and obligations supplementing them where appropriate. A number of legal principles such as the right to work, the right to belong to a trade union and the prohibition of discrimination on grounds of race or sex stem directly from the constitution. Statutory provisions, such as those relating to termination of employment, govern employment relationships in Cyprus.

### National Law And Employees Working For Foreign Companies

National Law will apply to all individuals that work in Cyprus, provided that the employee has his/her ordinary residence in Cyprus, regardless of their nationality.

### National Law And Employees Of National Companies Working In Another Jurisdiction

National Law will usually apply to an employee when he is working in Cyprus. When a national employee works in another jurisdiction, Cypriot employment law may conflict with the laws and regulations of the other jurisdiction. Normally, the applicable law is the law of the jurisdiction where the employee has his/her ordinary residence.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Contracts of employment can be concluded orally between the employer and the employee. There are no legal requirements for an employment contract to be evidenced in writing either by a contract or by a statement of terms and conditions. However, it is good practice to have an agreement prepared and signed stating the main particulars of employment that contains information about job and duties, holiday pay, earnings and allowances (see compulsory terms below for the minimum information that an employer must disclose to an employee).

### Mandatory Requirements:

#### Trial Period

There are no mandatory requirements that exist to provide trial periods when engaging new employees.

#### Hours Of Work

A working week cannot exceed 48 hours, including overtime. However, in certain areas (such as the hotel industry) different considerations may apply (for example, 38 hours weekly).

#### Earnings

As regards the amount of minimum pay, according to the most recent Order that has been effective from 1 April 2012, the minimum monthly salary has been set at 870 Euros. For employees who have worked for the same employer for six consecutive months, the minimum monthly wage is set at 924 Euros (minimum wages are reviewed annually).

#### Holidays / Rest Periods

An employee is entitled to at least eleven uninterrupted hours of rest each day and is entitled to a minimum of twenty four uninterrupted hours of rest per week.

All employees are entitled to at least 4 weeks annual leave. More specifically, those working five days a week are entitled to a minimum of 20 working days annual leave and those working six days a week are entitled to a minimum of 24 working days annual leave. Annual leave may be substituted by monetary compensation if employment is terminated and an employee has accrued untaken holiday.

#### Minimum/Maximum Age

The Protection of Young Persons at Work (Law 48(I)/2001) states that the minimum age for an employee is 14. A 14 year old employee must have successfully completed secondary school education or have been released from his obligation to attend school. The Law provides an exception for the employment of children in cultural, artistic, sport or advertising activities and sets the minimum age at 3. The Law also provides a limitation on the working hours depending on the employee's age and the type of work. There are no maximum age limits.

#### Illness/Disability

There are no mandatory requirements relating to illness and disability.

#### Location Of Work/Mobility

The place of work of the employee and the registered place of business must be included in the written information that the employer is obliged to provide to an employee.

Mobility clauses can be included in the contract of employment. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

#### Pension Plans

Pension plans are provided only to public servants employed by the state.

For other employees an employer is obliged to offer employees access to a 'stakeholder' pension scheme but does not have to contribute to this pension fund unless this is provided for in the contract of employment. The employer must contribute to social security schemes for the employees.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

Every pregnant woman is entitled to 'ordinary maternity leave' of up to 18 continuous weeks. Nine weeks must be taken on the second week before the week of expected childbirth. In addition to maternity leave, for nine months after childbirth a female employee is entitled each day to interrupt her employment for one hour or start work one hour later or finish work one hour earlier for the purposes of breastfeeding or for providing child care. In accordance with the law such time must be considered and paid as normal working time.

Employees, men or women, who have completed a continuous period of at least six months employment with the same employer, are entitled to take unpaid parental leave for a duration of up to thirteen weeks in total, by reason of the birth or adoption of a child, in order for the parent to take care of and participate in raising the child. Where a parent has more than one child, the parent's right to parental leave is independent for each child, provided that at least one year of employment with the same employer has elapsed since the expiration of parental leave previously taken in respect of another child.

### Compulsory Terms

The Principal Law providing for an Employer's Obligation to Inform Employees of the Conditions Applicable to the Contract or Employment Relationship came into force in 2000. The Law provides that an employer is obliged to notify an employee, in writing, of essential aspects of the contract or employment relationship. The written information needs to cover at least the following:

1. The identities of the parties
2. The place of work of the employee and the registered place of business or, where appropriate, the residence of the employer
3. The title, grade, nature or category of the work for which the employee is employed and a brief description of the work
4. The date of commencement of the contract or employment relationship and in the case of a temporary contract or employment relationship, the expected duration thereof
5. The collective agreements governing the employee's terms and conditions of work
6. The amount of paid leave to which the employee is entitled, as well as the procedures and time period for allocating such leave
7. The length of the periods of notice to be given by the employer and the employee in case that their contract or employment relationship is terminated
8. The amount and the frequency of payment of the remuneration to which the employee is entitled
9. The normal daily or weekly working hours of the employee

No condition of employment, as mentioned above, can be less favourable to the employee than the conditions provided for in the relevant legislation

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory terms, provided that these provisions do not override or give fewer rights to the employees than provided for in the statute.



## Types Of Agreement

Law 98(I)/2003 has certain provisions for employees who are employed for a fixed period. These provisions aim to ensure that fixed period employees receive equal treatment compared to employees employed for an unlimited period in order to avoid their exploitation and the continuous employment of short-term employees.

## Secrecy/Confidentiality

Under Cypriot employment law there is an implied duty of fidelity which forms the basis of the contract of employment. It has been long recognised by the Cypriot courts that the employee should perform his services to his employer in a trustworthy and faithful manner. The duty of fidelity, as regards confidentiality in employment contracts, extends only to information classed as trade secrets or so confidential that it requires the same protection as a trade secret.

Trade secrets do not generally include the employee's skill and knowledge, information which is publicly available and knowledge of general methods of running a business. Trade secrets can be described as ideas or information which the creator used financial resources to create and made efforts to keep secret.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

These issues are regulated by IP laws and regulations.

## Hiring Non-Nationals

A written employment agreement approved and stamped by the Labour Office is essential in order to safeguard that the mandatory requirements of Immigration Law of Cyprus is met. For non-EU citizens the Labour Office must grant permission to the employer intending to employ non-EU citizens. The employer must show that there is no human resource available in Cyprus or anywhere else in Europe. Such cases can only be granted for special and extraordinary occupations requiring rare qualifications.

An employer will be liable to a civil penalty if he negligently employs someone that is not entitled to work in Cyprus and will commit a criminal offence if he knowingly employs such a person.

## Hiring Specified Categories Of Individuals

There are no specific rules on hiring specified categories of individuals, but issues of discrimination may arise when a specific group, gender or category are exempted from employment without any objectively reasonable justification.

## Outsourcing And/Or Sub-Contracting

Sub-contracting does not involve 'employees' in the meaning given to it by the law. Thus, sub-contractors do not benefit from legislation regarding employment protection.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Either the employee or the employer may change the employment contract but both parties must agree to the change.

### Change In Ownership Of The Business

When there is a change in ownership of a business all employees are automatically transferred to the new employer on the same terms and conditions as their previous employment.

The employer shall inform the employees, in good time and in any event before the employees are directly affected by the transfer with regards to employment and working conditions.

The transfer of an undertaking, business or part or part of undertakings or business shall not of itself constitute grounds for the dismissal of an employee by the new or old employer. Such action is considered as illegal, however the employer has the right to dismiss employees due to economic, technical or organisational reasons which require changes in the level of employment.

### Social Security Contributions

Employers and employees are required to make social security contributions. Employers are required to pay five contributions, namely to the, Social Insurance Fund, Annual Paid Leave Fund, Termination of Employment Fund, Development of Human Resources and Social Coherence Fund.

### Accidents At Work

The employer is under an obligation to take reasonable care of the health and safety of all his employees. Breach of this obligation may result in the employer being liable for negligence.

### Discipline And Grievance

This may be a lawful reason for termination of employment.

Employer's discipline and grievance procedures are likely to include a letter from the employer setting out the issue and consequently arranging a meeting with the employer.



### Harassment/Discrimination/Equal pay

Article 28 of the Cypriot Constitution contains a general anti-discrimination provision which corresponds to Article 14 of the European Convention on Human Rights (ECHR). Article 28 outlaws direct and indirect discrimination on the grounds of community, race, religion, language, sex, political or other conviction, national or social decent, birth, colour, wealth, social class or any other ground whatsoever, unless the Constitution itself otherwise provides. In 2000 the Law on the rights of persons with disabilities came into force which includes the right not to be discriminated against on grounds of disability. Harassment is a prohibited form of discrimination and is defined as 'unlawful conduct related to any of the recognised grounds with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.

The Equal Pay Law of 2002 came into force in 2003. Every employer must provide equal pay to men and women for the same work or for work to which equal value is attributed, regardless of the sex of the employee and without exercising direct or indirect discrimination regarding remuneration or other benefits, either in money or in kind.

### Compulsory Training Obligations

There are no compulsory training obligations.

### Offsetting Earnings

Offsetting earnings is possible only under a court order.

### Payments For Maternity And Disability Leave

During maternity leave the employee receives maternity entitlement from the Department of Social Insurance.

Employees who have completed 6 months or more of continuous employment with the same employer, regardless of sex, can claim unpaid parental leave for up to 13 weeks in total on grounds of childbirth or adoption.

An employee is entitled to receive disability/sick pay for any period of over 3 days in which he is unable to work at the prescribed statutory rate.

### Compulsory Insurance

Compulsory insurance is required when work conditions are hazardous.

### Absence For Military Or Public Service Duties

An employer must pay his employees in relation to any period of absence from work due to military service regardless of the fact that the employee has not worked for his employer during that period.

### Works Councils or Trade Unions

The employee has the option to have the terms and conditions of his employment agreement determined by collective agreement between the trade unions and employer. Employees are entitled to be a member of a trade union. Section 6 of the Termination of Employment Law states that an employer can not dismiss an employee from employment simply because he/she is a member of a trade union.

### Employees' Right To Strike

There is no general right for employees to strike.

According to article 27 of the Cypriot Constitution the right to strike is recognised for purposes only of safeguarding the security of the Republic or the constitutional order or the public order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person.

Members of the armed forces, of the police and of the gendarmerie shall not have the right to strike.

### Employees On Strike

According to the Constitution an employee can not be punished for participating in a strike.

However, employers can still dismiss employees on strike if the strike was not properly authorised. Even if the strike was authorised, after a certain period the employer can dismiss the employee.

There is no fixed time frame but normally strikes carry on for a period varying from a few hours up until two days. A strike that continues for more than three days may give the employer the right to dismiss the employee.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of their employees as long as the actions took place during the course of employment.

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# 04. Firing The Employee

### Procedures For Terminating the Agreement

### Instant Dismissal

The employer can instantly dismiss the employee when an employee's conduct is such as to render him or her liable to dismissal without notice. For example, cases of gross industrial misconduct, a criminal offence, immoral behaviour, serious or repeated contravention or disregard of other rules in relation to employment may amount to instant dismissal.



### Employee's Resignation

Employees may resign provided that sufficient notice is given in advance.

### Termination On Notice

Statutory minimum notice to be given by the employer varies according to the employee's period of continuous employment.

Where the employee has been employed continuously for a period of 26 to 52 weeks, one week's notice is required. Where the employee has been employed continuously for a period of 52 to 104 weeks, two weeks' notice is required. Where the employee has been employed continuously for a period of 104 to 156 weeks, four week's notice is required and then one additional week of notice for every period of 52 weeks up to a maximum of eight weeks' notice for a period of 312 or more weeks of continuous employment.

The notice period can be extended by an agreement above the prescribed statutory minimum.

### Termination By Reason Of The Employee's Age

Employees can be dismissed by reason of age provided that the employee has reached the retirement age which is 65.

### Automatic Termination In Cases Of Force Majeure

Employees can be dismissed in cases of force majeure. Any dismissal on the ground of force majeure will not constitute a unfair dismissal.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire. Where the parties agree to terminate the employment they are not required to obtain the court or relevant regulatory body's approval before the termination is effective.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director or other senior officer's employment.

### Special Rules For Categories Of Employee

Special rules exist only when the employee is a non-national citizen as the employer is under an obligation to pay repatriation fees.

### Specific Rules For Companies in Financial Difficulties

When a company is in financial difficulty the Official Receiver notifies the employees. There is a fund established for such purposes and the employees are allowed a payment of the emoluments due for the past 13 weeks provided they have worked for over a period of 26 continuous weeks.

### Restricting Future Activities

Clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable. These are regulated under Competition Law.

### Severance Payments

Section 5 of the Termination of Employment Law stipulates that an employee is not entitled to compensation for termination of employment payable by the employer if:

1. The employee fails to carry out his or her work in a reasonably efficient manner.
2. The employee becomes redundant.
3. The termination of employment is due to force majeure.
4. An employee's fixed-term contract has expired.
5. The employee has reached the normal age of retirement.

The employer must show that he has acted 'reasonably' in relation to the dismissal of the employee (for example, in relation to the conduct of the employee written warnings should be made).

Any employee who has been employed by the same employer for at least two years, who has not yet attained the age of 65 years and who is declared redundant within the terms of the statutory definition, is entitled to a redundancy payment out of the Government's Redundancy Fund. This Fund is exclusively financed by employers' contributions in respect of each employee.

Redundancy payments are calculated according to the employee's salary, length of service, age and loss of career prospects.

### Special Tax Provisions And Severance Payments

No special tax provisions apply to severance payments.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

If termination is because of redundancy then the employee has to make a claim within three months of the dismissal. For dismissal based on any other reason the employee has twelve months in order to make a claim.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no other special matters which are important or unique to this jurisdiction.

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# Czech Republic

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are no special judicial bodies settling employment disputes – such disputes are simply settled by specialised judges in the civil courts.

### The Main Sources Of Employment Law

The Czech Republic is a civil law country; the main source of employment law is thus legislation. Employment relationships and the obligations of the parties are governed and regulated mainly by the Labour Code, Civil Code, Employment Act, various governmental regulations and collective bargaining agreements where applicable.

### National Law And Employees Working For Foreign Companies

The mandatory rules under national public law apply to all individuals physically working in the Czech Republic, regardless of their nationality and, where applicable, regardless of the law governing their employment contract. The law applicable to the employment relationship with a foreign aspect is determined according to the rules of international private law.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Should there be an employee employed in another jurisdiction by a company which is registered in the Czech Republic, the employment agreement shall generally be governed by the place where the agreement is concluded. The parties have contractual freedom and are entitled to have the agreement governed by the law agreed to under the rules of international private law. However, the rights of the employees shall never be lesser than those that they would enjoy in the country where the work is performed.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The law requires that the employer concludes the employment contract in writing.

## Mandatory Requirements:

### Trial Period

There is no legal obligation to arrange for a trial period. In the event that one is agreed to by the parties, the trial period needs to be agreed in writing prior to the commencement of the employment relationship (the date on which the employee starts working) and cannot exceed three (3) consecutive months or in the case of a senior employee six (6) consecutive months after the day the employment relationship is established. A trial period cannot be agreed after the date of commencement of employment.

### Hours Of Work

Normal weekly working hours may not exceed forty (40) hours. The working hours of employees working on a (multi) shift rota or underground should be shorter. The working hours of employees under the age of eighteen (18) years (minor employees) may not exceed eight (8) hours per day.

### Earnings

The legislation provides for a minimum salary (minimum remuneration for work). If the agreed pay is lower than the minimum salary, the employee is entitled to claim the difference between the minimum and the agreed salary from the employer.

Generally, the minimum salary is set annually by statutory order. The current minimum salary for a working week of forty (40) working hours is CZK 8,500 monthly or CZK 50.60 per hour. However, such a salary varies with different positions since the pay should be calculated with respect to the complexity of the work, responsibilities etc. (the so-called guaranteed salary also set by statutory order)

### Holidays / Rest Periods

The standard length of paid holiday is at least four (4) weeks per year. Some categories of employees are entitled to a longer guaranteed period of paid holiday (e.g. academic employees of universities).

After a maximum of six (6) hours of continuous work, employees are entitled to a rest period. Minor employees are entitled to a rest period after four and half (4.5) hours of continuous work. Work breaks are generally not included into the working hours.

### Minimum/Maximum Age

Employment of individuals under the age of fifteen (15) and individuals with unfinished compulsory school attendance is (with several exceptions) prohibited. There is no legal limit providing for the maximum age of employees.

### Illness/Disability

Disabled employees are entitled to special protection. Moreover, the employer is obliged to ensure certain special working conditions for these employees. Employers employing a certain percentage of disabled employees are entitled to a special state grant.

### Location Of Work/Mobility

The place of work must be specified in the employment contract. The employer may send an employee on a business trip only with his consent. When employees perform their work outside their standard place of work, they are entitled to the reimbursement of their travel expenses.

### Pension Plans

Employers are not obliged to contribute to the pension system; however, employers may decide to contribute to the individual pension schemes of their employees. The contributions can then be deducted from their tax base.



### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A female employee is entitled to maternity leave of up to twenty eight (28) weeks which can commence as soon as eight (8) weeks prior to the child's birth.

Maternity leave may not be shorter than fourteen (14) weeks and cannot be finished or interrupted during the six (6) weeks following the birth. Both female and male employees taking care of a child under the age of three (3) years are entitled to paternity leave for a period that is required by the employee. An employer may not instantly terminate the employment relationship with a pregnant employee and/or employees on maternity or paternity leave.

### Compulsory Terms

In the employment contract, the type of work, place(s) of work and commencement date must be specified. Further, the employment contract should contain information regarding the employee's rights and obligations. The contract may be concluded without this information; however, in that case the employer is obliged to provide the information in writing to the employee within one (1) month after the employment relationship is established. In the event that the employee is to be sent to work abroad, the employer is obliged to inform him of the expected period of work abroad and the currency of remuneration.

### Non-Compulsory Terms

Labour Law is governed by the principles of contractual freedom; therefore in the employment agreement the parties may stipulate any additional terms and conditions. Nullity of legal acts and provisions of the contract cannot be detrimental to the employee provided that the said nullity was not caused exclusively by him/her.

## Types Of Agreement

A labour relationship may be established either by a standard employment contract (establishing the employment relationship) or by agreements for work performed outside the employment relationship (such as Agreement on Work Performance or Agreement on Working Activity), the latter providing for fewer working hours and different formalities and conditions.

## Secrecy/Confidentiality

Generally, the law does not impose an obligation of confidentiality on employees except for a specific group of employees working for public authorities. Members of trade union organisations, work councils or representatives concerned with occupational health and safety protection are entitled to require certain information from the employer. These employees are obliged to keep such information confidential. In addition, certain state employees are obliged not to reveal secret and/or confidential information.

Without the employer's consent, no production equipment and/or other devices used at work, including computers and telecommunication devices, may be used by the employees. Unless there are good reasons connected to the special nature of the employer's activities, the employees' privacy in the workplace and common premises must not be encroached upon by open or hidden surveillance cameras (monitoring), interception and recording of telephone calls, checking emails or post addressed to the employees.

The personal data of employees may be processed by the employer according to the Labour Code and/or only with the permission of the employees in question, and always in compliance with the Personal Data Protection Act.

Regardless of the type of workers, a special statutory protection of trade secret applies; employees are under an obligation not to reveal certain confidential information if this is set out in their contract.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Under the Copyright Act, the intellectual property rights to all inventions created by the employees in the course of their work performance for the employer are owned by the employer unless agreed otherwise. The employee has certain moral rights (e.g. a right to claim authorship) over the invention, but the property rights to such inventions or other subject matters protected by intellectual or industrial property rights are exercised by the employer unless agreed otherwise.

### Hiring Non-Nationals

EEA and Swiss nationals and their family members are automatically entitled to work in the Czech Republic under the same conditions as Czech nationals (subject to certain exceptions).

Non-EEA nationals are entitled to the same employment rights as nationals/EEA and Swiss nationals only if they hold a residence and working permit for the Czech Republic. Employers intending to hire a non-EEA national are obliged to apply for special permission. Non-EEA nationals may only be taken on for those vacancies registered with the Labour Office and which have been offered to Czech nationals as open positions and that cannot be filled. This is provided that the employer notifies the Office in advance and discusses its intention to employ those foreigners with it.

Highly qualified non-EEA nationals or non-EEA nationals with expertise that is lacking in the Czech Republic may apply for a so-called "blue card" or "green card", respectively, which allow them to seek employment in the Czech Republic more easily.

### Hiring Specified Categories Of Individuals

Employers with over twenty-five (25) employees are required either to employ disabled persons (constituting at least four (4) % of their workforce) or purchase special products produced by the disabled or pay a special charge.



### Outsourcing And/Or Sub-Contracting

The law imposes certain mandatory requirements for contracts concluded between an employment agency and a user company as well as for the temporary assignment of employees.

The employment agency and the user company must ensure that the working conditions and the remuneration of the temporarily assigned employees are not worse than the conditions of the user's employees performing the same and/or similar work.

In addition to the case of an employment agency, an employer may also assign its employees to another employer. The agreement on temporary assignment may be concluded between an employer and an employee 6 months after the commencement of the employment at the earliest. Remuneration for temporary assignment is forbidden.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

The terms and conditions of the employment contract may only be changed in writing upon mutual agreement by the parties. In certain special cases, the employer is entitled to transfer the employee to another type of work without their consent.

### Change In Ownership Of The Business

Under Czech Law, when the enterprise or part of it is sold, the rights and obligations arising from the employment relationships established between the employer and the employees are transferred from the seller to the buyer. New employment contracts with the respective transferred employees need not be concluded.

A transfer of the employment relationships also occurs when the activities of an employer or part of them or the employer's tasks are transferred to a new employer. Both the transferor and the transferee employer are obliged to inform the employees about the date, reason, impacts of the transfer and planned measures relating to the transfer no later than 30 days before the transfer.

### Social Security Contributions

Both the employer and the employee have to contribute to the social security and health insurance systems.

### Accidents At Work

The requirements for safety in the workplace are set out in the Labour Code and the Additional Occupational Health and Safety Requirements Act.

Where an accident at work occurs the employer is obliged, without limitation, to investigate the causes and circumstances of the injury, maintain documentation of industrial injuries, notify the competent agencies and institutions and take measures to prevent the reoccurrence of such industrial injuries.

### Discipline And Grievance

In cases of breaches of work discipline, an employer might curtail an employee's holiday (following an unexcused absence), terminate the employment with notice due to the breach of the employee's duties, instantly dismiss the employee due to a material breach, or reduce the variable part of their salary.

In order to terminate employment with notice due to a breach of work discipline, the employer is obliged to first notify and warn the employee in writing as to the possibility of termination. The employer is then entitled to terminate the employment if the employee breaches his/her obligations again in the period of 6 months subsequent to the notification.

### Harassment/Discrimination/Equal pay

The employer shall ensure all employees are treated equally in terms of their working conditions, remuneration, vocational training and opportunities for career development. Any discrimination is prohibited.

According to the Anti-Discrimination Act which implements the EU rules against discrimination at work, harassment is also considered as discrimination and as such is prohibited.

### Compulsory Training Obligations

Under Czech Labour Law, the employer is obliged to train new and unqualified employees. The employees have to endeavour to gain qualifications during their employment with the employer. The employer is entitled to instruct employees to take some training courses.

The employer is additionally obliged to provide handicapped employees with job training and an opportunity to further their qualifications.

The employer and the employees may also conclude a qualification agreement. The agreement shall include the employer's willingness to enable the employee to further expand their qualifications and the employee's willingness to remain employed with the employer for an agreed period (maximum of five (5) years) or to reimburse the qualification costs settled by the employer. This shall additionally apply to those cases where the employment contract is terminated before a qualification enhancing course has been completed.

### Offsetting Earnings

In the Czech Republic there are very strict regulations relating to the offsetting of earnings. Any deduction to the employee's salary must be based on a law or agreed in writing otherwise it is deemed to be invalid. Generally, the amount deduced may not be higher than the amount deduced from the pay following a judicial decision and may not exceed the amount of half of the employee's remuneration.



### Payments for Maternity and Disability Leave

Female employees on maternity leave receive maternity benefits from the social security system, rather than pay from their employer.

Employees temporarily incapable of performing their work or ordered to stay in quarantine are entitled to compensation payment from their employer (subject to certain exceptions) for the first twenty one (21) calendar days of their temporary incapacity for work or stay in quarantine in the amount determined by the applicable law.

Disability leave payment is paid by the social security system from the twenty second (22) day of temporary working disability suffered by the employee. Up to that time the compensation of salary for disability is paid by the employer – from the forth (4) working day of the time off work due to the working disability.

### Compulsory Insurance

The employer is obliged to pay health and social insurance levies for every employee.

### Absence For Military Or Public Service Duties

The employer is obliged to grant an employee time off for the performance of a public function, civic duties and other activities in the public interest, provided that these activities cannot be carried out outside the working hours of the employee. Subject to contractual or legal obligations, the employee is not entitled to a compensation payment from their employer.

### Works Councils or Trade Unions

Trade unions may be established as an association of employees. There may be two or more trade unions operating within one company (employer). The employer is obliged to treat the trade unions equally.

Within a company, the trade unions enjoy special rights. Trade unions represent all employees working for the employer regardless of their association with the trade union. Where more than one trade union operates within one business, the employer – in certain cases – has to negotiate and establish an agreement with all of them.

In order for a trade union to be able to exercise its rights vis-à-vis the employer, at least three employees of the employer need to be members of the trade union in question.

### Employees' Right To Strike

The Czech Constitution guarantees employees the general right to strike under the conditions specified by law. In the event of a strike called to support collective agreement negotiations, the Collective Bargaining Act explicitly stipulates when such strikes should be considered as unlawful. The right to strike may be restricted for certain professions that are necessary for the protection of life and health; however, this can only be done based on the law.

### Employees On Strike

The employees cannot be compelled to join or made to refrain from taking part in a strike. Since the participation in the strike is an exercise of their constitutional right, the non-performance of working duties during the strike may not be considered as a reason for terminating the employment contract.

### Employers' Responsibility For Actions Of Their Employees

Unless a third party knew or it was reasonable to presume that the third party was aware that the employee had acted beyond their competence, the employer is fully bound by actions of their employees, provided such actions are commonly performed in the course of the employee's employment.

The employer is responsible for the damage caused to a third party by their employees during the performance of their working duties.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

The employment relationship may be terminated by agreement of the parties, upon notice of termination, by instant dismissal and upon cancellation during the trial period. Employment might also be terminated by the lapse of time or due to other reasons (such as the employee's death). The reasons for terminating the employment relationship on notice are expressly listed in the Labour Code; the employer is not entitled to terminate an employment contract on notice for other reasons.

Where the employment relationship is not terminated by an agreement or by instant termination, it ends upon the expiry of the notice period.

### Instant Dismissal

The employment contract may be immediately terminated if:

1. the employee has breached some of his/her duties, which stems from the statutory provisions and relates to its work performance, in a particularly grave manner or,
2. the employee has been sentenced, under final verdict, for a wilful criminal offence to a term of unconditional imprisonment of over one year or,
3. if the employee has been sentenced, under a final verdict, of a wilful criminal offence committed during the performance of his/her working tasks or in direct connection therewith, and to unconditional imprisonment of no less than six (6) months.



### Employee's Resignation

The employee may terminate the employment relationship with or without stating a reason. In most cases, the employment relationship ends upon the expiry of the notice period. Instant termination of the employment contract by the employee is allowed only in cases where the employee is not able to perform the work for health reasons (approval of a physician is required), and is not offered suitable work of a different kind and/or the employees have not received their salary (wage) or part of such a salary within fifteen (15) days of the due date.

### Termination On Notice

The notice of termination must be given in writing and delivered to the other party. In the notice of termination given by the employer to the employee, the statutory reason for which the employment relationship is ending must be specified. The employer is required to specify the reason clearly to prevent the reason from being confused with any other. Failure to comply with these requirements will result in an invalid notice of termination. The notice period shall start on the first day of the calendar month following the delivery of the notice, and end upon the expiry of the last day of the relevant calendar month with some exemptions. The notice period shall be at least two (2) months, except for special cases such as the transfer of the employment to another employer.

### Termination By Reason Of The Employee's Age

Pursuant to Czech Labour Code a legal representative of a minor employee who has not attained the age of 16 years may immediately terminate the employment relationship with an approval of a court if it is necessary for the interests of education, development and health of such a minor employee.

### Automatic Termination In Cases Of Force Majeure

Under Czech law, an employment relationship can additionally be terminated in cases of force majeure represented by the death of the employee and in some cases of the employer, too. Automatic termination in cases of force majeure additionally comes into question where the company (i.e. the employer) is dissolved and no legal successor is defined.

### Termination By Parties' Agreement

The parties are free to terminate the employment relationship by agreement. However, in some specific situations, the employee is entitled to a severance payment.

### Directors Or Other Senior Officers

The employer and the director, senior officer and other managers may agree on the possibility to be discharged from their managerial position, provided it is also agreed with them that they may resign from their position. Where the employer is a legal entity, these persons may be discharged from their position only by the statutory body. Where the employer is an individual, they may only be discharged from their position by the individual in question (i.e. the employer).

The employment relationship of these persons shall not come to an end upon their discharge or resignation from their managerial position. A new position within the employer's business shall be proposed and suitable alternative work corresponding to the employee's health and qualifications offered. Otherwise, the employment relationship may be terminated in the same way as already mentioned above.

### Special Rules For Categories Of Employee

The law provides for special protection of pregnant women, mothers of young children and employees under the age of eighteen years. Special rules additionally apply to certain categories of employees working in an unhealthy or potentially dangerous workplace (e.g. miners). Some exceptions are mentioned above.

### Specific Rules For Companies in Financial Difficulties

Under the Bankruptcy Act, the financial claims of employees against a bankrupt company are considered as a preference claim.

### Restricting Future Activities

The parties can agree to enter into a non-competition agreement for an agreed period of time. This period, cannot exceed one (1) year following termination of the employment contract. The employer is obliged to provide the employee with adequate monetary compensation for the above period in the amount of at least a half of or, the average monthly salary for each month of the duration of the non-competition agreement.

The non-competition agreement can only be concluded in the case that it is justifiable regarding the information and know-how that the employee obtains in the course of the employment with the employer, and where use of such information and know-how may have a substantial and detrimental effect on the employer's business.

A non-competition agreement must be concluded in writing.

### Severance Payments

Where the employment relationship is ended due to reasons of closure or relocation of the employer's business or its part, of a redundancy, the employee is entitled to a severance payment (regardless of whether the relationship is ended by termination or agreement) equivalent to one to three months´ average pays depending on the length of the employment.

Where the employment relationship is terminated on notice or by agreement because of an industrial injury, illness or related events incurred by the employee; he/she is entitled to a severance payment (regardless of whether the relationship is ended by termination or agreement) in the amount of at least twelve (12) months´ average pays.



### Special Tax Provisions And Severance Payments

There are no special tax provisions concerning severance payments. However, severance payments – as an income of the employee – are subject to income tax.

### Allowances Payable To Employees After Termination

In general, the employer is not obliged to give any payments to employees after their contract is terminated. However, should there be a non-competition clause stipulated, the employer shall pay remuneration of the pay for up to one (1) year.

Nullity of the termination of an employment relationship may be claimed both by the employer and the employee before the competent court within two (2) months of the day when the employment relationship in question should have come to an end as a result of such termination.

### Time Limits For Claims Following Termination

The time limits for claims arising from the employment relationships are governed by the Civil Code. The general time limit is three (3) years from the moment the claim could have been first raised.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None.

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# Denmark

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The ordinary civil court generally deals with employment cases, e.g. cases concerning dismissals, breach of contract and pay. Alternatively these cases can be settled by industrial arbitration.

The Labour Court (Arbejdsretten), a court set up by the unions and the employers' organizations outside the ordinary court system, deals with cases concerning violation of collective agreements. Some collective agreements also state that disputes shall be solved by arbitration.

When dealing with Employment Disputes in Denmark it is essential to examine in detail which rules apply and in which forum the dispute shall be dealt with.

### The Main Sources Of Employment Law

Employment law is mainly regulated by legislation and case law. Employment contracts are mandatory and although the starting point is freedom of contract, many employment contracts are subject to - and overridden by - collective agreements and legislative requirements. Some employees, mainly commercial and office employees, enjoys by law a higher level of protection than others.

All EU-regulations have been implemented in Danish law.

### National Law And Employees Working For Foreign Companies

In the absence of an agreement concerning governing law the statutory rights under national law will apply to all individuals physically working in Denmark, regardless of their nationality, and regardless of the law normally governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

A person employed by a Danish company, but posted to another country may, when bringing a case before a Danish court, choose that the rules of that other country be applied despite the fact that national Danish law would otherwise have governed the relationship. In other words, the employee is entitled to choose the law most favourable to him under the circumstances.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The employment contract must be in writing. Furthermore, the employer is obliged to inform the employee of a number of specified conditions (e.g. pay, working hours, place of work). If the employment contract fails to contain any of the obligatory conditions, the employee may be granted compensation in court (see "compulsory terms").

## Mandatory Requirements:

### Trial Period

There is no legal obligation to provide a trial period, but it is very common practise to do so, because special terms can be applied regarding the length of notice in a trial period. A trial period can as a general rule not exceed three months.

### Hours Of Work

Hours of work is something which is mainly regulated by collective agreements and it is usually 37 hours per week. If the employment is not regulated by collective agreements, the working hours are limited to a maximum of 48 hours per week including overtime (averaged over a four month period). Generally the employer has to compensate for overtime unless specified to the contrary in the employment contract and taken into account when fixing the employee's salary.

### Earnings

There is no statutory minimum wage, but it is customary that wages are stipulated in accordance with the collective agreements.

### Holidays / Rest Periods

The employee earns the right to 2.08 days paid holiday for each month of employment in a calendar year from January 1 to December 31 ("the Qualification Year"). However, the employee has the right to a minimum of 5 weeks of holiday in a year whether or not the employee has earned the right to paid holiday.

The holiday shall be held during "the Vacation Year" from May 1 to April 30 following the Qualification Year.

An employee who resigns is entitled to a holiday allowance at the rate of 12.5 percent of the wage for the part of the earned holiday that the employee has not taken before resignation.

### Minimum/Maximum Age

In general the minimum age is 15. There are special mandatory rules for employees aged between 15 and 18. There is no maximum age limit.

### Illness/Disability

The employer should apply considerable discretion with respect to these questions when interviewing applicants, changing employment terms and/or terminating employees.

Many employees are by law entitled to sick pay from the employer regardless of what may be stated in the employment contract.

### Location Of Work/Mobility

The employee's main place of work must be stated in the employment contract. The employment contract can include a mobility clause, but it has to be limited - the employee cannot be required to move anywhere at all in the world.

### Pension Plans

There are no mandatory rules, but most collective agreements do cover pension plans.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

Danish employment law is rich with complex mandatory regulations dealing with family support, including maternity leave and pay, adoption leave and pay etc.

The employer is not allowed to ask questions regarding pregnancy when interviewing applicants.

As a general rule women are entitled to 4 weeks maternity leave prior to the expected date of birth and 14 weeks of maternity leave after the date of birth. Men are entitled to 2 weeks of paternity leave after the date of birth. Furthermore, the parents are entitled to share 32 weeks of parental leave between them.



### Compulsory Terms

The employment contract must be provided within one month after the commencement of the employee's employment and the contract must contain all the significant conditions of the employment, including at least: the names and addresses of the parties, the work location or main place of work, a job description, the date when employment begins, any conditions regarding holiday, length of notice, salary, hours of work-and any collective agreements which apply. If the employment contract fails to contain any of the compulsory conditions, the employee may be granted compensation in court. In general, the compensation can not exceed 13 weeks of salary.

### Non-Compulsory Terms

Having regard to the statutory rights which cannot be waived, the parties are free to agree between themselves any other conditions.

## Types Of Agreement

Agreements exist in several different forms: fixed term, full-time, part-time etc. Please notice that the compulsory terms apply regardless of the type of contract.

## Secrecy/Confidentiality

There are rules against employees disclosing or exploiting their special knowledge about the employer. The rules apply during the employment as well as afterwards. Furthermore, the employment contract often contains terms that specify the type of information that is confidential and terms regarding compensation in the event of any breach.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

There are statutory provisions which will apply to determine ownership of IP rights. The employer normally owns the IP in any inventions created by the employee during employment.

## Hiring Non-Nationals

Citizens of the EU are generally treated as nationals and are entitled to work in Denmark. Non EU-citizens must have a residence and work permit before they are entitled to work in Denmark.

## Hiring Specified Categories Of Individuals

There are rules relating to the search for and hiring of certain categories of employee, such as children, disabled persons, pregnant women and other groups.

## Outsourcing And/Or Sub-Contracting

There are no specified rules regarding outsourcing and/or sub-contracting, but sometimes rules regarding "change in ownership of the business" apply.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Any significant changes to the contract require the same amount of notice as would be required in the event of a termination. If the employee refuses to accept the changes he may elect to terminate the contract by giving notice.

### Change In Ownership Of The Business

Change in ownership of the business is regulated by implemented EU law.

Unless the employees' contracts are terminated on notice before the change of ownership, all employees are automatically transferred to the new employer on the same terms and conditions.

The former employer is obliged to inform the employees about the reason for the transfer, the transfer date and the transfer's legal, social and economic consequences for the employees.

The new employer is obliged to pay salary, pension, holiday allowance – even if the claim was accrued before the change in ownership.

Please note that a transfer of the employees and/or part of the operation of the company may be considered a change in ownership according to the law mentioned above.

### Social Security Contributions

The employer and employee are both required to make social security contributions.

### Accidents At Work

The employer is obliged to take out industrial injury insurance.

As a general rule a work accident must be reported by the employer to the national board of industrial injuries within 9 days after the accident.

### Harassment/Discrimination/Equal pay

Equal treatment is one of the basic principles and employees are protected from harassment and discrimination on a number of grounds, including gender, sexual persuasion, religion, race, disability, part-time employment and age.

The rules apply not only in advertising the job, but also during the on-going performance of the job and also in connection with the termination.

The employee is entitled to compensation if the rules are not respected.

### Compulsory Training Obligations

Apart from work environment and security there are no general compulsory training obligations, but some professions will impose their own standards.



### Offsetting Earnings

As a general rule it is not possible for employers to offset an employee's debt against earnings. The general rule may only be waived if the employee has given his prior consent or if it is permitted by a statutory provision.

### Payments For Maternity And Disability Leave

Most collective agreements contain provisions regarding payment for maternity and disability leave.

Women are entitled to 4 weeks of maternity leave before the expected date of birth and 14 weeks of maternity leave after the date of birth. Men are entitled to 2 weeks of paternity leave after the date of birth. Furthermore, the parents are entitled to share 32 weeks of parental leave between them.

In the absence of contractual or/and legislative provisions the employee is entitled to a public service pay/benefit. The payment is regulated by the authorities during the parental leave.

### Compulsory Insurance

See "Accidents At Work".

### Absence For Military Or Public Service Duties

As a general rule the contract is suspended during military or public service. The employer cannot dismiss an employee because of absence which is related to military or public service duties.

### Works Councils or Trade Unions

All employees are entitled to form work councils and all collective agreements contain provisions regarding work councils and shop stewards.

There are several trade unions in Denmark. Employees cannot be prevented from or forced to join trade unions.

### Employees' Right To Strike

The right to strike is mostly granted by collective agreements and provided the strike follows certain rules, the strike will usually be deemed justified.

### Employees On Strike

As a general rule the employer is entitled to fire employees who are on strike if the strike is not legally justified.

### Employers' Responsibility For Actions Of Their Employees

The employer has an extensive responsibility for an employee's actions when carried out in the line of duty.

The employee is only liable if the damage is caused by his/her own gross negligence.

# 04. Firing The Employee

### Procedures For Terminating the Agreement

The procedure for dismissal may or may not be described in the employment agreement.

The minimum period of notice varies as regulated either by law, by collective agreements or by the individual employment agreement. Many employees are protected by legislation stipulating the period of notice.

There are no rules relating to any specific form for terminating the agreement but the employer carries the burden of proof – a proof which may be hard to establish in the absence of a written notice.

### Instant Dismissal

The employer may only terminate the employment agreement by instant dismissal in the event of a gross breach of contract. Even in those circumstances, the employee still enjoys certain basics rights.

### Employee's Resignation

The employment contract may generally always be terminated by the employee by giving due notice.

### Termination On Notice

Either party may terminate the agreement on notice. It should be noted that there may be statutory provisions relating to notice which will override the contractual notice period.

In some instances termination on notice is limited by collective agreements or/and legislation. If so, the termination must be reasonably justified by the employee or the employer's situation.

### Termination By Reason Of The Employee's Age

If there is a reasonable ground (e.g. normal retirement age) the contract may be terminated due to the employee's age.

### Automatic Termination In Cases Of Force Majeure

Theoretically, an employment contract may be terminated in cases of force majeure, but it requires very extreme conditions.

### Termination By Parties' Agreement

The parties may agree on as short a notice as they like.

### Directors Or Other Senior Officers

In general, directors are not covered by the laws applicable to employees. The terms and conditions for directors are therefore mostly regulated by the individual contract.



### Special Rules For Categories Of Employee

Generally, commercial and office employees enjoy a higher level of protection than others. Furthermore, there are special rules that apply to certain groups of employees, such as shop stewards, health and safety representatives, pregnant women etc.

### Specific Rules For Companies in Financial Difficulties

If a company applies for an administration order the employee may demand that the company provides a guarantee for the next pay. If a company fails to provide the guarantee within 14 days after such a demand, the employee is entitled to terminate the contract without further notice.

Employees are not automatically dismissed if a company goes into liquidation, but the trustee shall within 14 days after the commencement of liquidation, procedures inform the employees whether or not the insolvent estate wishes to use the employees working capacity. If so, the insolvent estate is obliged to abide by the terms and conditions in the individual employment agreement. Any claims by the employees against the company have priority over unsecured creditors' claims. If the estate is without funds, the claims are normally covered by a national guarantee fund.

### Restricting Future Activities

Generally, non-competition clauses are regulated by law and collective agreements. Such clauses will normally not be binding on the employee unless the agreement is in writing and the employee is compensated by additional remuneration.

### Severance Payments

Severance payments are generally regulated by the individual contract and in some cases by law and collective agreements. Generally, the severance payment is dependent on the length of the employment.

### Special Tax Provisions And Severance Payments

Generally, all contractual payments are subject to ordinary tax. There are no special exemptions for payments mark to an employee on termination.

### Allowances Payable To Employees After Termination

After termination the employer is obliged to pay the employee in respect of any accrued but unused holiday allowance.

### Time Limits For Claims Following Termination

Time limits are not stipulated by legislation, but after a certain period of time as decided by the courts on a rather individual case by case basis claims may no longer be brought forward. Case law tends to be gentler towards employees than employers in this as well as other aspects. General statute of limitation resolutions of course have to be observed.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The Danish employment law is rich in complex and mandatory regulations and we strongly recommend that you always seek a specific advice from a local specialist.

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# Ecuador

# Ecuador

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

For individual employment contracts, the Ministry of Labour Affairs handles certain aspects relating to the employer-employee relationship, such as individual hiring and authorization for dismissal with or without cause. Once the individual employment contract is finished, with or without cause, in the first instance, labour courts have jurisdiction over disputes. Appeals are heard in the Superior Court. The Superior Court does have a specialized labour court. For matters related to collective hiring, the Ministry of Labour is the ultimate authority. For collective labour disputes, a special conciliation and arbitration court is formed for each particular case. In accordance with recent administrative amendments, the Ministry of Labour Affairs has a Mediation Department (not an arbitration department) for the resolution of labour disputes.

### The Main Sources Of Employment Law

The main sources of employment law in Ecuador are the Constitution and the Labour Code and, when applicable, the Civil Code.

### National Law And Employees Working For Foreign Companies

National Law, including international treaties duly approved by Ecuador, will apply equally to national and non-national employees working in Ecuador.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Ecuadorian law will only apply to national employees working abroad if they are employed under an "enganche" contract.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

In general labour contracts must be written and registered with the Office of the Labour Inspector. However contracts can be implied. For employment to be established there must be evidence that the employee provides personal services in the course of an employment relationship for remuneration which is established in the contract, by law, collective bargaining contract or by custom.

### Mandatory Requirements:

#### Trial Period

Generally, contracts provide for a trial period of 90 days, but the parties may waive the trial period.

#### Hours Of Work

Unless a special work shift or overtime is agreed, employees cannot work more than 40 hours per week.

#### Earnings

Minimum wages and salaries are set by the Labour Authority. In addition to normal monthly pay, employees are entitled to the following:

1. Christmas Bonus or Thirteenth Salary: This is the equivalent to 1/12 of what the worker earned in the twelve months from December 1 of the previous year until November 30 of the year in which payment is made.
2. School bonus or Fourteenth Salary: This is one unified base salary and is paid once a year.
3. Also, the employer or company must pay their employees fifteen percent (15%) of the Company's net profits. Ten percent (10%) is distributed amongst the company's employees regardless of their salaries for the corresponding year. The remaining five percent (5%) is paid directly to the company's employees in proportion to their dependants, which are the employee's spouse, children under eighteen and disabled children regardless of age.
4. Reserve Funds: Any worker who has provided services for more than one year is entitled to payment by the employer, either directly or through the Social Security Institute, of a sum equal to one month's salary or wages for each complete year after the first year of employment. These sums will be paid monthly.
5. "A decent salary" is higher than the base salary and must at least cover the basic needs of the individual and his family. It is based on the basket of foods set each year by the appropriate authority and is monetary compensation paid by employers from the year's profits to their employees, before paying dividends. Although this payment reduces the employer's profits for the following fiscal year, it is a deductible expense.

#### Holidays / Rest Periods

Employees are entitled to Saturdays, Sundays and holidays of the country/region off. Employees are also entitled to 15 days annual leave per year and an additional day if the employee has worked for the company for more than five years. Public sector workers are entitled to 30 days annual leave.

#### Minimum/Maximum Age

The minimum age is 16, but there are a few specific exceptions. The minimum age for retirement is 65.

#### Illness/Disability

Employees must provide notice to the employer when they miss work because of a just cause. In the case of illness or disability, the employee must submit a doctor's certificate in which the time of leave is determined and whether or not the leave should be paid.

When the worker satisfies the prescribed minimum requirements the employer must pay the employee the benefits of general personal and family health insurance from the Ecuadorian Institute of Social Security (IESS). Furthermore, the employer must pay 50 percent of the worker's salary or wages for the first three days of illness when not work-related.

### Location Of Work/Mobility

Under "enganche" contracts and when the employee must move outside their usual residence, the employer must provide transportation or pay for transportation.

### Pension Plans

The employer is obligated to discount from the worker's salary the amount corresponding to the worker's personal contributions to the Ecuadorian Institute of Social Security (IESS). This is 9.35% of the worker's salary in general. The employer's contribution is 11.15%. In addition, workers employed for at least twenty-five years on a continuous or interrupted basis are entitled to receive an employer-paid pension.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

Maternity leave consists of two (2) weeks before giving birth and 10 weeks following birth; recent modifications to the Labour Code grants 10 additional days of maternity leave for multiple births. The modification also introduces paternal leave of ten (10) days with an additional eight (8) days in the case of a Caesarean or complicated birth, and 25 days if the child is born with a severe illness. If the mother dies during labour or while she is on maternity leave, the father is entitled to the total or remaining leave. There is also leave for adoptive parents equal to 15 days from the day the child is given to them. Finally, there is special leave, equivalent to 25 days, for parents with a child that has a degenerative illness; both parents can use this leave simultaneously or individually.

Maternity leave and shortened workday for nursing biological mothers is available. Other "family friendly" rights include maternity leave for adoption parents, parental leave for fathers when the baby is born and leave for both parents when the child has a degenerative illness.

### Compulsory Terms

These are the types of job under the contract. The manner in which the job is to be performed (including shifts or turns) the amount and form of payment of salary, the duration of the contract and the place where the work or job is to be performed. Special shifts must be authorized by the Ministry of Labour Affairs.

### Non-Compulsory Terms

Non-compulsory terms can be agreed in addition to the minimum rights that are established by the Labour Code.

### Types Of Agreement

There are several types and forms of employment contracts. These include, among others, fixed-term contracts, indefinite contracts, a specific job contract, contracts for task, piecework contracts, incidental work contracts, casual work contracts, seasonal contracts, part-time work contracts, contracts for work in another place ("enganche"), contracts for a group of workers and team labour contracts.



### Secrecy/Confidentiality

An employee is under an implied duty of secrecy/confidentiality but these rules can be further expanded in the employment agreement.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The rules are contained in Intellectual Property Law as opposed to the Labour Law. It is advisable to include these specific rules in the labour contract.

### Hiring Non-Nationals

It is possible to hire non-nationals but non-nationals must obtain a work permit from the Ministry of Labour. As a general rule, a minimum of 80% of employees must be Ecuadorian and therefore only 20% may be foreigners.

### Hiring Specified Categories Of Individuals

At least 4% of an employer's work force should be disabled. The number of men and women hired should be equal. Instead of hiring a disabled person, an employer may hire an individual who has a disabled person under his care. In this case, the work shift is reduced to 6 hours and severance pay for dismissal is higher.

### Outsourcing And/Or Sub-Contracting

Outsourcing for activities related directly to the purpose of the main business of the company is prohibited. The employer can, however, contract specialized services for specific services not related with the business' main purpose such as security, cleaning and messenger services. Specialized technical services can be sub-contracted under civil contracts if the provider is an independent party and the service is not part of the main purpose of the business.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Changes cannot be made unless the employee gives his or her consent.

### Change In Ownership Of The Business

Any change, even if the change benefits the employee, requires the employee's consent.

### Social Security Contributions

Social security contributions are required by employees and employers as indicated previously when referring to pension plans.

### Accidents At Work

In addition to the rules stated in the Labour Code, if the business has 10 or more employees it must have regulations for safety and hygiene which both the employee and employer must follow. If there is an accident at work, Social Security must be notified and they will assume expenses. If the accident is the liability of the employer, Social Security can require the employer to reimburse them. First aid must be provided by the employer.

### Discipline And Grievance

Labour Law includes certain disciplinary and grievance rules. The employer must include these rules in their internal regulations, duly approved by the Labour authorities. If the rules are violated either party may request authorization to terminate the labour contract. If the employer was at fault the employee may seek compensation.

### Harassment/Discrimination/Equal pay

Equal pay must be given to male and female employees who do the same work. No employee is to be discriminated because of gender, creed, marital status, etc.

### Compulsory Training Obligations

There are no compulsory training obligations unless agreed in an individual employment contract or collective bargaining contract.

### Offsetting Earnings

Earnings may be offset against an employee's debts but only if sanctioned by a court order in the case of paying child support.

### Payments For Maternity And Disability Leave

To receive payments for maternity and disability leave the employee must be enrolled with Social Security. For maternity leave, the employer pays 25% and Social Security the remaining 75% for the 12 weeks of maternity leave. The employee is allowed to work two hours less than the regular working day to take care of her child. A day care centre must be provided for employees' children under 6 in accordance with the Labour Code. Recent labour law amendments grant parental leave for the father when his child is born and for both parents in the case of adoption and degenerative illness.

To receive paid disability leave, the employee must obtain a doctor's certificate which sets out the amount of time the employee should have off and whether he/she should receive payment.

### Compulsory Insurance

The only compulsory insurance is with the Ecuadorian Institute of Social Security.

### Absence For Military Or Public Service Duties

Absence is permitted but without pay.



### Works Councils or Trade Unions

The law guarantees the freedom to form unions and the employer must provide the facilities for this purpose.

### Employees' Right To Strike

Employees have the right to strike. The main circumstances under which employees strike are when none of the petitions by employees have been granted, dismissal with or without cause for several employees, when a Conciliation and Arbitration Court is not formed, if conciliation is not reached, if an attempt is made to disassemble the workplace.

### Employees On Strike

Although the Law prohibits dismissal during the formation of a labour organization or when there is a strike, in practice, a worker may be fired. This would be a cause for a strike in which workers take over the workplace and the employer must pay extra compensation, if the dismissal is without just cause.

### Employers' Responsibility For Actions Of Their Employees

The employer is only responsible for the actions of its employees during the ordinary course of their work and performed in good faith.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

For fixed-term contracts, notification is made through the Labour Inspector. In the event of a fair reason, the procedure called "Visto Bueno" is applied, in which the Labour Inspector must decide on whether the employment agreement may be terminated.

### Instant Dismissal

Instant dismissal is not permitted. This would imply a dismissal without cause.

### Employee's Resignation

The employee may submit his resignation at any time and he will be entitled to a bonus for the time of service if he serves notice through the Labour Authority at least 15 days in advance.

### Termination On Notice

For fixed-term contracts, in the event that the employer ends the employment relationship, he must provide advance notice of at least 30 days and, in the event that the employee ends the relationship, he must provide advance notice of at least 15 days.

### Termination By Reason Of The Employee's Age

This is not permitted.

### Automatic Termination In Cases Of Force Majeure

Automatic termination in cases of force majeure does occur but it is rare. An example of where the contract will be terminated in a case of force majeure would be on the death of an employee.

### Termination By Parties' Agreement

On the basis of mutual agreement, the parties may terminate the contract without cause whenever they wish.

### Directors Or Other Senior Officers

There are no special rules that apply when dismissing a director or other senior office. However, the actions of a director or senior officer's legal representative, is governed by civil and commercial law as opposed to labour law.

### Special Rules For Categories Of Employee

If a union leader is fired without cause, he or she is entitled to enhanced compensation. When an employee is dismissed whilst on sick leave or maternity or parental leave, he or she will be entitled to additional compensation.

### Specific Rules For Companies in Financial Difficulties

Obligations due to the employees have preference over other obligations. Only taxes and payments to the IESS (Ecuadorian Social Security Institute) have to be paid before money owed to the employees. Any other debt is paid after having satisfied any debts owed to the employees.

### Restricting Future Activities

An employer cannot restrict employees' future activities. However, for high-level positions a special clause may be stipulated in the employment contract and then in the severance agreement which does restrict an employee's future activities. This will be enforceable more as a confidentiality obligation than a restriction in labour activities.

### Severance Payments

If the employee or employer notifies the appropriate authority the desire to terminate the employment contract without a just cause to do so, the employee receives a bonus equal to 25% of his or her last monthly salary for each year of service.

The severance pay corresponding to a dismissal without cause, in addition to the bonus for a dismissal with a "visto bueno" explained above, includes the following:

1. Up to three (3) years of service: three months' salary; and
2. Over three (3) years of service: one month's salary per each year of service up to a maximum of 25 months' salary.



If the fired worker had been employed by the same company between 20 and 25 years on a continuous or interrupted basis, he or she will receive the proportional part of the retirement pension.

Severance agreements require approval from the Labour Inspector and must be submitted no later than 30 days following the termination of the contract.

If a disabled individual or an individual with a disabled person under his care who was hired in the disabled person's place, is dismissed without cause, special severance pay equal to 18 months' remuneration must be paid.

### Special Tax Provisions And Severance Payments

Severance payments are not subject to income tax.

### Allowances Payable To Employees After Termination

There are no allowances that are payable to employees after termination.

### Time Limits For Claims Following Termination

Claims following termination must be made within three (3) years, except retirement pension and obligations by the Ecuadorian Institute of Social Security which are not subject to any time limits.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The possibility of the same employee performing two or more different kinds of jobs for the same employer has been declared unconstitutional.

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# El Salvador

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employees and Employers have two ways to resolve their disputes:

a) Ministry of Labor, which is an administrative and non-judicial stage in order to investigate and to settle severance and other payments, discrimination, etc.;

b) The Employment Tribunals, that have jurisdiction over most claims, even contractual claims or settlements which cannot be brought in the civil court by choice of the claimant.

Private or Commercial Arbitration is not allowed for disputes between employees, employers or Unions. All settlements must be validated by the Ministry of Labor.

### The Main Sources Of Employment Law

El Salvador has a civil law system. The sources of employment rights and obligations are:

a) legislation - the Constitution (1983), ILO conventions No. 87, 98, 135, 151, Labor Code (1972), Employment Equality Act (2000), Health and Safety at work Rules (1971), and other laws and regulations of work;

b) Employers' Handbooks;

c) individual contracts (whether written or oral), collective bargaining agreements and common practice all form part of the contractual relationship;

d) Settlements, compromises or awards before the Director General in collective disputes of an economic nature;

e) business customs;

f) case law developed by labor and civil Courts and from the Supreme Court of Justice.

### National Law And Employees Working For Foreign Companies

The statutory rights under national law will apply to all individuals physically working in El Salvador, regardless of their nationality and regardless of the law governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under National Law will usually only apply when the employee is physically working within the jurisdiction of El Salvador. However, contractual law may still apply in appropriate cases.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract to be in writing in order to be valid. The existence of an employment agreement can be proved by evidence such as witnesses, letters, payroll and payments.

However, every employer is required to provide each employee with a written statement of the particulars of certain terms of the agreement, not later than 8 days after the beginning of the employee's employment.

### Mandatory Requirements:

#### Trial Period

When engaging new employees, the first 30 days shall be a "probationary period'. Within the probationary period either party may terminate the contract without reason.

#### Hours Of Work

The employees shall work a maximum of 44 hours per week, or 39 hours per week for night shift workers.

#### Earnings

There is a restriction prohibiting employees from earning below a minimum hourly wage (which is reviewed from time to time). There are different rates depending on the activity of the employer (business and services, industry, textile manufacturing, agriculture)

#### Holidays / Rest Periods

Employees are entitled to a minimum of 15 days paid vacation per year. There are also various holidays, compulsory daily and weekly rest periods which have to be observed.

An example of daily rest period would be the lunch break. El Salvador's Labour Code in article 166 stipulates that this break shall last half an hour at least. There is no other daily rest obligations established by statute.

A weekly rest period would be that every worker is entitled to a paid day off for each working week, generally it is on Sunday. However, employers in companies which by the nature of their activities usually work on Sunday, have the faculty to assign their workers the day off during the week. Aside of these cases, a company must request approval from the Directorate General Labour Welfare.

#### Minimum/Maximum Age

There is a normal minimum age of 16 (which can be varied in certain cases), below which employees cannot work. In El Salvador, local authorities often regulate how and what work can be carried out by children of particular ages. Different rules (e.g. on working time, night shift) apply to children or young workers. There are no maximum age limits.

#### Illness/Disability

There are no mandatory requirements relating to illness and disability. However, see 'Harassment/ Disability/Equal Pay' below.



#### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses or allowances.

#### Pension Plans

Employers are required to register the company and its employees with a Pension Fund Administrator dully authorized to operate in El Salvador by the Superintendence of Pension Funds.

These "AFP's" are trustees of private pension schemes that satisfy certain minimum government requirements to ensure they offer value for money. Employers and employees are obligated to contribute towards a pension scheme.

#### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A limited number of "family-friendly" rights exist, including paid maternity leave, paid breastfeeding leave, time off for dependants and part-time working.

Employees are not entitled to paid paternity leave, paid adoption leave, paid parental leave and paid "honey-moon" leave. It is for the employer to grant such rights.

#### Compulsory Terms

The terms that must be provided to the employee include the following: the names of the Employer; the term of the contract and the date when employment begins; place of work; the hours of work; remuneration and the scales and intervals of pay; tools and materials; job title/job description; any collective agreements which apply; to appoint dependants or relatives; and certain information regarding disciplinary procedures.

#### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights.

### Types Of Agreement

All employment relationships are eventually contractual in nature, whether or not the terms have been reduced to writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term, variable, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated.

There are laws against discrimination which prevent employees from being treated less favourably than other employees because of working part-time or working on a fixed term contract.

### Secrecy/Confidentiality

During the employment relationship an employee is under an implied duty to respect the confidentiality of the employer's commercial and business information The Employer may terminate the employment agreement without incurring any liability if the worker has disclosed company secrets, has taken advantage of having such information or discloses administrative information after employment.

Only trade secrets are protected by the implied duty of confidentiality. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment. To disclose trade secrets can be considered a criminal offence.

In addition to the implied duties, employers will often include in the employment contract an express term specifying the type of information that is a trade secret, and therefore protected, to prevent future disclosure.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights. These regulations are established in the Law of Trademarks.

### Hiring Non-Nationals

Each Employer is bound to hire at least 90% of Salvadorian citizens. Employers are obliged to ensure that all employees are entitled to work in El Salvador. Different requirements apply depending on the nationality/status of the individual concerned.

A non-national must require a temporary residence with a work permit and a multiple visa to leave and enter to the country anytime without more authorizations to work in El Salvador.

This residency card is issued by the General Directorate of Migration in coordination with a specific office of the Ministry of Labour.

The residency permit has a validity of 1 year.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work to be carried out by vulnerable groups (e.g. children or pregnant women).

### Outsourcing And/Or Sub-Contracting

There are not specific rules relating to outsourcing.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with civil law contractual principles, an employer may not change any term of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change).



Any change, to which the employee does not consent, will amount to a breach of contract. If the change is a significant one, which goes to the root of the contract, the employee is entitled to resign and treat the contract as terminated. In doing so, the employee may also claim that he has been constructively dismissed and seek damages accordingly.

### Change In Ownership Of The Business

When there is a change in the ownership of a business (except a change merely in the shareholding ownership), all employees are automatically transferred to the new employer with the same terms and conditions.

The substitution of an Employer is not a cause for termination of employment agreements. There are obligations imposed on both the old and the new employers. There is mandatory requirement placed on employers to notify to the workers when a substitution is going to happen (for example a merger or acquisition).

### Social Security Contributions

Employers and employees are required to make social security contributions (rates are determined annually). Employers are also required to contribute towards allowances payable to employees during their employment. These allowances include sick pay and maternity pay, for example.

### Accidents At Work

Employers have a duty to ensure the safety of their employees in the course of their employment. Employers are also responsible under labor and civil law for accidents caused by the acts of their employees where the employees were acting in the course of their employment. It is compulsory for the employer to take out insurance to cover potential claims by employees in this regard.

In addition to the Labor Code duties, a number of additional obligations are imposed on employers through legislation (most significantly the Health and Safety at work Rules 1971). The employer also owes specific statutory duties to members of the public who are affected by the activities of the employees and other people's employees working on their premises. In some instances, a breach of the employer's statutory duties may give rise to civil and subsidiary criminal liability.

### Discipline And Grievance

Currently, there are certain minimum steps which must be taken in relation to discipline and grievances to avoid an automatic unfair dismissal. These steps must be established in the Employer's Handbook. The Employer's Handbook must be approved by the Ministry of Labor to be enforceable.

The law does not establish a disciplinary process to be followed by the Employers; the disciplinary authority belongs to each Employer depending on the Employer's Handbook (previously approved by the Ministry of Labour). For example, most of the Handbooks establish:

1. First Offense: Verbal warning.
2. Second Offense: Written reprimand.
3. Third Offense: Suspension for one day without pay.
4. Fourth Offense: Suspension without pay for more than a day and up to thirty days, with the authorization of the General Directorate of Labour Inspection.
5. Final Offense: Termination of contract without liability according to Article 50 of the Labour Code.

An Employment Handbook may also stipulate that for three consecutive written warnings a worker can be dismissed, under Article 50 of the Labour Code, due to repeated negligence in performing their duties.

### Harassment/Discrimination/Equal pay

Employees are protected from discrimination on grounds of sex, age, sexual orientation, marital status, race, religion or belief, disability, part-time status and fixed-term status. Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), or on termination.

In the case of discrimination on grounds such as sex, race, age or religion the discrimination may be direct or indirect. In other instances, such as disability discrimination, there is no specific distinction between direct and indirect discrimination.

There is no qualifying period of employment for protection from discrimination. Discrimination can lead to a claim in the Ministry of Labor or the Employment Tribunal.

El Salvador's Labor Code, in article 123, stipulates that workers hired in the same company or business that develop the same work under identical circumstances, shall be entitled to earn equal wages regardless of sex, age, race, colour, nationality, political opinion or religious belief.

In 2000 El Salvador ratified ILO Convention 100, concerning Equal Remuneration for Men and Women Workers for Work of Equal Value and according to Article 144 of the Constitution it is the law of the Republic of El Salvador.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/expectations.



### Offsetting Earnings

It is not possible for employers to offset earnings against employees' debts. The employer must present a lawsuit against the employee. The employer may only make a deduction from the employee's wages if the employee has a contractual agreement with a Bank or other Financial Institution which permits the employer to make deductions and pay this money straight to the Bank. The employee must give his prior written consent to the deduction.

According to the case law of the Supreme Court of Justice, any deduction made must not result in the employee receiving less than the minimum wage, even if the employee has given written consent.

### Payments for Maternity and Disability Leave

Employees will benefit from certain payments subject to satisfying the relevant necessary requirements. To trigger statutory maternity pay entitlement, a woman must have accrued at least 6 months continuous employment before the expected week of childbirth and must still be employed during that week.

The employer must give the employee 12 weeks maternity leave. If the employer is enrolled in the Social Security Institute (ISSS), it will cover the 75% of the employee's basic wage during such leave. Recent benefits, enacted by the government, set out that the ISSS shall cover 100% of the employee's basic wages.

When an employee is absent from work due to a disability or illness, an employee will be entitled to receive statutory sick pay from the ISSS (the amount of which is determined by statute). An employee is entitled to statutory sick pay from the fourth consecutive day of absence, subject to earning a minimum amount on average beforehand.

### Compulsory Insurance

The Employers are required to maintain insurance at the ISSS (public institution) which will cover medical attention for bodily injury or disease sustained by employees during, and arising out of, their employment.

To be enrolled with a private insurance company is optional.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for public service duties. The employment agreement is considered suspended.

### Works Councils or Trade Unions

A Union can demand recognition if a sufficient proportion of the workforce desire it (35 members is the minimum). The Union must first make a written request to the Ministry of Labor. An employee who is a member of a Union has certain rights in relation to his employment. For example employees cannot be dismissed because of membership of, or for taking part in the activities of the Union. The members of the board of directors of the Union cannot be dismissed during their appointment.

### Employees' Right To Strike

There is a right for employees to strike. In order for a strike to be valid and recognized by Salvadorian labor law, it has to fulfil one of the following purposes:

1. Execution or revision of the collective bargain agreements;
2. Execution or revision of the collective convention of work; and
3. the defence of the professional common interests of the workers.

### Employers' Responsibility For Actions Of Their Employees

Employers are vicariously liable for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair dismissal.

An employer must be able to demonstrate a "potentially fair" reason for the dismissal. Whether the reason identified for the dismissal is fair depends on the tribunal's view as to the reasonableness of the employer's actions. At present, a failure to comply with the minimum statutory procedures (see discipline and grievance, above) will result in an automatic unfair dismissal. It is important to note that compliance with the minimum procedures in itself is not sufficient to guarantee fairness.

### Instant Dismissal

The employer can terminate an agreement by instant dismissal if the employee is guilty of gross misconduct, but even in this instance the employer must still follow the minimum statutory steps for dismissal (see discipline and grievance above) and must still be able to satisfy the test of fairness.

### Employee's Resignation

The agreement can generally always be terminated by the employee's resignation. A notice period is not required by law.

### Termination On Notice

It is not mandatory that the parties terminate the agreement by giving notice. Giving notice is only required if the employee has been hired to render services for a specific task or for a specific period of time.



### Termination By Reason Of The Employee's Age

The employment can be terminated due to the employee's age but only once the employee reaches the applicable retirement age. It is mandatory to fulfil criteria in order for dismissal to be fair:

1. in order to terminate by reason of the employee's age an employee must be at least 60 years old if he is a man and 55 years old if she is a women; and
2. employees must have pension contributions for at least 25 years before the termination. These contributions do not need to be, continuous.

### Automatic Termination In Cases Of Force Majeure

The contract will be deemed "frustrated" where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace are such examples.

### Termination By Parties' Agreement

The parties are entirely free to agree to terminate the employment agreement on any grounds they desire. Where the parties agree to terminate the employment, they are not required to obtain the courts' or regulatory body's approval before the termination is effective, but any termination agreement between the parties in which the employee purports to give up certain statutory legal rights will only be binding if it complies with certain requirements. By virtue of the Labor Code the agreement, reassignment or settlement will be void unless it is in writing (in forms delivered by the Ministry of Labor or signed before a Notary Public).

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director or other senior officer's employment. In the case of a statutory director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association) and this revocation of the directorship will need to be to registered in the Registry of Commerce.

### Special Rules For Categories Of Employee

There are no categories of employees to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous protection from unfair dismissal.

### Specific Rules For Companies in Financial Difficulties

There are special rules which apply to a company in financial difficulty. If a company goes into liquidation, all employees are automatically dismissed but they are still entitled to receive their salaries, severance and other payments that the Employer still owes.

### Restricting Future Activities

Generally clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable.

### Severance Payments

Normal contractual principles apply to severance payments included in the contract.

In cases of redundancy and unfair dismissal, there are statutory payments which are calculated by reference to the employee's age, length of service and salary (subject to certain statutory caps, reviewed annually).

### Special Tax Provisions And Severance Payments

Contractual payments (wages and bonus), social security and pension fund deductions are subject to tax in the normal way. Severance payment for termination is not subject to deductions.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Most claims relating to termination payments (including contractual claims) must be issued within 60 days of the event.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are none.

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# Estonia

# Estonia

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Labour Inspectorate has exclusive jurisdiction for most employment claims, but in certain cases and when the parties fail to reach agreement in the Labour Inspectorate, the case can be brought in the civil court. The appropriate court will depend on the defendant's residence address. The civil courts are Harju-, Viru-, Pärnu- and Tartu County Court. Appeals of county court judgments are resolved by the District Courts, located in Tartu and Tallinn. Appeals on District Court decisions will be resolved in the Estonian Supreme Court in Tartu. The time limit for submitting a petition to a Labour Inspectorate is generally four months. A time limit of 30 calendar days applies for claims relating to unfair dismissal. Employees have three years to submit a salary dispute claims.

### The Main Sources Of Employment Law

The main source of employment law relating to the employment contract, which regulates the terms of the contract, is the Employment Contracts Act. Other sources of employment law are the Working conditions of workers posted in Estonia Act, the Collective Agreements Act, the Seafarers Act, the Public and National Holidays Act, the Occupational Health and Safety Act, the Individual Labour Dispute Resolution Act, the Collective Labour Dispute Resolution Act, the Trade Unions Act, the Employees' Representatives Act, the Community-scale Involvement of Employees Act and the Funded Pensions Act and Parental Benefit Act.

### National Law And Employees Working For Foreign Companies

The statutory rights under national law will apply to all individuals physically working in Estonia. Foreign law will be applied to labour relations where this is established by the international agreements of Estonia, Estonian laws or agreements between the parties to the employment contract. Parties to the employment contract may choose the law applicable both to the entire employment contract and to a part thereof.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under national law will usually apply when the employee is physically working within the jurisdiction of Estonia. However, parties to the employment contract may also choose the law applicable both to the entire employment contract and to a part thereof.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract to be in writing. If a person does work for another person for remuneration, it is presumed to be an employment contract and the terms and conditions according to the Employment Contracts Act apply. Employment contracts can therefore be oral. Contracts that do not exceed two weeks are not subject to written form requirements.

### Mandatory Requirements:

#### Trial Period

If an employment contract does not specify a probation period, it shall be regarded as entered into without a probation period. The probation period may not exceed four months. In a fixed-term employment contract, the trial period cannot be longer than half of the contract term.

If, during the probation period, an employer decides that an employee is not suitable for the job, the employee can be dismissed before the expiry of the trial period by giving the employee 15 days written notice. The employee will not be entitled to severance pay.

#### Hours Of Work

A full time employee works 40 hours per week (which is deemed to be seven days), unless the employer and the employee have agreed that the employee will be a part-time worker. It is presumed that the employee works 8 hours a day.

The age of the employee affects how many hours he / she is allowed to work. For example:

1. employees who are 7-12 years of age can work 3 hours per day and 15 hours per week;
2. employees who are 13-14 years of age or who are required by law to attend school can work 4 hours per day and 20 hours per week;
3. employees who are 15 years of age and do not have to attend school can work 6 hours per day and 30 hours per week;
4. employees who are 16 (who do not have to attend school) and 17 years of age can work 7 hours per day and 35 hours per week.

#### Earnings

Minimum wages are reviewed annually, following agreement between the EAKL trade union confederation and the employers. The rate shall provide a standard of living that is close to (or even below) subsistence levels. The rate is enforced by law and applies nationwide to the majority of full-time employees. Minimum wages are gross amounts, that is, before the deduction of income tax and social security contributions. There is a restriction prohibiting employees from earning below a minimum hourly wage. The current monthly minimum wage is 320 EUR in the year 2013 and the current minimum hourly rate is EUR 1,90.

#### Holidays / Rest Periods

Employees are entitled to 28 calendar days of holiday per year. The employee and employer can agree to a longer period of annual holiday or a longer period can be provided by law. There are also various compulsory daily and weekly rest periods and breaks which have to be observed.

#### Minimum/Maximum Age

The normal minimum age of employees is 15 (which can be varied in certain cases), below which employees cannot work. The Employment Contracts Act regulates how and what work can be carried out by children of particular ages. Different rules (e.g. on working time) apply to children or young workers. There are no maximum age limits. Persons who have attained 63 years of age and who have completed at least fifteen years of pensionable service have the right to receive an old-age pension.

### Illness/Disability

An employee has the right to refuse to work if the employee is temporarily unable to work for the purposes of the Health Insurance Act. An employer may request an applicant to undergo a medical examination to confirm the employee's illness/disability and inability to work.

### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

### Pension Plans

There are 2 types of funded pensions – mandatory and supplementary funded pensions. A mandatory funded pension is a periodic benefit which is guaranteed pursuant to law. This type of pension fund is regulated according to the Funded Pensions Act and the the Social Tax Act. Compulsory contributions are made.

A supplementary funded pension is a benefit for the receipt of which units of a voluntary pension fund are acquired or an insurance contract for a supplementary funded pension is entered. The rate of mandatory monthly contribution is 2 per cent of the employee's remuneration. The supplementary funded pension is based on each person voluntary deciding to start saving either by contributions to a voluntary pension fund or by entering into a respective supplementary pension insurance contract with a life insurance company. The supplementary funded pension contracts can be made with life insurers as pension insurance, or by acquiring pension fund units with a fund manager. An employer may make contributions for a person to acquire units of voluntary pension fund and pay insurance premiums to a supplementary funded pension insurance contract. It is possible to choose between three different pension products: (i) pension insurance with guaranteed interest; (ii) pension insurance with investment risk, or (iii) pension fund. The estimates are that the state pension and the funded pension will together account for about half of a person's pre-pension income. According to the research, however, a person's pension should be 65-70% of his or her previous income in order to maintain the established life standard.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

Childbirth allowance is a single benefit which is paid on the birth of a child. The amount of support in 2013 is 320 EUR. In addition, 80% of Estonian local governments pay additional childbirth allowances.

More information about these allowances can be received from the town or rural municipality government of the place of residence.

Parental leave and child care allowance: The mother, father or some other family member has a right to 140 days leave. Maternity leave must be taken no later than 70 calendar days before the estimated birth date given by a doctor. If a person starts her maternity leave within 30 days of the estimated birth date, the maternity leave is shortened by the respective period. Employees can receive benefits whilst on maternity leave in accordance with the Health Insurance Act. Grandfather, grandmother, sister or brother, if he or she is the actual guardian of the child and if the mother or father of the child does not use the parental leave, may also be entitled to parental leave. In cases where the leave is used by some other family member, the employee must get the employer's agreement. Parental leave may be used either at once or in parts and the person on parental leave may change.

During the time of parental leave the employment contract is stopped, this means that the job is retained. The leave cannot be used if the child is partially or wholly on state maintenance. Childcare allowance is paid during parental leave. Childcare allowance is paid either to the parent or the actual guardian of the child. The amount of childcare allowance is dependent on the age of the children and the number of children in the family. The childcare allowance is ordinarily received during parental leave, but being on parental leave is not a prerequisite to receiving childcare allowance. A parent may terminate or stop parental leave (by resuming work) and keep getting child care allowance if somebody is not already using it. Parental leave is mostly used after maternity leave, but students who receive no benefit for pregnancy and maternity leave, may use the right for childcare allowance immediately after childbirth.

Childcare allowance shall not be paid in relation to the birth or adoption of whom maternity or adoption benefit is paid according to the Health Insurance Act or parental benefit according to the Parental Benefit Act.



### Compulsory Terms

In every employment contract, the parties must agree on the essential conditions of the contract: the names of the parties; the date when employment begins and when continuous employment began; the scales and intervals of pay; the hours of work; holiday entitlement; provisions relating to sickness or injury; provisions relating to pension and pension schemes; place of work; length of notice or anticipated fixed term; job title/job description; any collective agreements which apply; and certain information regarding grievance and disciplinary procedures. For employees posted abroad for more than one month, additional information is required (the currency in which remuneration is to be paid, any additional remuneration or benefits to be provided and the terms and conditions relating to return to Estonia).

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions. It is worth mentioning that parties to the employment relationship may agree to more favourable employment terms than those established by Estonian laws. However, it is highly advisable to include the agreed provisions in the employment contract.

## Types Of Agreement

Employment contracts may be: non-term; fixed-term, temporary, seasonal; on additional work, secondary job; with home workers; on the supply of services and other. As a rule, an employment contract is concluded for an indefinite period of time (non-term).

## Secrecy/Confidentiality

According to the Law of Obligations Act, employers may determine which information employees are obligated to keep as a production or business secrets. Employers and employees may agree on a contractual penalty for a breach of the duty to maintain confidentiality and the provisions of compensation for damage caused by a breach of the duty to maintain confidentiality to the extent not covered by a contractual penalty.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights.

## Hiring Non-Nationals

EU citizens have the right to stay in Estonia provided that they have valid travel documents or an identity card for up to three months. In order to obtain the right of temporary residence, an EU citizen must contact the local government authority and register his/her residence within three months from the date of entering Estonia. The right of temporary residence is granted for a period of five years. A residence permit for non-EU citizens is issued only if the wages of the foreigner ensure his/her subsistence in Estonia. An employer must pay the foreigner a salary which is at least equal to the product of the recent average yearly wages in Estonia published by the Statistical Office of Estonia and the coefficient 1,24.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

### Outsourcing And/Or Sub-Contracting

Changes of the owner of an enterprise, establishment or organisation, the subordination, founder or name thereof, any merger by forming a new enterprise, establishment or organisation, division by forming new enterprises, establishments or organisations, division by acquisition or merger by acquisition may not be a legitimate reason to terminate employment relations.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In the event of changes in production, scope, technology or labour organisation, as well as in other cases of production necessity, an employer is entitled to unilaterally change the conditions of an employment contract. If an employee does not agree to work under the changed working conditions, he may be dismissed from work by the employer provided that the employer follows the established dismissal procedure.

### Change In Ownership Of The Business

When there is a change in ownership of a business (except a change merely in the shareholding ownership), all employees are automatically transferred to the new employer on the same terms and conditions. These rules also apply where only a specific part of a business changes ownership.

There are obligations imposed on both the old and the new employers to consult with the affected employees though elected representatives, prior to the transfer taking place.

Employees are allowed to refuse to transfer to the new employer. However, if they do they will be deemed to have resigned and will not be entitled to any compensation (unless the refusal relates to a failure to maintain the same terms and conditions after the transfer).

### Social Security Contributions

Employers and employees are required to make social security contributions (rates are determined annually). Employers are also required to contribute towards allowances payable to employees during their employment. These allowances include sick pay, maternity pay and paternity pay.



### Accidents At Work

Employers have a common law duty to have regard to the safety of their employees. Employers are also responsible under common law for accidents caused by the acts of their employees where the employees were acting in the course of their employment. It is compulsory for the employer to take out insurance to cover potential claims by employees in this regard.

The employee who is unable to work as a result of an accident at work or occupational disease will be compensated for the pay lost in accordance with the Law on Social Insurance and Health Insurance Act. If the injured employee has not been covered by the above mentioned social insurance the employee's lost income, medical aid and treatment costs as well as the expenses related to the victim's social, medical and professional rehabilitation will be compensated by the employer in accordance with the procedure established by the Civil Code.

### Discipline And Grievance

The discipline and grievance procedure of the employer is defined by work regulations. They are approved by the employer subject to the approval by the representatives of the employees.

### Harassment/Discrimination/Equal pay

Employees are protected from discrimination on grounds of sex, age, sexual orientation, marital status, race, religion or belief, disability, part-time status and fixed-term status.

Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), on termination or even after the employment has ended (for example in writing the reference).

In the case of discrimination on grounds such as sex, race, age or religion the discrimination may be direct (for example refusing to employ a man or woman), or indirect (for example by imposing a condition which is irrelevant to the job but is such that fewer people of a particular group can qualify). In other instances, such as disability discrimination, there is no specific distinction between direct and indirect discrimination.

The Gender Equality Act prohibits discrimination based on sex in the private and public sectors. The Act also imposes an obligation on state and local government agencies, educational and research institutions and employers to promote gender equality of men and women. Where there is a claim based on gender inequality the employee has the right under the Act to claim for compensation.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/expectations. Employer is obligated to provide the employee with training based on the interests of the employer's enterprise, and bear the training expenses and pay average waged during the training.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts. However, the employer may only make a deduction from the employee's wages if it is required or permitted by a statutory or contractual provision or the employee has given his prior written consent to the deduction.

### Payments for Maternity and Disability Leave

The health insurance fund pays benefits to those employees who are temporarily unable to work. Such benefits are a percentage of the employee's average income per calendar day.

When an employee who cares for a child under 3 years of age or for a disabled child under 16 years of age is ill or is receiving obstetrical care or employees nursing a child under 12 years of age at home, that employee is entitled to receive a benefit of 80 per cent of their average salary. Employees on maternity or adoptive leave are entitled to 100 per cent of their salary whilst on such leave.

Employees who cannot work because of an illness or injury caused as a result of an occupational disease or an accident at work are also entitled to receive 100 per cent of their salary during such leave.

### Compulsory Insurance

Unemployment insurance is a type of compulsory insurance for those working in Estonia. The purpose of unemployment insurance is to pay benefits to employees who are unemployed as a result of, collective redundancy or the insolvency of employers.

The employee's unemployment insurance contribution is currently 2% of the employee's salary and other remunerations. The employer's contribution is 1% of their salary. The rates of unemployment insurance contributions are established by the Supervisory Board of the Unemployment Insurance Fund. The following persons are exempt from paying unemployment insurance contributions: workers who have reached the age at which they are entitled to old-age pension; workers who have been granted early-retirement pension; sole proprietors; self-employed legal persons; and members of the Riigikogu, the President of the Republic, members of the Government of the Republic, members of local government councils, the Chancellor of Justice and judges.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

In labour relations the rights and interests of employees may be represented and protected by the trade unions. Where there is no functioning trade union and the staff have not transferred the function of employee representation to the appropriate trade union, then the employees shall be represented by the trustee elected by secret ballot at the general meeting of the staff. One and the same person may not represent and protect the interests of both the employees and the employers.



When protecting the rights and interests of the employees, trade unions are guided by laws regulating trade union activities, the Employment Contracts Act and their respective regulations. The status of trustee and their activities are established by law.

### Employees' Right To Strike

The employees and their representatives have the right to organise and manage strikes.

### Employees On Strike

Employees shall vote as to whether or not to strike at a general meeting of employees. At least 50 per cent of employees must vote to strike in order for the decision to be legal. Once the decision to strike has been taken, a strike committee must be established to lead the strike and represent the interests of the employees during the strike negotiations with the employer.

The employees participating in a strike shall not receive remuneration for work during the strike, and the employer shall not make social security payments for striking employees, unless otherwise agreed by the parties to the collective interest dispute.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair dismissal.

An employment contract will expire:

1. upon grounds established by the Employment Contracts Act and other laws (termination of the employment contract by mutual agreement, upon contract's expiry, upon the notice of employee, due to circumstances beyond the Employees control, on the Initiative of an employer for reason arising from employee;)
2. upon the liquidation of an employer without legal successor; and
3. upon the death of an employee.

For every type of termination the procedural requirements differ.

### Instant Dismissal

The employer can terminate an agreement by instant dismissal if the employee is guilty of gross misconduct. Even in this instance the employer must still follow the minimum statutory steps for dismissal and must still be able to satisfy the test of fairness.

### Employee's Resignation

An employee is entitled to terminate a non-term employment contract, by giving his employer written notice of at least 30 days. The employee may cancel a fixed-term employment contract only extraordinarily with good reason prescribed in the Employment Contracts Act. The collective agreement may set a different period of notice, but it shall not exceed one month.

### Termination On Notice

The amount of notice that an employer must give to an employee depends on the period of employment. If the employee has worked for:

1. less than one year, the employer must give a minimum of 15 calendar days notice;
2. one to five years, the employer must give a minimum of 30 calendar days notice;
3. five to ten years, the employer must give a minimum of 60 calendar days notice;
4. ten year or more the employer must give the employee a minimum of 90 calendar days notice.

Employees who wish to terminate the employment contract must give the employer a minimum of 30 calendar days notice.

Employment contracts may be cancelled during the probationary period by giving no less than 15 calendar days' notice. An employee does not have to notify the employer of extraordinary cancellation if, considering any and all circumstances and mutual interests, it cannot be reasonably demanded that the performance of the contract be continued until the expiry of the agreed term or term of advance notice.

### Termination By Reason Of The Employee's Age

Only the circumstances, which are related to the qualification, professional skills or conduct of an employee, are recognised as valid. Termination by reason of the employee's age is discriminatory.

### Automatic Termination In Cases Of Force Majeure

The death of the employee shall be treated as automatic termination of the employment relationship.



### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire.

Where the parties agree to terminate the employment, they are not required to obtain the courts' or regulatory body's approval before the termination is effective. However, any termination agreement between the parties in which the employee purports to give up certain statutory legal rights will only be binding if it complies with certain requirements.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director or other senior officer's employment. In the case of a statutory director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association).

### Special Rules For Categories Of Employee

There are no categories of employees to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous protection from unfair dismissal.

### Specific Rules For Companies in Financial Difficulties

An employer may extraordinarily terminate an employment contract for economical reasons if the continuance of the employment relationship on the agreed conditions becomes impossible due to a decrease in the work volume, reorganisation of work or other cessation of work (lay-off).

A lay-off is also extraordinary cancellation of an employment contract and is valid:

1. upon cessation of the activities of an employer; or
2. upon declaration of the bankruptcy or termination of the bankruptcy proceedings of an employer without declaring bankruptcy, due to abatement of the bankruptcy proceedings.

Before cancellation of an employment contract due to a lay-off an employer shall, where possible, offer another job to an employee. An employer shall, where necessary, organise an employee's in-service training or change the employee's working conditions, unless the changes cause disproportionately high costs for the employer. Upon cancellation of the employment contract, employers shall take into account the principle of equal treatment. Upon cancellation of an employment contract due to a lay-off, the employees' representative and those employees raising children under three years of age have a preferential right to keep their job.

### Restricting Future Activities

A written agreement between an employee and an employer regarding the restriction of the occupational activities of the employee after termination of employment is possible. Such agreement is permitted if the employer pays the employee adequate monthly compensation for observing the restriction. The restriction must be for a reasonable period of time.

### Severance Payments

Upon terminating an employment contract due to a lay-off, an employer shall pay an employee compensation of one month's average wages. An employee also has the right to receive an insurance benefit under the Unemployment Insurance Act.

Upon terminating a fixed-term employment contract for economic reasons, an employer shall pay employees compensation equal to the salary due for the remainder of the contract.

No compensation is paid if the employment contract is terminated due to force majeure.

If an employee terminates the employment contract extraordinarily because the employer has committed a fundamental breach of the contract, the employer shall pay the employee compensation of three months' average wages. A court or a labour dispute committee may change the amount of the compensation, taking into account the reasons for the termination and the interests of the parties.

If an employer or an employee gives advance notice of termination later than provided for by law or a collective agreement, the employee or the employer has the right to receive compensation to the extent to which they would have had the right to obtain upon the term of advance notice.

### Special Tax Provisions And Severance Payments

Severance payments are subjected to personal income tax in Estonia.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

The general time period for submitting a petition to a Labour Inspectorate is four months. Employees have 30 calendar days to submit a claim for unfair dismissal. If the employee is making a claim relating to salary, the claim must be submitted within three years of the contract being terminated.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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# European Union (EU)

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There is no specialised European labour court; member state courts have competence. However, member state labour courts may refer questions to the European Court of Justice (ECJ) in Luxembourg for a "preliminary ruling" on the interpretation of EU employment measures.

### The Main Sources Of Employment Law

Member states have their own unique national employment laws. However, under the principle of the primacy of EU law, there are provisions of the EC Treaty, Directives and Regulations which directly affect the employment laws of member states. The interpretations of EU provisions by the ECJ are binding on the courts of member states. General principles of EU law also form a source of law affecting national employment law measures. Since the enactment of the Treaty of Lisbon in 2009, the EC Treaty is officially called the Treaty of the Functioning of the European Union (TFEU). The Treaty of Lisbon sets out new numbering for the Articles of the Treaty, and the new numbering is used here.

### National Law And Employees Working For Foreign Companies

The parties to the contract will usually have a free choice as to the (national) law that governs the contract. However, in the absence of an express choice, Article 8 of the Rome Convention determines the applicable law governing the employment contract. As for social security contributions and benefits, these are subject to national law, but the choice of which national law applies is determined according to EC Regulation 883/2004.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The Posted Workers Directive (96/71) provides that workers from one member state who are posted to another member state for a limited period are guaranteed certain minimum employment protection and rights applicable within the host member state. The minimum rights of the host member state can include mandatory collective agreements. Where member states do not have mandatory collective agreements it may be possible to pay the posted workers less than other workers from the host member state where their pay is set in some other way, for example, by a (non-mandatory) collective agreement.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The form of the employment agreement is governed by national law.

## Mandatory Requirements:

### Trial Period

Trial periods are governed by national law of the individual member state.

### Hours Of Work

Several Directives regulate working hours, including Directive 2003/88 which provides that workers should not work, on average, in excess of 48 hours per week. Specific measures apply to certain employment sectors such as Directive 2002/15 for transport.

It is possible for employees to agree to contract out of the 48 hour week. Only some member states, notably the UK, have implemented into national law the right of individuals to opt-out of the 48 hour working week.

### Earnings

Minimum wages are set by each individual member state as determined by national law.

### Holidays / Rest Periods

Directive 2003/88 requires that each member state takes measures to ensure that workers are entitled to paid annual leave of at least four weeks and provide for various compulsory rest and break periods.

### Minimum/Maximum Age

Non-discrimination is a general principle of EU law enshrined in Article 16E of the Treaty. Article 21(1) of the Charter of Fundamental Rights specifically prohibits age discrimination (along with other forms of discrimination). Directive 2000/78 also requires member states to implement legislation prohibiting age discrimination (along with other forms of discrimination).

Discrimination is prohibited on the grounds of sex, sexual orientation, marital/civil partnership status, race, religion and disability.

### Illness/Disability

Similar provisions apply to anti-discrimination on grounds of illness or disability as apply to age discrimination. There is also considerable legislation at European level on health and safety at work.

### Location Of Work/Mobility

EU nationals are entitled to move freely between member states to look for and engage in employment. Employers (including prospective employers) cannot discriminate on the ground of nationality.

### Pension Plans

Pension plans and employer-employee pension contributions are mainly subject to national law. However, EU law influences for example the right to transfer pensions where a worker moves from one member state to another (eg EU Directive 98/49). It would also be contrary to EU law to deny part-time workers access to occupational pensions. The Pensions Directive (2003/41) sets out rules which apply to all pension institutions in the EU. Article 157 of the Treaty requires equality between the sexes on pay, and pensions are considered pay for these purposes.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

On maternity leave, Directive 92/85 provides that female employees are entitled to receive a minimum of 14 continuous weeks' maternity leave. Women on maternity leave must be paid at least as much they would receive if they were off work for sickness reasons. The ECJ has also ruled unlawful any dismissal by reason of pregnancy and has enshrined the principle that there must be no less favourable treatment of women by reason of pregnancy/maternity. Employees on maternity leave are entitled to most employee benefits accrued whilst on maternity leave. Similarly, women returning to work following maternity leave have the right to request a more flexible working arrangement, such as part time hours. Employers have the right to refuse the request but only if the refusal can be objectively justified (which is an objective test assessed by national courts, namely that the justification must be a proportionate means of achieving a legitimate aim).

On adoption and paternity leave, Directive 06/54 gives discretion to member states whether to recognise distinct rights for paternity and/or adoption leave. Where a member state does recognise these rights, it must ensure that employees are protected from dismissal in exercising their adoption/ paternity leave rights and also that at the end of the period of leave workers are entitled to return to their jobs or equivalent posts on terms that are no less favourable to them.

In addition to specific rights on maternity, paternity or adoption leave, Directive 96/34 grants all employees (male or female) an additional right to a minimum of three months parental leave to enable them to take care of their natural-born or adopted child. The member states have discretion to determine the age limit of the child by when parental leave must be taken up until a maximum of 8 years old. Both the mother and father have separate non-transferable rights to parental leave. The Directive does not require that the parental leave must be paid, which is a matter for individual member states. The right to parental leave was extended to four months by Directive 10/18 which was enacted on 8 March 2010 and which member states were required to implement by 8 March 2012.

### Compulsory Terms

Compulsory employment terms are determined by national law.

### Non-Compulsory Terms

The ability of employers and employees to agree to non-compulsory terms is also governed by the national law of each member state.

## Types Of Agreement

The national law of each member state sets out the types of difference employment agreements that are acceptable in that member state. Directives 97/81 and 99/70 prohibit less favourable treatment of workers working part-time or working on a fixed term contract.

## Secrecy/Confidentiality

National laws determine the duties of secrecy and confidentiality that can be imposed on employees during and after employment.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

National laws govern the ownership of inventions and other intellectual property rights.

## Hiring Non-Nationals

There is a general principle of non-discrimination in the Treaty, and EU nationals are entitled to move freely between member states to look for and engage in employment. Non-EU nationals benefit from EU anti-discrimination laws. As such, non-EU nationals cannot be refused employment because of their sex or nationality/race. However, member states have national immigration rules which mean non-EU nationals must have the correct visa and work permit before being allowed to work in that member state.

### Hiring Specified Categories Of Individuals

Various EU directives set out non-discrimination and equal treatment requirements. For example, EU Directive 2000/78 provides that discrimination in employment on the grounds of religion or belief, disability, age or sexual orientation is prohibited. Directive 2000/43 implements the principle of equal treatment between persons irrespective of racial/ ethnic origin.

### Outsourcing And/Or Sub-Contracting

EU Directive 2004/18 sets out procurement rules and guidelines which members states must follow. Outsourcing and sub-contracting could be affected by the Directive depending on whether they meet certain financial thresholds. Outsourcing and sub-contracting may also come within the remit of the Acquired Rights Directive (2001/23), which safeguards employees' rights in the event of a transfer of an "undertaking".

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Changes to the contract of employment are governed by the national law of the member state.

### Change In Ownership Of The Business

EU Directive 2001/23 contains provisions relating to the safeguarding of employees' rights in the event of transfers of undertakings or business, or parts of undertakings or businesses. Among other things, the Directive ensures that correct information and notification is given to employees and that employee representatives are not denied recognition by the transferee employer. Other than in certain prescribed exceptions, the Directive also prohibits dismissals or changes to employment contracts due to the transfer alone.

### Social Security Contributions

The requirement for an employer or an employee to make social security contributions is determined by the national law of the member state. The choice of which national law applies is determined according to Regulation 883/2004.



### Accidents At Work

Article 153 of the Treaty specifically calls on member states to improve 'the working environment to protect workers' health and safety'. A framework Directive on workplace safety (89/391) and a number of individual Directives on, for example, workplaces, work equipment, personal protective equipment, manual handling of loads and display source equipment are relevant. There are also laws on workers' exposure to electromagnetic fields and carcinogens. Directive 2009/104 makes provision for minimum health and safety requirements when employees use equipment at work.

### Discipline And Grievance

The national law of member states may provide rules which govern discipline and grievance procedures.

### Harassment/Discrimination/Equal pay

Article 157 of the EC Treaty enshrines the principle that men and women should receive equal pay for equal work. EU Directive 2000/78 sets down rules prohibiting direct and indirect discrimination, harassment and victimisation in the employment sphere (as well as in other spheres, such as the provision of goods and services). This EU directive covers discrimination on grounds of sex, race ethnic or national origin, disability, age, sexual orientation, religion and belief.

### Compulsory Training Obligations

Compulsory training obligations, if any, are provided for by the national law of member states.

### Offsetting Earnings

Employers who wish to offset employee debt against their wages will have to look to the national law of the member state to see whether or not this is permissible.

### Payments For Maternity And Disability Leave

Payments for maternity and disability leave are provided for by the national laws of the member state.

### Compulsory Insurance

Compulsory insurance is member state specific and is governed by the applicable national law.

### Absence For Military Or Public Service Duties

Absence for military or public service duties is a matter for the national law of each member state.

### Works Councils or Trade Unions

Unions are normally organised at national level. However, there is also an emerging EU industrial relations system, with European Works Councils (EWCs) being created, promoting a transnational system of worker representation. EWCs are bodies representing the European employees of a company. Through them, workers are informed and consulted at a transnational level by management on the progress of the business and any significant decision that could affect them. A consolidating Directive 2009/38 will come into force in member states in June 2011, but will operate largely on the same basis as the previous regime subject to certain clarifications. The legislation covers businesses with at least 1,000 employees within the European Economic Area (EEA) and at least 150 employees in at least two countries within the EEA. Currently there are around 820 EWCs representing 14.5 million workers at transnational level.

The composition and function of each EWC is adapted to the specific situation of the company by an agreement between management and workers' representatives of the different countries involved.

EU Directive 2002/14 also gives certain information and consultation rights to employee representatives where the employer only employs 50 staff in any one member state.

### Employees' Right To Strike

An employee's right to strike is set out in the member state's national law. In addition, the Charter of Fundamental Rights of the European Union enshrines certain political, social, and economic rights for EU citizens and residents. The Charter was drafted and officially proclaimed in 2000, but its legal status was then uncertain and it did not have full legal effect until the Treaty of Lisbon came into force on 1 December 2009, subject to the British, Czech and Polish protocols. The Charter provides for employees' social rights to be applied within companies, e.g. workers' rights to be informed, to negotiate and take collective action – in other words, the right to strike.

### Employees On Strike

If employees are on strike, their rights whilst on strike are dealt with by the national law of each individual member state.

### Employers' Responsibility For Actions Of Their Employees

The national law or case law of each member state will set out whether an employer can be held vicariously liable for the acts of its employees during the course of employment.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

Each member state may have different procedures for terminating employment agreements which will be enshrined in national law.

### Instant Dismissal

Instant dismissal is governed by national law.

### Employee's Resignation

Whether or not an employee can resign in order to terminate employment is a matter for national law.

### Termination On Notice

Termination of employment on notice is decided by national law.

### Termination By Reason Of The Employee's Age

Under Directive 2000/78, it is unlawful to terminate a worker's employment directly on the grounds of age, unless it can be objectively justified. If termination is on grounds of retirement the termination is exempt from the discrimination provisions. Member states are largely free to set their own national default retirement ages. Employers which set their retirement ages below the national retirement age will have to objectively justify their decision.

### Automatic Termination In Cases Of Force Majeure

Whether or not employment can be automatically terminated in cases of force majeure will be decided by the national law of the member state.

### Termination By Parties' Agreement

National law will set out whether or not the parties can terminate the employment contract by agreement.

### Directors Or Other Senior Officers

Directive 2004/109 (Transparency Directive) requires directors to set out a statement of their relevant responsibilities on the accounts and reports. Other measures regarding the termination of a director or other senior officer's employment are governed by national law.

### Special Rules For Categories Of Employee

The national law of member states may provide special rules for certain categories of employees.

### Specific Rules For Companies in Financial Difficulties

Directive 2008/94 provides rules on protecting employees in the event of the insolvency of their employer. In situations where the business in difficulty is bought by another employer, most of the employees' previous employment rights are protected (under Directive 2001/23). This protection cannot be provided if insolvency proceedings have been initiated with a view to liquidating the business.

### Restricting Future Activities

National law of the member state sets out whether or not an employer can restrict the future activities of the employee.

### Severance Payments

Employees' entitlement to severance payment is set out under national law.

### Special Tax Provisions And Severance Payments

The tax treatment of severance payments are a matter of national law.

### Allowances Payable To Employees After Termination

Whether or not employers are liable to pay allowances to employees after termination is a matter for national law.

### Time Limits For Claims Following Termination

The time limits imposed on employees for bringing a claim following termination is different in each member state and is determined by national law.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The primary source of European law is the Treaty. The original Treaty was the Treaty of Rome, and there have been various amending Treaties, the latest of which was the Treaty of Lisbon 2009. The official name is now the Treaty of the Functioning of the European Union (TFEU). Secondary EU law takes the form of "Regulations", "Directives" and "Decisions". Most employment measures at EU level take the form of Directives. A Directive is binding on each member state but leaves the form and method of implementing the EU provisions into national law to the member state. Certain principles have been established to ensure EU law interacts across all member states.



### Direct Effect and Primary Effect

In accordance with the doctrine of "direct effect", as developed by the ECJ, Treaty articles that set out rights and obligations which are clear, precise, unconditional, and leave no discretion, produce "direct effect" - that is, they can be relied on by nationals (businesses and individuals) in the national legal system and courts of their member state. Provisions of Regulations, Decisions and, subject to certain exceptions, Directives can also be directly effective, provided the same four conditions are met. If certain provisions of Directives have not been transposed into member state national law (either at all or by the required timeframe), or have been incorrectly implemented, employees can rely directly on the Directive if they work in "public sector" employment, i.e. employers which can be considered "emanations of the state". Employees working within the private sector can also rely on the Directive in the same circumstances, provided the incorrect national legal measure can be construed and interpreted in the light of the Directive.

The doctrine of direct effect must be read in conjunction with the doctrine of primacy (or supremacy). Primacy means that EU provisions take precedence over conflicting provisions of national law. Thus, the uniformity of EU law, in all member states, is preserved.

### Interpretation

There are certain approaches to interpretation unique to European law. The "literal" interpretation used in common law jurisdictions is often replaced by the "contextual, purposive or teleological" approach, particularly where the wording of any text is ambiguous. In addition, all language versions are authentic (there are 20 official languages). According to the ECJ, regard must be had to all language versions in interpreting EU provisions. Where differences occur, the principle of linguistic equality means it is necessary to achieve a uniform interpretation. Finally, the ECJ is not bound by its own previous judgements, which can often lead to contradictory case law.

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# Finland

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employment disputes are brought in the civil courts; District Court, Court of Appeal and Supreme Court. The Labour Court handles legal disputes arising out of collective agreements or the Collective Agreements Act.

### The Main Sources Of Employment Law

Employment law, as with Finnish law in general, is mainly regulated by legislation. The main sources of legislation include the Employment Contracts Act (55/2001), the Collective Agreements Act (436/1946), the Working Hours Act (605/1996), the Annual Holidays Act (162/2005) and the Occupational Safety and Health Act (738/2002). There are also various collective agreements that are generally binding on employers who act within the scope of such an agreement.

### National Law And Employees Working For Foreign Companies

Finnish law will apply to all employees who work within the territory of Finland, regardless of the nationality of the company and of the employee.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under Finnish law will usually apply only when the employee is physically working within the jurisdiction of Finland. However, Finnish law may still apply in appropriate cases, such as if the employment in another jurisdiction is only temporary.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

An employment contract may be oral, written or electronic. If the employment contract is made orally, the employer must also present the employee with a written statement of the principal terms of work.

## Mandatory Requirements:

### Trial Period

There is no legal obligation to provide trial periods when engaging new employees, but it is common in practice to do so. The maximum length for a trial period is 4 months.

### Hours Of Work

Regular working hours shall not exceed 8 hours a day or 40 hours a week. The regular weekly working hours can also be arranged in such a way that the average is 40 hours over a period of no more than 52 weeks. In period-based work, the working hours can be arranged so that they do not exceed 120 hours during a three-week period or 80 hours during a two-week period.

### Earnings

There is no minimum wage provided by law, but collective agreements usually contain a minimum wage.

### Holidays / Rest Periods

Employees are usually entitled to 4 or 5 weeks´ paid holiday per year, and various compulsory daily and weekly rest periods. In addition to holiday pay, the employee is usually paid a holiday bonus. The holiday bonus is based on collective agreements, and it is usually 50 % of the holiday pay.

### Minimum/Maximum Age

There is a normal minimum age of 15. However a 14 year old may be admitted to light work during school holidays or temporarily during school time. The employment relationship is usually terminated before the age of 68 (see section "Termination By Reason Of The Employee's Age") and a flexible retirement starts usually at 63.

### Illness/Disability

The employee is entitled to be absent from work if he is unable to perform his work due to an illness or an accident. The employer is liable to pay wages during the employee's sick leave (see section "Payments For Maternity And Disability Leave" below).

### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. If the employee has no primary fixed workplace, an explanation as to how the employee will work in various work locations must be given in writing.

### Pension Plans

The employer is liable to organise the employee's employment pension security. The pension security is organized through an insurance company. The employer deducts the employee's employment pension premium from the employee's pay.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A range of parental rights exist, including maternity, paternity, parental leave, child-care leave and part time child-care leave. The length of maternity leave is always 105 weekdays, paternity leave is usually 18 weekdays and parental leave is 158 weekdays maximum. One of the parents can stay on child-care leave up until the child reaches the age of three. The parents of a small child have the right to shorten their working hours. One of the parents is entitled to stay at home for a maximum of four days if a child under 10 years of age falls ill. By law the employer is not obliged to pay wages during maternity, paternity, parental leave, child-care leave and part time child-care leave.

The provisions regarding parental rights are applied equally to those employees with an adopted child. The only exception to this rule is that child-care leave of a parent of an adopted child continues until a period of two years has elapsed from the adoption, or at the most until the time the child starts school.

### Compulsory Terms

The terms that must be provided to the employee by the end of the first pay period at the latest include: the domicile or business location of the employer and the employee; the date when employment begins; the duration of a fixed-term employment contract and the justification for specifying a fixed term; the trial period; the place where the work is to be performed or, if the employee has no primary fixed workplace, an explanation of how the employee will work in various work locations; the employee's principal duties; the collective agreement applicable to the work; the grounds for the determination of pay and other remuneration, and the pay period; the regular working hours; the manner of determining annual holiday; the period of notice or the grounds for determining it. For employees sent abroad for more than one month, additional information is required.



### Non-Compulsory Terms

The employer and the employee are free to agree other terms in addition to the compulsory provisions, provided that these terms are not less favourable to the employee than the minimum statutory provisions or the relevant collective agreement.

## Types Of Agreement

The employment contract is a free-form contract. It may be concluded in writing, orally or electronically. The employment contract is usually concluded for an indefinite period. A fixed-term employment contract may only be concluded for a justified reason.

## Secrecy/Confidentiality

The employee may not utilize or divulge to third parties the employer's trade or business secrets during the term of employment. If the employee has obtained such information unlawfully, the prohibition continues after termination of the employment relationship. Utilizing or divulging trade or business secrets after termination of the employment relationship may be also criminal.

It is common practice for secrecy and confidentiality to be expressly covered in the terms of the contract.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

The employer is usually entitled to the rights of employee inventions. If the employer wants to claim the rights to an invention, the invention must be such that the employer can make use of it in his field of activity. Irrespective of this, the employer may always claim the rights to an invention that is the outcome of a specific task given to the employee.

Copyrights in the employment relationship belong to the employer if this has been agreed either explicitly or implicitly. In cases where there is no agreement, copyrights have to be evaluated on the basis of the employee's tasks and established practice in the trade, among other things.

The law has specific provisions on programs, databases and circuit designs created in an employment relationship. If they are created while the employee carries out his duties arising from the employment relationship, copyright belongs to the employer. In other cases, the transfer of rights has to be agreed on.

## Hiring Non-Nationals

A non-national cannot usually work in Finland without a residence permit for employed persons. Citizens of the Nordic and EU countries do not need such a permit. The employer has the obligation to ensure that non-national employees have a permit to work in Finland. The employer also has to keep records of non-national employees at his service.

### Hiring Specified Categories Of Individuals

There are specific rules about hiring minors and other legally incompetent persons.

### Outsourcing And/Or Sub-Contracting

Outsourcing and sub-contracting constitutes a transfer of business if the business or part thereof to be outsourced / sub-contracted remains the same or similar after the new entity begins carrying out the work (see section "Change In Ownership Of The Business" below).

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

The terms of employment can be changed by agreement. This can be done by using the employer's right to supervise work or by giving notice on the employment contract. Mandatory provisions of law and collective agreements limit the parties´ contractual freedom and notice procedure.

### Change In Ownership Of The Business

When an enterprise is assigned, rights, obligations and employment benefits valid at the time of the assignment devolve to the new owner. The assignor and the assignee are jointly and severally liable for the employee's pay or other claims deriving from the employment relationship that have fallen due before the assignment. Unless otherwise agreed, however, the assignor is liable to pay the assignee employees for claims that have fallen due before the assignment.

When an employer assigns its enterprise, employees shall be entitled to terminate their employment contracts as from the date of the assignment regardless of the period of notice otherwise applied to the employment relationship or of its duration.

### Social Security Contributions

Employers and employees are required to make social insurance contributions. The employer contributions include the employer's social security contribution, the employment pension premium, the occupational accident insurance premium, the unemployment insurance premium and the group life insurance premium. The employer's social security contribution is paid to the tax authorities. Other premiums are paid to the respective insurance companies. The employer deducts the employee's employment pension premium and unemployment insurance premium from the employee's pay. The employee's sickness insurance premium is included in his tax deductions.



### Accidents At Work

Employers have to insure their employees against accidents at work and occupational diseases. Employees working no more than 12 days per calendar year do not have to be insured. If the employer has not acquired the necessary insurance, the Federation of Accident Insurance Institutions indemnifies the employee in case of an accident.

Employers have to notify the insurance company of all accidents at work and occupational diseases. If the accident has resulted in death or serious injury, it has to be reported to the police and the Office of Occupational Safety and Health Inspectorates.

### Discipline And Grievance

If the employee has neglected his duties in the course of his employment or committed a breach thereof, the employer may give him a warning. After that the employer may be entitled to terminate the employment relationship.

### Harassment/Discrimination/Equal pay

Employees are protected from unjustified discrimination on grounds of sex, age, health, disability, national or ethnic origin, nationality, sexual orientation, language, religion, opinion, belief, family ties, trade union activity, political activity and any other comparable circumstance. The employer has a duty to treat his employees impartially in other respects as well, unless an exception is warranted by justified reasons. The discrimination ban must be observed also in hiring new employees.

The employer is liable to take action against harassment at the workplace. The harasser can be given a warning or, as a last resort, his employment relationship can be terminated.

Paying employees different salaries because of the employee's sex or other discriminatory reason may be deemed illegal discrimination.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally. However, if the employer is planning to fire an employee based on re-organization (financial and production-related grounds for termination), the employer has a limited obligation to train the employee so that he can fulfil other duties in a new vacant position.

### Offsetting Earnings

In cases where the employer is owed money from the employee, the employer can offset such debt against the employee's pay. However, only 1/3 of the net wages may be deducted. The employer may not make any deductions if the counterclaim is not clear and contested.

### Payments For Maternity And Disability Leave

By law, the employer is not obliged to pay wages during maternity leave. However, some collective agreements contain provisions on the employer's obligation to partially pay wages during maternity leave. The Social Insurance Institute (KELA) pays maternity allowance. The amount of such an allowance depends on the prior earned incomes of the applicant.

According to law, employees are entitled to pay during disability leave. The length and details of paid disability leave are in practice determined in the applicable collective agreement. The length of paid disability leave is staggered according to the length of the employment relationship. Entitlement to national disability allowance paid by the Social Insurance Institution begins after the disability has lasted for 9 weekdays. The employer is entitled to be reimbursed disability allowance paid to the employee, if the employee has received pay from both the employer and the Social Insurance Institution.

### Compulsory Insurance

Employers have to insure their employees against accidents at work and occupational diseases.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties. Military or public service is compulsory for men and voluntary for women.

### Works Councils or Trade Unions

Employees in Finland are highly organised into trade unions. The main work of the trade unions nowadays is to negotiate collective agreements establishing rates of pay, working hours, holidays and other terms of employment in specific industries. Collective agreements are binding on the trade union that signs the agreement and their member associations.

### Employees' Right To Strike

Trade unions are obliged to ensure that the employees that they represent do not undertake industrial action (strike) while the collective agreement is in force. The duty to maintain industrial peace does not, however, extend to individual employees.

### Employees On Strike

Employees on strike are not entitled to pay during the strike.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for damages caused by their employees through an error or negligence at work. If the employee has caused the damage intentionally or through gross negligence the employee is liable to the employer to an amount deemed reasonable.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

The employer may not terminate an indefinitely valid employment contract without proper and weighty reason. The reasons for terminating employment are divided into two categories: person related grounds and production related grounds.

Such reasons can be:

1. serious breach or neglect of the employee's obligations (person related grounds for termination), or
2. the work has diminished substantially and for permanently for financial or production-related reasons, or for reasons arising from reorganisation of the employer's operations (financial and production-related grounds for termination).

Employees who have neglected their duties under the employment relationship shall not be given notice before they have been warned and given a chance to amend their conduct. Additionally, the employer shall, before giving notice, find out whether it is possible to avoid giving notice by giving the employee other work inside the company.

If the work of employees has substantially and permanently diminished, they may not be given notice if they can be given other work that is equivalent to that defined in their employment contracts. If no such work is available, they shall be offered other work equivalent to their training, professional skill or experience.

In companies that employ at least 20 employees, the employer may not dismiss any employee on financial and production-related grounds without organising a co-operation procedure. The employer must negotiate with the employees over the planned decrease of the workforce.

The termination of employment has to be made within a reasonable time after the employer has been informed of the reasons for terminating. The termination does not have to be in a specific form; however, it is recommended that the termination is recorded in writing.

### Instant Dismissal

The employer is only entitled to terminate an employment contract with an immediate effect upon extremely weighty reasons regardless of the applicable period of notice or the duration of the employment contract. Such a reason may be deemed to exist if the employee commits a breach of his employment contract or he neglects duties based on the employment contract or the law which have an essential impact on the employment relationship in such a serious manner as to render it unreasonable to expect that the employer should continue the contractual relationship even for the period of notice.

### Employee's Resignation

An employment agreement can be terminated by the employee's resignation. Contractual or minimum notice periods provided by law must be followed.

### Termination On Notice

Parties can terminate an employment agreement on notice, but there may be liability for unfair dismissal (see above). Contractual or minimum notice periods by law must be followed.

### Termination By Reason Of The Employee's Age

The employment relationship is terminated without a notice period at the end of the calendar month during which the employee becomes 68 years of age, unless the employer and the employee agree to continue the employment relationship.

### Automatic Termination In Cases Of Force Majeure

Finnish labour legislation does not include a provision of force majeure. In practice, force majeure may however be a ground for termination.

### Termination By Parties' Agreement

The parties are free to agree on termination of employment.

### Directors Or Other Senior Officers

The position of a managing director is not covered by the laws applicable to employees. However, directors and senior officers are mainly covered by employment laws.

### Special Rules For Categories Of Employee

Pregnant employees and employees using their rights to maternity, paternity, parental or child-care leave have special job security. Also employee representatives cannot be given notice on the usual grounds. Also the employment relationship cannot be terminated when the employee carries out military or public service duties.

### Specific Rules For Companies in Financial Difficulties

The employer may terminate the employment contract if the work has diminished substantially and permanently due to financial difficulties of the employer (financial and production-related grounds for termination). If an employee is given notice on that basis and the employer needs new employees within 9 months of termination of employment for the same or similar work that the employee was doing, the employer shall offer work to this former employee first if the employee continues to seek work via an employment office.

### Restricting Future Activities

A non-competition agreement can be made for a particularly weighty reason. The non-competition agreement limits the employee's right to conclude an employment contract with another employer or otherwise compete with the employer. Normally the non-competition agreement will last for a maximum of 6 months.



The non-competition agreement may include a provision on liquidated damages, which shall not exceed the amount of pay received by the employee for the 6 months preceding the end of the employee's employment relationship.

An agreement of non-competition does not bind the employee if the employment relationship has been terminated for a reason deriving from the employer.

### Severance Payments

Parties may agree on severance payment. Severance payment may diminish unemployment insurance contributions.

### Special Tax Provisions And Severance Payments

Contractual payments are subject to tax in the normal way, which means that they are taxed like a normal salary.

### Allowances Payable To Employees After Termination

Employers are not required by law to contribute to any allowances payable to employees after termination. Unemployed employees are entitled to unemployment allowance paid by the Social Insurance Institution of Finland.

### Time Limits For Claims Following Termination

Claims following termination must generally be issued to the District Court at the latest within 2-5 years.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Some of the collective agreements are confirmed generally applicable by the Ministry of Social Affairs and Health. Generally applicable collective agreements must be followed also by employers who do not belong to any employers´ association. An employer, who is bound by a collective agreement, is liable to observe its provisions to all employees who work in the scope of the agreement.

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# France

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

All lawsuits arising from a dispute relating to an employment agreement must be brought before a French Labor Court, i.e. "Conseil de Prud'hommes". The judges are non-professional, being specified that half of them are elected by the employers and the other half by the employees.

The judgments of the French Labor Court may be appealed before the Court of Appeal.

If the employer has been ordered to pay a provisional payment of salaries by the French Labor Court, he will have to make the payment even if a party has appealed this judgement.

### The Main Sources Of Employment Law

All employment matters are governed by European Law, the French Labour Code, Collective Bargaining Agreements, company rules (ie Company level agreement, policy rules…), individual employment contracts, custom of a profession ("usages") and local practice and lastly case law.

### National Law And Employees Working For Foreign Companies

French law will be applied if the employment agreement provides for its application. Even if the agreement does not so provide, the French Public Policy Rules will still apply, pursuant to the Rome I Regulation (593/2008/UE).

French law will also apply if there is no applicable law mentioned in the contract, as long as the work is performed in France.

The contractual law set forth under the terms and conditions of the employment agreement, must not contradict the French public order.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The parties are free to maintain the application of French law to French employees working in a foreign country.

If nothing has been provided for in the employment contract, the usual place of performance of the work will determine the law governing the contract.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The employment contract is generally in writing, in order to avoid any misunderstanding as to its terms. Furthermore, it is mandatory, according to the French Labour Code, that some provisions have to be made in writing.

## Mandatory Requirements:

### Trial Period

If the Company or the employee wants to provide a trial period, it must be provided for in the employment contract. It is limited in terms of duration, between two and four months (for executives only), depending on the function of the employee. The trial period is renewable under specific conditions and needs the employee's approval in writing.

### Hours Of Work

The legal weekly working time is 35 hours.

This weekly working time can be exceeded subject to the execution of an individual agreement between the employer and the employee in the respect of law.

This working time can also be exceeded through a company's agreement signed by the employer and the company's trade union(s) representative(s). However, even if a company agreement exists, individual agreements between the employers and the employees may be required.

The hours of work may be distributed either from Monday to Friday, or Monday to Saturday, depending on the activity.

### Earnings

A minimum salary ("S.M.I.C.") is fixed each year, below which an employee cannot be hired.

Collective Bargaining Agreements may also provide for minimum salaries that may be higher.

### Holidays / Rest Periods

Employees are entitled to a minimum of 2.5 working days holiday per month.

They may benefit from paid vacation days from the first month of their employment.

During the above mentioned legal weekly working time, employees must have a minimum of:

1. 20 minutes of rest for 6 hours of work.
2. 11 hours of rest between 2 days of work.
3. 35 hours of rest per week.

### Minimum/Maximum Age

The minimum working age is 16 years old and the maximum age to retire is now 70 years old. However, employees are free to retire as soon as they may be entitled to a retirement allowance. From the age of 65, the employer may suggest that the employee considers retirement but may not automatically place him to do so.

### Illness/Disability

The French Labour Code provides requirements relating to "professional" illness and disability.

These requirements are more constraining than those provided for in cases of "regular" illness or disability and impose binding procedures on the employer.

It is forbidden to dismiss an employee because of his/her illness, which constitute discrimination.

### Location Of Work/Mobility

The employer must specify in writing the employee's normal place of work. Mobility clauses can be included in the employment contract but cannot be used by the Company in bad faith.

Constraining mobility clauses are valid only if they are justified by the needs of the business, if they clearly define their geographical limit at the date of hiring, and if they do not interfere with the employee's right to a family life.



### Pension Plans

The employer must contribute to a general pension plan for the employee.

Complementary retirement insurance must also be provided for if the employee is an executive.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

The French Labour Code provides for parental rights, notably maternity/paternity/adoption, parental leave and pay and notably for a specific protection against dismissal if the termination of the employment contract is liable with this leave.

These leaves suspend the employment agreement. When the employee returns in the Company, he/she must be assigned to the same position as before he/she left, or to a similar position.

### Compulsory Terms

The title of the employee, the duration of the notice period and the relevant Collective Bargaining Agreement must also be provided for in the employment agreement.

For employees working abroad, the contract must specify the applicable social security regime, the provisions of the Collective Bargaining Agreement applicable during the posting abroad, compulsory provisions of the law of the country where the employee is working, and the conditions of the return to France.

### Non-Compulsory Terms

Other terms can be provided for in the employment contract, as long as these provisions are at least as favourable to the employee than the law or the relevant Collective Bargaining Agreement would be.

## Types Of Agreement

French labour legislation favours indefinite term employment contracts. But other types of contracts exist, such as fixed term employment contracts, part time employment contracts, and contracts for agency work and for apprenticeships.

Specific contracts must be made in writing, on the day employment starts at the latest. They must bear specific compulsory provisions to be applicable. Failing to do so, those employment contracts may lead to economical sanctions for the employer, and may be upgraded to an indefinite term employment contract.

## Secrecy/Confidentiality

There is a general obligation of confidentiality during and after employment contract even if there is no written clause in it.

This obligation concerns the employer's commercial and business information as well as his know-how.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

There are legal provisions in the French IP Code as well as in most Collective Bargaining Agreements relating to IP Rights.

Generally, inventions made by an employee will belong to the employer if they fall within the employee's job description.

## Hiring Non-Nationals

French citizens do not need a work permit to be hired in France. No work permit is required to hire EU nationals. However, during the transitional period, Bulgarians and Romanians will have to apply for a work permit until 2014.

Non-EU citizens must apply for a work permit.

### Hiring Specified Categories Of Individuals

Companies with over 20 employees must ensure that disabled people constitute at least 6% of the total staff (after one year).

People under 18 years of age cannot work at night.

Pregnant women cannot occupy dangerous jobs.

### Outsourcing And/Or Sub-Contracting

There are legal provisions relating to subcontracting which mean that the employer has to apply the same rules regarding salary, work at night, safety rules and maternity rights to all detached/outsourced employees.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers are allowed to make amendments to the employment contract, provided that these changes can be justified, either on personal or economic grounds.

There are two categories of changes that can be made to the employment contract:

1. Changes regarding the working conditions may be imposed to the employee. If an employee objects to the changes, the employer may consider instant dismissal.
2. Major modifications have to be accepted by the employees. If an employee objects to the changes, the employer may terminate the contract on notice (see definition below).

In both cases, a modification addendum to the employment contract must be executed by the parties.

### Change In Ownership Of The Business

The French Labour Code provides for an automatic transfer of the individual contracts to the new employer. All the obligations and benefits related to the individual contracts are transferred.

The Works Councils or employees' representatives (if any) of the concerned companies need to be consulted.

Each affected employee must be individually informed in writing.

If there is a major modification to the contract (change of functions, salary, place of work etc.), the employees are allowed to refuse and in this case the employer is liable for the termination of the contract and is obliged to proceed with a redundancy procedure and to pay the relevant indemnities.



### Social Security Contributions

Social Security Contributions are paid both by the employer and the employee and are aimed at financing the allowances paid to the employees, such as sick pay, maternity pay and unemployment allowances.

The amount payable is approximately 22% for employees and 50% for employers.

In the case of illness and maternity, employers are required to contribute towards allowances payable to employees, depending on the provisions of the relevant Collective Bargaining Agreement.

### Accidents At Work

Employers have a duty to ensure the safety of their employees and are liable for any failure in such respect. Employers are also responsible for torts caused by the acts of their employees when the employees were acting in the course of their employment.

The French Labour Code provides for a prohibition against terminating the employment agreement in cases of an accident at work.

### Discipline And Grievance

Discipline and grievance issues are provided for in the French Labour Code. For companies employing more than 20 people, company rules must outline the disciplinary procedures.

### Harassment/Discrimination/Equal pay

The French Labour Code deals with:

1. Sexual and moral harassment. Moral harassment can be defined as actions which tend to deteriorate the working conditions and thus the health of the employee. Recent case law has ruled that as long as the employee has brought a claim for harassment, the burden is on the employer to provide evidence that there was no harassment.
2. Protection against discrimination based on any element of the employee's personal life (sex, age, race, religious opinions). The French Government created the HALDE, replaced in 2011 by the "Défenseur des Droits", to deal with discrimination claims of individuals.
3. Equal pay principle. Since 2009, French law provides for negotiations in companies with regards to equal pay between men and women.

### Compulsory Training Obligations

Employers have a general obligation to train their employees so that they can perform their function adequately.

Moreover, the French Labour Code provides for compulsory training obligations for employees, amounting to 20 hours of training per year, with a maximum of 120 hours. Employees must ask the employer to benefit from these rights.

### Offsetting Earnings

Employers may offset earnings against employees' debts. The French Labour Code limits such offsetting to 10% of the salary.

### Payments For Maternity And Disability Leave

The French Labour Code provides for payments for maternity and disability leave in order for the salary to be maintained.

The duration and amount of these payments depends on the Collective Bargaining Agreement.

### Compulsory Insurance

By paying social fees, employers are insured in case of receivership procedures or judicial winding-up. In such case, salaries will be paid by the French Administration.

### Absence For Military Or Public Service Duties

Public service duty no longer exists in France.

### Works Councils or Trade Unions

Under the French Labour Code, companies with over 11 employees must appoint employee representatives, and companies with over 50 employees must establish a works council. The number of representatives depends on the number of employees in the Company.

Employee representatives and works councils are informed and consulted on a monthly basis on general business issues affecting employees and they can also be consulted through exceptional meetings if need be.

Only companies with over 50 employees are concerned by trade union delegations. A union's delegation can exist if at least 2 employees joined a trade union.

Trade unionists may be appointed if they obtained at least 10% of the votes at the first row round of the professional election.

There is a specific protection for employees involved with such representation in order to prevent discrimination in the performance of their duties: in particular, their employment agreement cannot be modified without their consent, and their employment cannot be terminated unless the Labour Administration has authorised such termination.

Moreover, all such employees are entitled to delegation hours (that is to say, hours paid by the employer to perform such functions, even during working time).

### Employees' Right To Strike

The right to strike exists, subject to limits concerning public services. For private companies, this right is granted subject to an abuse of power duly acknowledged in Court.



### Employees On Strike

Except in cases of a gross offence such as violence or destruction of company equipment, the employer cannot fire employees who are on strike. Employees on strike cannot even be replaced by employees with a fixed term contract.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of their employees under the French Civil Code. However, the employer will not be liable when the employee acts beyond the scope of his duties.

With regards to security issues, the employer is liable for damages caused by an employee to another.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

Both the employer and the employee can terminate the employment contract.

The employer must follow specific procedures to terminate the employment contract but these procedures differ depending on the ground for termination (i.e. whether it is a personal or economic ground). The grounds for termination must be duly justified in the termination letter.

In most cases, there are certain minimum steps which must be followed before termination to avoid a lawsuit for unfair dismissal, such as: inviting the employee to a preliminary meeting and providing notice of the termination by registered mail letter within certain time limits.

### Instant Dismissal

Instant dismissal may be effected in cases of gross misconduct, but even in such a case, the employer has to follow the correct procedure (see above).

Such procedure implies the compliance to strict time limits.

The employee is deprived of any dismissal indemnity, and any notice period.

### Employee's Resignation

Employees may resign but have to respect a notice period. The resignation does not entitle the employee to unemployment allowances.

French case law also provides that the employee is entitled to an "instant resignation" in cases of gross misconduct by the employer.

### Termination On Notice

Termination on notice is possible if the procedure is respected. The notice depends on the type of professional qualification held by the employee, and varies between one and three months.

The notice period can be executed or not, depending on the employer's will. Even if the employer does not want the employee to work during the notice period, the salary during this period must be paid.

The notice period may be extended by consent.

### Termination By Reason Of The Employee's Age

An employee can be obliged to retire once he / she reaches the age of 70.

### Automatic Termination In Cases Of Force Majeure

In very exceptional cases, "force majeure" can terminate the contract, provided three cumulative conditions are met: (i) the event is not foreseeable, (ii) it could not have been avoided and (iii) it is outside the control of the employer.

In practice, courts rarely apply force majeure.

### Termination on mutual Agreement

Employer and employee can decide to terminate their employment contract through the device of termination by mutual consent. This process, which allows the parties to terminate the employment contract without any dismissal procedure and without alleging any ground, entitles the employee to unemployment benefits.

### Directors Or Other Senior Officers

If the company's bylaws allow it, when an executive officer of the company (e.g., directors, chief executive officer, member of the board of directors, General manager, president of the board etc.) is being dismissed, unlike an employee, he/she can be dismissed instantly and without any obligation on the company to either justify any grounds for dismissal or pay any indemnity.

French law does not consider executive officers to be employees. Therefore, disputes are brought before the Commercial Courts.

### Special Rules For Categories Of Employee

Approval from the French Labour Administration is necessary to dismiss an employee representative. Termination by consent must also be approved by the French Labour Administration.

Employee representatives, works council and trade union members: termination must be authorised by the French Labour Administration;

Pregnant women and women on maternity leave: termination is not possible except in cases of gross misconduct or absolute necessity to terminate;

Sick employees: termination is not possible on ground of illness except in cases where the absence of an employee is harmful to the company and provided the employment guarantee (minimum duration under which the contract must be maintained) provided for by the Collective Bargaining Agreement is respected.



Employees with a fixed term contract: termination is not possible except in cases of an agreement between the parties, gross misconduct, force majeure, if the employee is offered a contract for an indefinite term or in case of physical incapacity.

Professionalization contracts, which are linked to the employee's studies, cannot be terminated except in cases of gross misconduct.

### Specific Rules For Companies in Financial Difficulties

There are specific rules which apply in case of financial difficulties.

First of all, there are different levels of financial difficulties, which may lead to two solutions:

1. the continuation of the activity: in such case, redundancies are made by the legal representative of the company;
2. in case of a winding up of the company, the legal representative is no longer in charge and a liquidator is appointed by the judge. In such case, redundancies are made by this liquidator.

In both case, redundancy rules have to be applied.

These rules are quite complex.

Redundancies must be made under a real economic and financial ground. This economic and financial ground is difficult to assess in general because court decisions regularly add criteria.

The procedure to be enforced depends on the number of employees in the company, the number of employees to be made redundant, the presence of employees' representatives.

Pursuant to those criteria, different obligations have to be fulfilled, and delays to enforce the redundancies may change.

### Restricting Future Activities

It is possible to include in the contract a non-competition clause upon termination, to protect the interests of the Company.

Such clause must be limited in terms of territory, duration of time (maximum of 2 years) and scope, and must also provide for a financial compensation to be paid to the employee after the termination of the employment agreement (generally between ¼ and ½ of the monthly salary, depending upon the Collective Bargaining Agreement, or the contract) for the duration of the restricted period.

### Severance Payments

Severance payments are calculated according to the Collective Bargaining Agreement or the law, depending on the seniority of the employee, the age of the employee and if more favourable, the terms of the contract.

### Special Tax Provisions And Severance Payments

No social charges are charged on severance payments which are less than 75,096 euros (for 2014) or 2 years of salary. Such payments will bear an 8% tax (CSG / CRDS). If the amount of severance indemnities exceed the overall amount of 375.480 euros (for 2014), social charges are charged on the total amount.

In case of termination of the employment agreement by mutual consent, no social charges are charged in the above limits except a specific one of 20 % called "forfait social" to be paid by the employer.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

For claims relating to compensation or damages for unfair dismissal there is a time limit of 2 years.

The time limit for challenging a redundancy is 5 years. However, the letter of notification may reduce this time limit to 12 months.

Claims relating to the payment of salaries must be brought within 3 years form the 1st july 2013.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

In France, due to the length of the procedures before the Labour Courts, it is common for employers and employees to negotiate terms of settlement rather than pursue claims through litigation.

To such extent, the law of June 2008 is significant as it enforces the new device of the termination by consent.

The updating of The French Labour Code in May 2008 and the laws of June and August 2008 contribute to more flexibility for employers and safety for employees.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Labour Courts (Arbeitsgerichte) have exclusive jurisdiction for most of the claims arising from an employment relationship regardless of the value of the matter in dispute and especially concerning the termination of employment agreements. Civil Courts in general have jurisdiction for claims of managing directors and management board members.

### The Main Sources Of Employment Law

In Germany, employment law is not governed by one single "Employment and Labour Law Act" but by many different laws (national and European), individual contracts, collective bargaining agreements, employers/works council agreements and common practice. Some of the most important national statutes are the Federal Leave/Vacation Act (Bundesurlaubsgesetz), the Act for Continued Remuneration during sickness and holidays (Entgeltfortzahlungsgesetz), the Dismissal Protection Act (Kündigungsschutzgesetz), the Works Council Act (Betriebsverfassungsgesetz) and the Collective Bargaining Agreements Act (Tarifvertragsgesetz). Even though German law is based on the idea of codification, an "Employment and Labour Law Act" is still missing and many gaps of the existing regulations are filled by case law, especially by the highest German Labour Court (Bundesarbeitsgericht).

### National Law And Employees Working For Foreign Companies

Parties to an employment agreement can choose what law/jurisdiction shall govern their contract. However, certain basic mandatory provisions of German law that are aimed at the protection of the employee will automatically apply to any employee working in Germany regardless of the parties' choice of law. If no choice is made the law of the place of employment will govern the agreement.



### National Law And Employees Of National Companies Working In Another Jurisdiction

Minimum standards comparable to German statutes have to be guaranteed to an employee if he is assigned to work in another country within another jurisdiction.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

In general, under German law written agreements are not required for an employment relationship to become effective. However, certain substantial requirements need to be fixed in a written agreement and handed to the employee no later than one month after the beginning of the employment. In order to be effective any fixed term of an employment relationship must be in writing.

### Mandatory Requirements:

#### Trial Period

Any probation period for an employment shall be no longer than 6 months. It is not mandatory and has to be agreed upon between the parties. A trial period can reduce the notice period for a termination to a minimum of 2 weeks' notice period.

#### Hours Of Work

Working hours are limited to 8 hours per day/48 hours per week (Monday – Saturday). The daily working hours can be extended to 10 hours provided that 8 hours per day on average are not exceeded over a period of 6 calendar months/24 weeks. Certain exceptions apply. Work on Sundays or public holidays is possible for certain industrial sectors (e.g. police, emergency rescue, catering etc.) or with special permit by competent authority.

#### Earnings

There is no general minimum wage required by German law. Certain collective bargaining agreements, especially for the building industry, set a mandatory minimum wage. A statutory minimum wage of 8,50 €/hour shall be implemented by the 1st of January 2015. Lower wages on the base of representative collective bargaining agreements shall be possible for a period of transition until the end of 2016.

Collective Bargaining Agreements may also provide for minimum salaries that may be higher.

#### Holidays / Rest Periods

Every employee is entitled to a statutory minimum of 4 weeks paid vacation. Often, individual contracts or collective bargaining agreements grant more vacation days of up to 6 weeks per year. Disabled employees are entitled to an additional 5 vacation days per year. Statutory daily and weekly rest periods have to be observed.

#### Minimum/Maximum Age

Persons under the age of 15 cannot be employed (with certain exceptions). There is no maximum age for employees; however, the statutory old age pension will generally be paid after turning 67.

#### Illness/Disability

Employees continue to receive their remuneration for a period of 6 weeks in cases of inability to work due to sickness. Employees have to inform the employer of their sickness immediately and have to submit a respective doctor's certificate stating the expected duration of their absence after 3 days.

Disabled persons have special rights under German law, e.g. the right of employment in accordance with their ability to work and extra vacation days. Depending on the number of disabled employees in a company a representative body for disabled employees can be elected. Before firing a disabled employee a certain authoritative body has to be asked for its permission. The permission will usually be granted if the termination of the employment is not associated with the disability of the employee.

### Location Of Work/Mobility

The normal place of work is usually stated in the employment agreement. Mobility clauses can be included but must be enforced reasonably. The employer must reimburse any travel expenses for temporary visits to other work places.

### Pension Plans

Pension plans are not mandatory but very common. If a pension plan exists certain legal requirements have to be observed.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

German law grants several different rights such as paid time off with regard to pregnancy/ maternity (6 weeks before and 8 weeks after childbirth), paternity and adoption. Any mother or father can claim parental leave for up to 3 years for each child. The main obligations of the employment relationship will be suspended during parental leave. Under certain provisions different rights and possibilities to change the employment agreement apply e.g. part-time work during parental leave.

### Compulsory Terms

Within one month of commencing employment the employer must fix certain compulsory provisions in a written employment agreement: name and address of employer and employee; commencement date; for fixed term agreement the duration of the fixed term; place of work; short description of the scope of duties of the employee; amount and contents of remuneration; agreed working hours; number of annual vacation days; notice period for termination of the agreement; a general reference to any applicable collective bargaining agreements and/or works council agreements.

### Non-Compulsory Terms

Beyond the compulsory terms the parties are free to agree upon any other provisions aslong as they do not conflict with any applicable laws.

### Types Of Agreement

All employment relationships are based upon a contractual agreement between employer and employee – whether or not it is written down. There are different types of agreements: full-time, part-time, fixed term or for an unlimited period of time. For certain types of agreements some special rules need to be observed. Regardless of the type of agreement all employees have the same rights, i.e. no employee shall be discriminated against because he/she is on a fixed term or a part-time contract.

### Secrecy/Confidentiality

Any employment relationship has an implied duty for the employee to keep confidential any company and trade secrets learned during the term of the employment. Furthermore, the parties can agree upon an express rule for secrecy/confidentiality in the agreement which may last even after the employment relationship has ended.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The Act on Employee's Inventions (Arbeitnehmererfindungsgesetz) stipulates what happens to the ownership of IP rights during the term of an employment relationship. The parties may agree upon different regulations in the employment contract.



### Hiring Non-Nationals

Only non-nationals with a valid residence and work permit are eligible to be employed in Germany. The permit(s) have to be obtained by the employee at the German embassy/consulate in the non-national's home country or (under certain circumstances) at the local Aliens Department in Germany. In general, all nationals of the European Union and the EEA do not require a visa and are automatically entitled to work in Germany.

### Hiring Specified Categories Of Individuals

With regard to hazardous activities certain restrictions apply for pregnant women, children and disabled persons. They are all protected by special laws.

### Outsourcing And/Or Sub-Contracting

German law provides special rules for the sub-contracting of workers from another employer. An employer who professionally leases out his employees to other companies requires a special permit.

Outsourcing generally has the effect that all employees of the outsourced part of the company are automatically transferred to the new company – including their employment agreements with all rights and duties.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

Within the scope of the employment agreement and its interpretation the employer has the right to give instructions to the employees. Significant modifications have to be executed by a dismissal with the option of altered conditions of employment or by consent of the employee. The employee can file a claim against the altering dismissal in order for the Labour Court to verify whether the altered conditions of the employment agreement are reasonable for the employee.

### Change In Ownership Of The Business

For an asset deal, German law states that all employees are automatically transferred to the new employer on the same terms and conditions of their employment agreement. The new owner of the business may not change the employees' contractual provisions for a period of one year. These rules also apply if only one part of a business is sold via an asset deal to a new owner.

Dismissals due only to the change in ownership are not permitted. All employees affected by the change in ownership have to be informed of the change and its consequences for them in writing by the new or the old owner prior to the change.

Works councils – in certain cases of old and new owner – have to be involved in the proceedings of the change according to the rules under German law. The works councils have to be informed in detail about the planned changes prior to the execution of the changes. In certain cases the employer has to discuss with the works council and find a way how to compensate the employees for the consequences the changes may have for the employees, e.g. agreement on severance payments if the changes cause a reduction of work force.

### Social Security Contributions

Statutory social insurance (including pension insurance, unemployment insurance, health insurance, long-term care insurance and employee accident insurance) is mandatory for most employees. Besides the contributions for employee accident insurance which are borne by the employer alone, employer and employee each pay half of the social security contributions. The employee's part of the contribution is automatically deducted from his monthly gross salary.

### Accidents At Work

Employers have the obligation through several laws to ensure the employee's safety while working for the employer. German law requires all employers to contribute to the statutory accident insurance that covers every employee. Contributions vary depending on the number of employees and the type of business.

### Discipline And Grievance

With regard to equal treatment/discrimination complaints of employees, each employer has to appoint an internal ombudsman. For all other issues the works council is the authoritative board for grievance proceedings.

In cases of breach of contract due to misbehaviour the employer can issue a warning towards the employee. The warning letter has to follow certain rules set by numerous court decisions. Statutory rules with regard to the warning letter itself do not exist. If the employee repeatedly misbehaves in the same or a similar way the employer may terminate the employment relationship.

### Harassment/Discrimination/Equal pay

Equal treatment is a general principle under German law. It has been implemented in its own statute in 2006 (General Equal Treatment Act) following the transformation of a Directive by the European Union. The statute prohibits direct or indirect discrimination or harassment due to race, ethnic background, gender, religion, belief, disability, age or sexual identity. The employer has to compensate the employee for any damages arising out of the discriminating behaviour or harassment of another employee or client if the employer did not take any measures to prevent the discrimination/harassment. If a person did not get employed due to discrimination the employer has to pay damages of three month's salary that the person would have earned if he/she had been employed. In other cases the amount of damages is not limited.



The principle of equal pay for equal work is also implemented into German laws, e.g. the Act on Posting of Workers (Arbeitnehmerentsendegesetz) provides that an employer must grant workers posted from other companies or countries the same wages as he pays his own workers according to generally binding collective bargaining agreements.

### Compulsory Training Obligations

There are no general training obligations imposed by German law. However, several professions may set up their own standards/requirements.

### Offsetting Earnings

A minimum amount of the earnings is protected against offsetting. Above that amount the employer may offset earnings against employee's debts in cases where the employer has received a certified notice of the employee's creditor.

### Payments For Maternity And Disability Leave

A mother is eligible for paid time off 6 weeks before the childbirth and 8 weeks after it. In these periods the mother will continue to receive her net salary partly paid for by her statutory health insurance, the employer and the federal state. Employees continue to receive their remuneration from the employer for a period of 6 weeks in case of inability to work due to sickness. After that period the employees usually obtain sick pay from their health insurance. Under specific circumstances the employer can reclaim expenses for maternity pay and disability pay from the statutory health insurance companies.

### Compulsory Insurance

Statutory social insurance (including pension insurance, unemployment insurance, health insurance, long-term care insurance and employee accident insurance) is mandatory for most employees. Except for the employee accident insurance, the employer and employee share the contributions for the social insurance.

### Absence For Military Or Public Service Duties

Where an employee is drafted for military or public service duties or in case the employee voluntarily joins the military the employment relationship is suspended, i.e. the employee has no obligation to work and the employer does not have to pay the employee. After the end of military or public service duties the employment relationship will continue on the same terms and conditions. The employer may not dismiss the employee due to the draft or the voluntary military service. Regulations do not apply to employees joining federal volunteer services.

### Works Councils or Trade Unions

It is a constitutional right to establish, maintain and be a member of a trade union. Collective bargaining agreements with a minimum standard of working conditions can be entered into by a trade union and a single employer or a trade union and an employers' association for certain industrial sectors.

Companies with at least 5 employees have to establish a works council upon request of the employees. Standards for working conditions are usually established between the employer and a works council in a works council agreement. For certain actions of the employer the involvement or approval of the works council is required. For example, the works council has to be consulted prior to any dismissal.

### Employees' Right To Strike

The right to strike is granted by the German constitution. A strike has to follow certain rules which are not set by a statute but have been developed through many decisions of the highest German Labour Court (Bundesarbeitsgericht). If a strike is not authorized and operated by a trade union and is aimed at improving the conditions of a collective bargaining agreement the strike is illegal.

### Employees On Strike

If the strike is legal (see above) an employee cannot be dismissed for the reason of participating in the strike. During a strike the employer does not have to pay those employees joining the strike. They will receive "strike money" from their trade unions if they are a member of the trade union on strike.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of their employees as long as the damages caused are not due to intentional or grossly negligent behaviour of the employees.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

The letter of termination must be in writing. The termination must comply with the terms of the contract. In most cases there are certain minimum steps to be followed. The legal or contractual notice period must be observed.

If a works council is established it has to be granted a hearing before the termination.



### Instant Dismissal

The employer can terminate by instant dismissal where the employee is guilty of gross misconduct. Certain minimum procedural steps have to be observed in these cases (hearing of the employee and the works council) and certain time-limits have to be observed.

### Employee's Resignation

The agreement can generally be terminated by the employee's resignation. Normally the contract will stipulate the notice period required.

### Termination On Notice

The employee can terminate on notice. The notice period depends on the contract or the duration of continuous employment.

An employer with more than 10 employees can terminate on notice, if the duration of employment is less than 6 months. If an employee is employed for more than 6 months' notice must be based on specific reasons derived from the person or conduct of the employee or other company related grounds.

If the employer has less than 10 employees there are basically no restrictions for terminating the employment.

### Termination By Reason Of The Employee's Age

There is no legal retirement age that automatically terminates the employment. Termination due to the employee's age must be contractually agreed.

### Automatic Termination In Cases Of Force Majeure

There is no automatic termination in cases of force majeure. This would be treated as serious cause and would generally justify an instant dismissal if the event comes from outside the influence of the employer.

### Termination on mutual Agreement

The parties are entirely free to agree a termination agreement. The parties are not required to obtain the courts' or regulatory body's approval before the termination is effective. The agreement will be void if it is not in writing.

### Directors Or Other Senior Officers

Senior officers who are entitled to hire and fire employees by their own discretion do enjoy only reduced protection against unfair dismissal.

In the case of a statutory director, termination of employment does not automatically bring the directorship to an end. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association). Vice versa the dismissal from the function of the directorship does not automatically bring the employment contract to an end.

### Special Rules For Categories Of Employee

Special rules apply for (I) members of the works council, (II) severely handicapped employees, (III) women throughout pregnancy and four month after giving birth, (IV) employees on parental leave and (V) employees who assume certain official duties within the company, e.g. the data security officer, the officer in charge of emission control.

### Specific Rules For Companies in Financial Difficulties

There are only special rules in cases of adjudication of bankruptcy. In this case the employee or administrator can terminate the employment contract with a notice period of three months (overruling all other agreements under the employment contract or a collective bargaining agreement).

For companies with 10 employees or more all rules regarding protection against unfair dismissal remain valid also in case of bankruptcy. The closing down of a business leads to a justified termination for company related grounds.

### Restricting Future Activities

Generally, parties are free to agree clauses restricting the future activities of an employee. The agreement must be in writing and is only valid if it includes a compensation for the employee of at least 50% of the annual salary during the year preceding the termination. Maximum duration for a non-competition clause is two years.

### Severance Payments

In general, severance payments are freely negotiable. German law does not establish a right to severance payments. When determined by a court in cases of unfair dismissal, the age, the duration of employment and the salary are generally considered when calculating the amount of severance payment.

In cases of unfair dismissal the severance payment is usually between 50% - 100% of a monthly salary for every year of employment.

### Special Tax Provisions And Severance Payments

Since 2006, there have been no special tax exemptions applied to severance payments.

The only tax privilege is that such extra income – if the sum of all payments exceeds in the respective year the normal annual income – can be treated for taxation as if it would have been paid distributed over five years.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.



### Time Limits For Claims Following Termination

Usually a cut-off period for contractual claims is agreed upon in the employment contract or is stipulated by a collective bargaining agreement. Labour Courts have approved time limits of 3 months following the origination of a claim. Otherwise the standard period of limitation for claims applies (3 years).

In cases of unfair dismissal a claim for continued employment has to be served within three weeks of receiving the notice of termination.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Despite the volume of legislation there are lots of gaps in the statutory rules. Labour law in Germany is to a great extent case-law.

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# Greece

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employment disputes are brought in the single-judge civil court (Employment Disputes Section). There are specific rules that apply to employment disputes which simplify the procedure before the court (e.g. shorter deadlines, the possibility of the parties to appear at the trial without a lawyer etc).

### The Main Sources Of Employment Law

The main sources of employment law are the following:

- The Greek Constitution.
- International Treaties.
- European Directives and Regulations.
- The Greek Civil Code.
- Employment legislation.
- Collective Labor Agreements and decisions of arbitral tribunals related to such collective agreements.
- Internal Company Regulations specifying the company's policies relating to the conditions of work.
- Customary practices.
- Case law.

### National Law And Employees Working For Foreign Companies

Greek legislation applies to non-nationals working in Greece. However, the parties may choose the governing law of the employment agreement on the condition that they observe all mandatory legal rules provided in Greek law (e.g. those governing the working hours, the minimum wage, the employees' equal treatment, the prohibition of juvenile work, the protection of maternity and pregnancy etc). Given that a great part of Greek employment legislation comprises of mandatory rules, choosing the law of another jurisdiction as the governing law of the employment contract leaves little room for variation.

It should be noted that foreign companies have the right to hire staff and employ them in Greece. On the condition that the nature of the services to be provided by the employees locally does not give rise to a permanent establishment for the said foreign company, the latter is not obligated to set up a branch or undertake any other registration in Greece. In this case, all withholding and social security obligations are registered and reported by the employees themselves on a regular basis with the Greek tax and social security authorities.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Greek legislation applies only to employees working in the Greek territory. Greek nationals working in another jurisdiction are not subject to Greek legislation but rather to the legislation of the country in which their employer is located. Exceptions, however, can be made due to a bilateral agreement between Greece and the foreign jurisdiction and by the governing law clause included in the particular employment agreement. Another exception is where a Greek employee is posted to another EU jurisdiction for a limited period of time (Directive 96/71/EC).

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal obligation for the employment agreement to be made in writing, except in the case of part-time employment agreements, job-rotation employment agreements and the renewal of definite duration employment agreements. However, the employer must in any event provide the employees with the main terms of their employment in writing.

The employment agreement may be concluded orally or implied by the actions of the employer and the employee. Exceptions are provided for specific employment agreements (e.g. with the Greek State and hotel companies) which must always be made in writing. Whether made orally or in writing, the employer must communicate in writing to the employee the key employment terms (i.e. work location, nature of tasks, duration of the contract, working hours, salary etc.).

### Mandatory Requirements:

#### Trial Period

A trial period is not mandatory but is often used in practice for the indefinite duration employment agreements. Regarding the indefinite duration employment agreements, the law provides that if an employee is dismissed within twelve (12) months of his/her hiring, he/she is not entitled to severance payment.



#### Hours Of Work

Pursuant to article 6 of the National General Collective Labour Agreement of 14.02.1984, as amended, employees may not work more than 40 hours per week and more than eight hours daily on a five-day working week.

a) Overwork

Overwork, is the work that is offered in addition to the weekly hours set out in the labour contract, which currently stands at 40 hours for full time employment, up to the following maximum number of hours:

- up to 45 hours for 5-day working weeks (i.e. 41 – 45 hours) and
- up to 48 hours for 6-day working weeks (i.e. 41 – 48 hours).

Overwork is determined on a weekly basis. The aforementioned applies according to the general provisions of labour law. Collective bargaining agreements may provide for different working hours.

When employers occupy employees more than the expected weekly hours, for every hour worked over 40 hours per week and until 45, the hourly salary is paid with an increment of 20% in the case of 5-day working weeks.

b) Overtime

**Legal and illegal overtime**

Overtime is differentiated between legal and illegal overtime. In order for overtime to be deemed legal, the following requirements must all be met:

1. Overtime must be provided for one of the following circumstances:

a. Urgent work necessary for preventing accidents, organizing rescue measures for addressing sudden damages to material, premises or buildings;

b. Urgent work of a temporary nature or extraordinary urgent needs for serving the public;

c. Extraordinary work load;

d. Eve of holidays;

e. Preparatory or supplementary work which, due to their nature, are performed past the statutory working hours and

f. Making up for lost time in the event the business experiences an interruption.

2. The Employer must notify the labour inspector in advance of the overtime. It should be noted that when the work is of an urgent nature, the notification to the labour inspector may take place no later than the same business day.

3. The overtime must be recorded in a special book maintained by the Employer.

4. Daily overtime must not exceed 3 hours (please see below paragraph).

**Time Limits For Overtime Work**

Overtime is work provided beyond the maximum daily statutory time limits. The maximum daily statutory time limits for 5-day working weeks are 9 hours. Overtime is any work provided above 9 hours per day. Daily overtime may not exceed 3 hours.

In the event of unskilled labour, any overtime above 120 hours per year requires approval from the labour inspector.

**Increments**

Legal overtime is paid with the following increments:

- up to 120 hours per year, hourly salaries are paid with an increment of 40%;
- above 120 hours per year, hourly salaries are paid with an increment of 60%.

Each hour of illegal overtime is paid with an increment of 80% from the first hour of overtime (previous rate before legislative amendment was 100%).

c) Work on Sunday

It should be noted from the onset that employment on Sunday is neither overwork nor overtime. If someone is to work on Sunday, this is considered an independent working day with the right of receiving the increment set out below. It is only when the employee exceeds the weekly (in the case of overwork) or daily (in the case of overtime) hourly limits that he/she is entitled to additional increments for such work.

Employees working on Sundays are entitled to a daily salary increased by 75%. It should be noted that the increase of 75% is calculated on the statutory salary provided by law and not the actual salary paid to the employee. For sake of clarity, statutory salary is the minimum salary provided by law or collective bargaining agreements and not the agreed salary actually paid to the employee.

Employers must seek permission from the labour inspector for its employees to work on Sundays for urgent work, due to the nature of the products or the season or in the event the work cannot be postponed to another day within the week.

d) Night Work

Night work is work provided at night between 10:00 pm and 6:00 am the following day. Work provided at night is paid with an increment of 25%.

The following categories of employees are not entitled to receive the increment of 25%:

- employees not covered by the pay system under the Collective Labor Agreement, which sets minimum wages and wage levels, such as agricultural workers, home workers, etc.
- managing directors;
- employees who are paid for being on stand-by.

### Earnings

According to Greek laws, minimum earnings are set out as follows:

- the minimum daily gross wage for workers is €26,18 per day and
- the minimum monthly gross salary for employees €586,08 per month.

### Holidays / Rest Periods

Employees working a five-day working week who have completed at least two months of employment with the same employer are entitled to 2 days of leave for every month of employment. This means that on completion of the 1st year of employment, an employee is entitled to 20 working days of paid annual holiday. Annual holiday leave is increased by a day for the second year of employment and another day for the third year up to a maximum of 22 working days.

For employees working more than five days a week, the minimum annual holiday entitlement is 24 days. Annual holiday leave may reach a maximum of 26 working days.

This annual holiday entitlement cannot include paid public holidays (e.g. Christmas, the Monday after Greek Easter, Independence Day). Additional paid public holidays (up to five days per year) may be decided by the Minister of Employment.

### Minimum/Maximum Age

According to article 127 of the Greek Civil Code, the minimum age for an employee is 18 years old. However, employees younger than 18 but older than 15 may work with the permission of their guardians. There is no maximum age limit set.

### Illness/Disability

In case of an illness or disability, an employee is entitled to time off during which he/she retains his/her right to a salary, which is met both by the employer and the social security organization, according to the provisions of the social security legislation.

The length of paid illness or disability leave depends on the duration of the employment relationship. In particular, the law provides for the following:

- Employees who have worked for less than four years can take a maximum of one month off,
- Employees who have worked for more than four years but for less than ten years can take a maximum of three months off,
- Employees who have worked for more than ten years but for less than fifteen years can take a maximum of four months off, and
- Employees who have worked for more than fifteen years can take a maximum of six months off.

### Location Of Work/Mobility

The location of work must be stipulated in the employment contract or provided in writing by the employer. In the event of doubt, it may be agreed orally or implied. It can also be agreed that the employee must provide his/her services in different places (in the same city or in different cities), in which case the company must cover the employee's travel expenses.



### Pension Plans

Greek employers do not participate in pension schemes as pensions are funded by the Greek State. However, two kinds of supplementary pensions exist in Greece which the employer may adopt. There are subsidiary pensions, which are funded by employer contributions which are paid to the social security organization.

In companies occupying more than 100 employees, the employer may provide employees with access to occupational pensions (Law 3029/2002). These pensions are voluntary and result from mutual contributions made by both the employer and the employee.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

According to Article 50 of Statute 4075/2012 on "Parental Leave for Upbringing", parents, including adoptive parents, have the right to ask for and receive this leave without pay. The leave can be for up to four (4) months (given all at once or in instalments) and may be requested from the parent until the child reaches the age of six (6) years old. During the course of the employee's leave, the employee has full insurance coverage from his/her social security under the condition that both the employer and employee contributions are paid in full during this period. The leave for school visits, which is normally paid, can be granted for a maximum of four (4) days per year to parents of children not older than sixteen (16) years old (art. 4, National General Collective Labour Agreement of 2008/2009).

Moreover, Greek law provides for an extensive protection scheme for pregnant women, mothers, fathers and adoptive parents. Pregnant women are entitled to a total of seventeen (17) weeks' paid leave (art. 11, Statute 2874/2000, of which eight (8) weeks should be taken before the birth and 9 weeks after the birth (art. 7, National General Collective Labour Agreement of 2000/2001).

Pursuant to article 97 (B1) of Statute 3144/2003 (art. 9, National General Collective Labour Agreement of 2004/2005), mothers are entitled to reduced working hours for a period of thirty (30) months after their maternity leave ends [i.e. one (1) hour less for thirty (30) months or two (2) hours less for twelve (12) months and one (1) hour less for six (6) months].

In addition, according to Statute 3655/2008 (art. 142), mothers are entitled to an additional 6 months leave after the expiration of the above 17-week maternity leave which they can take either before or after exercising their right for reduced working hours for a period of thirty (30) months. Fathers are entitled to two (2) days of paid leave for the birth of each child (art. 10, National General Collective Labour Agreement of 2000/2001). They also have a right to reduced working hours where the mother does not make use of her relevant rights (art. 7 ( B2), Statute 3144/2003).

### Compulsory Terms

Compulsory terms of the employment agreement are:

- the full particulars of the contracting parties;
- the place of work and the job position;
- the duration of the contract;
- the annual leave entitlement;
- severance and notice obligations;
- basic salary;
- bonuses and other fringe benefits;
- the working hours; and
- the applicable collective labour agreement.

### Non-Compulsory Terms

In so far as non-compulsory terms do not contravene mandatory law provisions the parties are free to agree any terms of a non-compulsory nature (e.g. bonuses).

## Types Of Agreement

The most common types of employment agreements are:

- full-time/part-time employment agreement of an indefinite duration,
- full-time/part-time employment agreement of a definite duration,
- collective, as opposed to individual, employment agreements.

There are several types of collective employment agreements, i.e. the National General Collective Labour Agreements (applicable to all employees), the National Occupational Agreements (applicable to employees of the same occupation in Greece), the Regional Occupational Agreements (applicable to employees of the same occupation in a certain city or district), Branch Collective Agreements (applicable to employees of a certain occupational subsector) and Company Agreements (applicable to employees of a certain company).

In addition to the above, Greek Labour Law provides the following flexible types of employment:

- Employer's Suspension Right

  The issues concerning the conditions and the procedure for placing employees under suspension have been recently enacted pursuant to labour law no. 3846/2010, Art. 4(1). Businesses and undertakings whose economic activities have been reduced may, instead of terminating employment agreements, suspend employees, by written communication, for not more than three (3) months on annual basis. Such suspension is valid only after consultation with the employees' legal representatives, pursuant to the provisions of presidential decree no 240/2006 and the provisions of law no 1767/1988 (regarding Employee Committees). If there are no legal representatives of employees, the notification and consultation procedures take place with all employees. Notification is deemed to have been effected by virtue of a single announcement made at a visible and accessible point in the company.

  During the suspension period, the employees under suspension receive half of the average of the salary they had received the preceding two months as full-time employees. Following the period of three months, the same employee may be placed again under suspension only after he/she has been reinstated at work for a period of at least three (3) months. Suspension of employees must be notified by any means with the competent Labour Inspection Office, Social Security Institution and Labour Employment Office.

- Job Rotation

  According to Law 3846/2010, in the event the Employer experiences reduction in its operations, it may, instead of terminating employment contracts, impose a system of job rotation, the duration of which cannot exceed more than 9 months per calendar year.

  In order to apply the system of job rotation, the Employer must previously inform and consult with the employees' legal representatives. According to the law, job rotation is the working schedule with fewer working days per week or fewer weeks per month or fewer months per year, or a combination thereof, but always with full working days.

  In addition, new employment agreements will have to be signed, which must include the time of employment, the allocation of work, the working periods and the method by which salaries will be calculated.



**Secrecy/Confidentiality**

The employee's obligation for secrecy and confidentiality is set out in the Greek Civil Code. Under this code an employee is under an obligation not to disclose to third parties anything concerning the employer's business, which is or could be, considered confidential. The employment contract may set out in more detail an employee's secrecy/confidentiality obligations by specifying its content and duration. Such clauses can extend the obligation to post termination.

**Ownership of Inventions/Other Intellectual Property (IP) Rights**

According to Law 1733/1987, there are three types of inventions and intellectual property rights:

Clerical invention: This invention is created in the course of the employment relationship. Therefore, it belongs entirely to the employer, unless it is profitable for the employer, in which case the employee is entitled to reasonable remuneration.

Dependent invention: This invention is created by the employee making use of the employer's materials, means or information. Therefore, 40% belongs to the employer and 60% belongs to the employee.

Free invention: This invention is created by the employee during the course of his/her work and belongs entirely to the employee.

**Hiring Non-Nationals**

Where an employee is an EU-national, there are no any specific legal requirements, with the exception of obtaining a Greek tax number and Greek social security (unless the employee provides a certificate that he/she has social security in his/her home jurisdiction).

If the employee is a non-EU non-national, the employee must obtain the following:

1. a Greek Tax Registration Number,
2. Greek social security (unless an exemption is obtained pursuant to a bilateral social security agreement),
3. a work - residence permit issued by the Ministry of the Interior or the locally competent Prefecture, according to article 17 of Law 3386/2005, and
4. an entry permission (visa) issued by the Greek Embassy or the Consulate.

The cost and length of the procedure for obtaining the above permits depend on whether the employee comes to work in Greece at his/her own initiative or after an invitation of his/her employer, according to articles 14 to 17 of Law 3386/2005.

### Hiring Specified Categories Of Individuals

There are certain categories of employees who enjoy greater protection by law. In particular, there are specific legal provisions which ensure the protection of parents with more than four children, employees on military service, disabled persons and victims of wars. According to Law 2643/1998, companies employing more than 50 employees must ensure that at least 8% of their workforce is made up of the above categories of employees.

### Outsourcing And/Or Sub-Contracting

According to article 651 of the Civil Code, secondment of employees is allowed. In such cases, the consent of the employee is always required. During the secondment, the initial employer retains its contractual obligations towards the employee. In addition, the employer and the employee may agree that during the course of the employment relationship the employee shall provide his services to third parties (arts 113 et seq., Statute 4052/2012). This kind of employment is known as "temporary employment" and applies to companies operating under the form of an SA and licensed by the Minister of Commerce.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

If the employer wants to change the terms of the contract, the employee's consent is always required. If the employer makes a unilateral change, in particular where such a change is detrimental to the employee, without requesting or obtaining the employee's consent, the employee may treat the contract as being terminated. According to Greek case law, changes such as the transfer of the employee to another office or department or the reduction of the employee's wages may be regarded as a unilateral prejudicial change amounting to termination of the contract.

### Change In Ownership Of The Business

Where there is a change in the ownership of the business, the employee retains all of his/her previous rights with the previous employer. According to article 4 of the Presidential Decree 178/2002, where a business is transferred the employees are by default transferred to the new employer who must take all possible measures to maintain the employees' previous employment status/benefits.

In line with EU Directive 2001/23/EC on safeguarding employees' rights on transfers of undertakings, businesses or parts of businesses, Presidential Decree 178/2002 provides that if employees are transferred to a new entity, they are deemed to retain their period of continuous employment, as well as all rights relating to their previous employment.



### Social Security Contributions

Both the employer and the employee make social security contributions. The employer must pay all social security contributions to the social security organization (IKA) within a month of making the corresponding deductions from the employee's gross salary. An amount equivalent to 43.96% of the employee's salary is contributed which is made up of 16.50% from the employee and 27.46% from the employer.

### Accidents At Work

According to article 662 of the Greek Civil Code, the employer must take all necessary measures to protect the health and safety of employees. Law 1568/1985 provides that employers must keep the work place in good condition so as to prevent accidents.

Where an accident takes place at work, or is associated with work (e.g. commuting), and the employee cannot work for 3 days or more, the employer must pay the employee damages. The amount of such damages, as stipulated by Law 551/1915, depends on the gravity and the duration of the employee's absence from work. Damages can be awarded up to a maximum of 6 years' salary where the employee is permanently disabled as a result of the injury. The employer must notify the accident to the Police, the Labor Inspector Organization and the Social Security Organization (IKA).

### Discipline And Grievance

Dismissal must used by an employer as the last resort when an employee has committed a breach of their employment contract.

According to article 1 of Legislative Decree 3789/1957, the following penalties can be applied to employees who breach the terms of their employment:

1. A complaint can be lodged against the employee either orally or in writing,
2. A Reprimand, which must take place always in writing,
3. A Fine or,
4. Suspension from work (temporary dismissal) for up to 10 days per year.

Employees should be aware of the above penalties through the company's Regulation. An employee subject to a disciplinary measure has the right to defend himself/herself before the employer. The above penalties must not be exercised capriciously by the employer, which means that the measure chosen in each case must be proportional to the breach.

### Harassment/Discrimination/Equal pay

Pursuant to articles 2 and 5 of the Greek Constitution and article 57 of the Greek Civil Code, the employer must take all necessary measures to ensure that employees are not discriminated against or subjected to acts of harassment, moral or sexual (as underlined in the National General Collective Agreement of 2000/2001) and must try and ensure that employees' dignity is maintained.

Articles 4 and 22 of the Greek Constitution provide for the principle of equal treatment of all employees, forbidding any kind of discrimination based on one's sex, race, age, political convictions, religion, sexual orientation etc. According to this constitutional principle, all employees must have the same access to employment, the same prospects of career progress and promotion, and receive equal treatment from their employer - especially regarding remuneration and other voluntary financial benefits.

The principle of equal pay is one of the most fundamental in Labour Law. It is applied to all employees having the same qualifications and providing the same type of work under the same conditions.

### Compulsory Training Obligations

Greek Labour Law does not provide for such obligations. However, training is obligatory in some companies in order to improve employees' qualifications.

### Offsetting Earnings

According to article 664 of the Greek Civil Code, the employer cannot offset earnings against the employee's debts. The above does not apply if the employee caused a financial loss to the employer in the course of the employment agreement.

### Payments For Maternity And Disability Leave

During maternity or disability leave the employee maintains his/her right to salary, which is covered by both the employer and the social security organisation.

### Compulsory Insurance

Upon hiring an employee, the employer is under an obligation to insure the employee with the appropriate social security organization. If the employer does not insure the employee the employer is subject to administrative and criminal penalties. For certain occupations (e.g. in the construction sector) employers must also maintain civil liability insurance. There is no obligation to provide any form of employer, third party liability or life insurance to the employees.

### Absence For Military Or Public Service Duties

Employees are entitled to leave for military or public service duties. If an employee has been employed for 6 months, he or she cannot be dismissed during the course of such leave.

### Works Councils or Trade Unions

Companies that employee more than 50 employees must allow employees to form work councils, which are usually composed of 3 to 7 members. Work councils work with the employer to discuss and improve the work conditions of the employees and the development of the company. Apart from work councils, Law 1264/1982 has introduced the employee's right to participate in trade unions. A trade union needs at least 20 members.



### Employees' Right To Strike

The right to strike is established by article 23 of the Greek Constitution.

### Employees On Strike

During the course of a strike the employment relationship is suspended so the employee cannot be dismissed for participating in a strike, unless the strike is illegal.

### Employers' Responsibility For Actions Of Their Employees

Pursuant to articles 334 and 922 of the Greek Civil Code, employers are wholly responsible for the acts of their employees in the course of the employment relationship.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

Pursuant to Law 2112/1920, the termination of an employment agreement is possible on the condition that it is made in writing, that the employer pays severance payment to the employee and that it is not regarded as proportionate. If the employment contract is of indefinite duration and the employee has not completed twelve months of continuous work with the same employer, severance payments are not compulsory. Termination must be notified both to the employee and the Greek Manpower Employment Organisation within 8 days.

### Instant Dismissal

An employer can instantly dismiss an employee without having to give any reason. In this situation an employer will be liable to pay the employee the statutory severance payment unless the following circumstances apply:

1. If the employer has already started criminal proceedings against the employee because of a criminal act the employee conducted at work.
2. If there is a judicial decision against the employee for any kind of indictable offence.
3. If the termination of the employment contract is the result of the employee's gross misconduct,
4. If the company ceases its operations because of force majeure.

In the above cases the employer may terminate the employment contract without giving a notice period and without paying severance.

### Employee's Resignation

According to article 4 of Law 2112/1920, the employee may terminate the employment agreement by giving a maximum of 3 months' notice to the employer.

### Termination On Notice

As mentioned above, it is not compulsory for the employer to give notice of termination. However, if a notice period is given, its duration depends on the duration of the employment. According to Law 2112/1920, the following table provides the statutory notice periods in case of termination of the employment agreement by the employer:

| Year of Service | Notice Period |
|---|---|
| 1 year completed | 1 month |
| 2 - 4 years completed | 2 months |
| 5 - 9 years completed | 3 months |
| Over 10 years completed | 4 months |

The maximum notice period is 4 months for a employee with over 10 years of employment. A longer notice period may be agreed with the employer. If the employer does not observe the notice period, he is liable to pay an increased severance payment. If the employer follows the prescribed notice period, according to the Law, the severance payment will be half of the severance payment that would be due had notice not been given (see below relevant section "Severance Payments").

### Termination By Reason Of The Employee's Age

Employees entitled to their pension may terminate the employment relationship and receive severance payment (as per Law 2112/1920, reduced at 50%). The employee holds the same right even if the employer terminates the employment relationship because of the employee reaching retirement age.

### Automatic Termination In Cases Of Force Majeure

The death of the employee may constitute a force majeure which automatically terminates the employment relationship. The death of the employer, however, does not automatically end the employment relationship unless the parties agreed that this would be the case.

### Termination By Parties' Agreement

The parties may decide mutually to terminate the agreement at any time.



### Directors Or Other Senior Officers

There are no specific terms required for the termination of the employment relationship in the case of directors or senior officers. However, the employment status of a director is different from that of ordinary employees and often falls outside the provisions of Greek Labor Law (e.g. provisions for annual leaves, working hours and the payment of overtime work).

### Special Rules For Categories Of Employee

Certain categories of employees enjoy a wider protection against dismissal. Employment legislation (e.g. Laws 3514/1928, 1264/1982 and 1483/1984) provides protection to employees executing their military service, employees with disabilities, victims of wars, employees exercising their trade-union rights and pregnant women. In particular, pregnant women cannot be dismissed during the course of their pregnancy or within a year of childbirth. Employees cannot be dismissed because of their participation in trade-union activities. Individuals with disabilities and war victims can only be dismissed because of the company's financial difficulties, whereas employees having executed their military service may not be dismissed within a year after their discharge.

### Specific Rules For Companies in Financial Difficulties

Where a company faces financial difficulties, the employer may decide to make redundancies but only if the matter has been discussed with the employees' representatives. The employer must enter into consultation with the employees' representatives to examine possible ways of avoiding or minimizing dismissals and reducing the negative effects of such dismissals. Following consultation, the employer must notify the Minister of Employment or to the Prefect of the decision reached. Where the employer and employees' representatives fail to reach an agreement, the competent administrative authority (the Minister of Employment or the Prefect) will decide on the case.

Pursuant to governing Law 1387/1983, only companies with more than 20 employees are allowed to make redundancies subject to the following restrictions:

1. for companies employing 20 to 150 employees, Law 1387/1983 applies where at least 6 dismissals take place in one month.
2. for companies employing more than 150 employees Law 1387/1983 applies where at least 5% of the employees or at least 30 dismissals take place in a month.

### Restricting Future Activities

Employees are subject to the principle of confidentiality and the prohibition of competition. This obligation can be put into the employment contract; however, such a clause must be specific to the company's business interests and be limited in terms of time and area. If the clause is unreasonable and an abuse of the employer's power the clause can be deemed as null and void.

**Severance Payments**

If the employment contract is terminated without notice, the employee is entitled to be paid the following severance:

| Year of Service | Severance |
|---|---|
| 1 – 3 years completed | 2 month |
| 4 – 5 years completed | 3 months |
| 6 – 7 years completed | 4 months |
| 8 – 9 years completed | 5 months |
| 10 years completed | 6 month |
| 11 years completed | 7 months |
| 12 years completed | 8 months |
| 13 years completed | 9 months |
| 14 years completed | 10 month |
| 15 years completed | 11 months |
| 16 years completed | 12 months |
| 17 years completed | 13 months |
| 18 years completed | 14 month |
| 19 years completed | 15 months |
| 20 years completed | 16 months |
| 21 years completed | 17 months |
| 22 years completed | 18 months |
| 23 years completed | 19 months |
| 24 years completed | 20 month |
| 25 years completed | 21 months |
| 26 years completed | 22 months |
| 27 years completed | 23 months |
| 28 years completed | 24 months |



The statutory severance payment is calculated based on the gross regular monthly salary of the employee at the time of termination of employment and includes the salary and any other benefit provided to the employee on a fixed and permanent basis, according to his employment agreement. This includes bonuses and allowances paid to the employees on a regular basis.

Furthermore, Greek employment Law provides for certain limitations when calculating the gross regular monthly salary on the basis of which the minimum statutory severance payment is calculated (i.e. the "Minimum Statutory Base Salary"):

a) The Minimum Statutory Base Salary for the first 16 years of completed service with the same employer (i.e. 12 months of severance payment) cannot be greater than 8 times the daily wage of an unskilled worker multiplied by 30, which at current applicable rates, is a monthly Minimum Statutory Base Salary of €6,283.20.

b) According to a recently enacted law, for employees who have more than 16 years of service with the same employer, the calculation of years of service is calculated according to the number of years of service he/she had on 12 November 2012. This effectively means that irrespective of the number of years employees will continue to work with the same employer, he/she will be able to calculate the number of years of service according to the number of years he/she had on 12 November 2012, without taking into consideration any further years of service.

c) In addition to the above, for 17 or more years of completed service with the same employer, the monthly Minimum Statutory Base Salary, according to recently enacted Greek employment legislation, cannot be greater than €2,000.

d) Notwithstanding the above, it should be noted that the limitations set out in above, when calculating Minimum Statutory Base Salary do not apply in the following two cases:

- If the employment agreement stipulates that the employee is entitled to statutory severance payment on the basis of the actual gross salary without any limitations stipulated in Greek law; and
- If the Employer agrees to waive the above limitations at the time of dismissal and pay the statutory severance payment according to the employee's actual gross regular monthly salary.

The employer does not have to pay severance to the employee in the following situations:

- If the employer has already started criminal proceedings against the employee because of a criminal act the employee conducted at work.
- If there is a judicial decision against the employee for any kind of an indictable offence.
- If the termination of the employment contract is the result of the employee's gross misconduct.
- If the company ceases its operations because of force majeure.

In the above cases the employer may terminate the employment contract without giving notice and without paying severance.

A reduced severance payment is possible when the employment contract is terminated because of the employee's retirement (see above).

### Special Tax Provisions And Severance Payments

According to article 15 par. 3 of the Greek Income Tax Code, severance payments are subject to Greek withholding tax as follows:

- 0% tax for severance payments up to €60,000
- 10% tax for severance payments between €60,001 and €100,000
- 20% tax for severance payments between €100,001 and €150,000
- 30% tax for severance payments over €150,001.

### Allowances Payable To Employees After Termination

Employers are not required to pay allowances to employees after termination.

### Time Limits For Claims Following Termination

Claims relating to an unfair dismissal can be raised within a period of 3 months of the termination. Claims relating to severances can be raised within a period of 6 months from the event.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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# Guatemala

# Guatemala

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Labor and Social Security Courts must be established, with jurisdiction in each economic zone, which the Supreme Court of Justice determines, paying attention to the following:

a) Concentration of workers.

b) Industrialization of work;

c) Number of workers, unions and employers associations; and

d) A report previously rendered by the Ministry of Labor and Social Security and General Inspection of Labor.

The number of courts must be determined by the Supreme Court of Justice, which may increase or reduce the number of said courts whenever it deems it necessary.

### The Main Sources Of Employment Law

The main sources of employment law are the Guatemalan Labor Code, its regulations and other labor laws. Other principles are used to resolve labour disputes, which include the following: the right to labor; equality: and custom. Principles and laws of common right also govern labour disputes. Labor and social security law have precedent over the various sources when resolving a labour dispute.

### National Law And Employees Working For Foreign Companies

The Guatemalan Labor Code applies to all employees and employers located within Guatemala regardless of nationality.

### National Law And Employees Of National Companies Working In Another Jurisdiction

When a national employee is employed by a national company but is required to work in another jurisdiction, the Guatemalan Labor Code applies to those employees. Such employees will be subject to the principles of international law and treaties.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

An individual labor contract can come into existence simply by the employee starting work for the employer. However the parties must enter into a written agreement , except for agriculture and cattle raising labor, domestic services, accidental or temporary labor not exceeding sixty (60) days, providing labor for a determined work, when its value does not exceed one hundred Quetzales (Q.100.00) and the term to deliver the hired work does not exceed sixty (60) days.

### Mandatory Requirements:

#### Trial Period

In every contract for an indefinite time, the first two months are considered a trial period. The parties can agree to a shorter trial period. During the trial period, either party can terminate the contract for any reason, without incurring any liability.

#### Hours Of Work

The ordinary working day shift cannot exceed eight (8) hours per day, and forty-four (44) hours per week. The ordinary working night shift cannot exceed six (6) hours a day and thirty-six (36) per week. The ordinary working mixed shift cannot exceed seven (7) hours a day and forty-two (42) hours a week. Work performed between 6 am and 6 pm is considered day work. Work performed between 6 pm and 6 am of the following day is considered as night work. Work spread between both day and night shifts, is called a mixed shift; however, if, on a mixed shift, the employee works four or more hours during the night, it will be classed as a night shift for payment purposes.

#### Earnings

All workers must be paid the at least the minimum salary which is determined periodically according to the characteristics of each job, the specific conditions of each region and the resources of each employer in each sector. The level of the minimum salary must also take into account if salaries are paid by reference to a unit of time, by piecework or by participation of profits or sales. Minimum salaries must be applied so that workers who are paid by piecework, task work, flat rate or by the job are not prejudiced.

#### Holidays / Rest Periods

Employees are entitled to be paid for the following public holidays: 1 January; Thursday, Friday and Saturday Saints; 1 May; 30 June, 15 September, 20 October , 1 November, 24 December (half day), 25 December, 31 December (half day), and the day of the employee's local festival.

All employees are entitled to a minimum of fifteen (15) days of paid holiday provided they have worked for the same employer for a year. This entitlement increases with every completed year of service.

There are also various compulsory daily and weekly rest periods and breaks which have to be observed.

#### Minimum/Maximum Age

Employees must be at least fourteen (14) years old (which can vary in certain cases). Different rules apply in regards to working periods and conditions. There is no maximum age limit.

#### Illness/Disability

Employment is suspended when an employee suffers an illness, professional risks occur at work or the employee is proven to be temporarily incapacitated and cannot work.

The law does not establish a specific amount of time off, and these are causes of partial suspension of contract, until the employee fully recuperates from the illness, but if the employee is incapacitated to continue labor for more than nine months, the contract is suspended definitely.

Pension for disability will be granted initially for a year, and could continue for equal periods, previous proof that the conditions of disability persists.

The suspension of employment does not break the employee's continuity. These are causes partial suspension of the contract, so the employee is released of the obligations to execute the work and the employer is obligated to pay salary. Nevertheless, if the employee is protected by the benefits ofsocial security the employer must pay onlythe quotas ordained by social security regulations.

If the employee is not protected by these benefits and if the responsibility of the employer is not established in another form by legal dispositions, the only obligation is to grant license to the employee until total recuperation occurs, according to the following rules: a) After continuous labor greater than two months and less than six months employer must pay half salary during a month; b) Greater than six months but less than nine months, employer must pay half salary for two months; c) Greater than nine months, employer must pay half salary for three months.

### Location Of Work/Mobility

The place where the job will take place can be included in the Labor Contract. If the employee is required to carry out his job in a different location to where he lives then, provided the distance between both places is more than fifteen (15) kilometers, the following rules apply:

1. When the worker is forced to make daily trips to and from work, the employer must pay him the transportation fare or the reasonable expenses he incurs; and
2. When the worker is forced to live in the place where the work is to be undertaken, the employer must only pay for the reasonable expenses of transportation to and from the location, before and after the duration of the contract.

### Pension Plans

There are no specific provisions within the Guatemalan Labor Code that provide for pension plans.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

All pregnant workers are entitled to paid maternity leave thirty days prior to childbirth and fifty-four (54) days after childbirth. New mothers who are breastfeeding are entitled to two thirty (30) minute breaks in order to feed the baby. The employer must provide the employee with a place at work to breast feed. Instead of taking the two 30 minute breaks during the working day, the worker can choose to start work an hour later or finish an hour earlier. Breaks for breastfeeding, whichever way taken, will be paid. The employee is entitled to these breaks for up to ten (10) months after returning to work. This time period may be extended if recommended by a medical practitioner.

Where a female worker adopts a minor, she will have the right to adapt to the new way of life. Documentation must be provided to the employer in order to prove that the adoption took place.

A male worker is entitled to two days paid leave in order to be at the birth of his child.

### Compulsory Terms

The following terms must be provided to the employee no later than two (2) months after the employee has started employment:

1. The names, surnames, age, sex, marital status, nationality and domicile of the contracting parties;
2. The date employment started;
3. The worker's job duties and a description of the job;
4. The place or places where the services are to be rendered or the job performed;
5. The place where the worker lives when he is hired;
6. The duration of the contract or the statement that it is for an indefinite period of time or for the execution of a specific job;
7. The hours of work;
8. The salary, benefits and commission the worker is to receive; if the salary must be calculated by unit of time, by piecework or in any other way, and the manner, period and place of payment.

### Non-Compulsory Terms

Parties are free to agree to non-compulsory terms. However, the parties cannot agree to terms and conditions that are below the terms and conditions or contrary to the rights of the employee stipulated in the Constitution of the Republic of Guatemala, the Guatemalan Labor Code, its regulations and other labor or social security laws grant the workers. Such terms are null and do not bind the parties even though they may be stipulated in internal work regulations, a labor contract or any other pact or agreement.



### Types Of Agreement

There are different types of agreements such as undefined term, fixed term and for specific labor.

### Secrecy/Confidentiality

Guatemalan law provides that workers have the obligation to keep technical, commercial or processing information, which they obtain either directly or indirectly during their employment, secret. A higher obligation is place on more senior employees who may be provided with such information in the course of their job. Information should be kept secret in order to protect the company.

If the employee breaches this obligation, the employer can dismiss the employee without incurring any liability.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Employment law in Guatemala does not regulate the ownership of inventions or other intellectual property rights.

### Hiring Non-Nationals

If an employer wants to hire a non-national, an application must be made to the Executive Body. Employers must have regard for Guatemalan immigration law. The Ministry of Labor and Social Security set immigration levels and must clearly state their reasons when limiting immigration of non-nationals.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups of employees can carry out. Work performed by women and minors must be especially compatible with their age, situation or physical state and intellectual and moral development.

### Outsourcing And/Or Sub-Contracting

There are no specific labour laws that relate to outsourcing and / or sub-contracting.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

The labor contract cannot be fundamentally changed permanently without the parties express agreement. The Ministry of Labor and Social Security can authorize such changes without the parties' agreement when the economic situation of the company justifies such changes. Changes to the employment contract cannot subject the employee to less favourable terms than the minimum protection that the Guatemalan Labor Code grants the workers.

### Change In Ownership Of The Business

Substitution of the employer does not affect the existing labor contracts. The old employer is jointly liable with the new employer for obligations that arise before the transfer and for six months after. Six months after the transfer the new employer is solely liable. In no case will the former employer be responsible for any action originated from deeds or omissions of the new employer.

### Social Security Contributions

The Guatemalan Institute of Social Security is the entity in charge of giving workers benefits. Employers are obligated to send a list of their workers, with the correct information required, to the Institute of Social Security in order for these benefits to be given to the workers.

### Accidents At Work

Employers shall adopt the necessary precautions to ensure the health and safety of workers at work. If the employer does not follow such precautions resulting in an accident at work that results in permanent disability or death of the worker, the employer shall pay compensation for the damages caused, independent from pensions or other payments covered under the social security system.

### Discipline And Grievance

If an employee is dismissed but the employee does not agree with the reason put forward by the employer for the dismissal, the employee has the right to summon the employer before the labor and social security courts. The employee must exercise this right within the prescribed time limit. The employee will seek to prove that the employer did not have a just cause to dismiss the employee.

Employers must give written notice to the employee indicating the cause of dismissal, and the employee has the right to require the employer to prove in court the justified cause for dismissal. The employee can complain against employer, to administrative authorities within 30 days of dismissal or any disciplinary sanctions.

### Harassment/Discrimination/Equal pay

Discrimination on the grounds of sex, race, religion, political creeds, economic situation and education is prohibited. Protection from discrimination applies to all workers regardless of their wages or position.

An employer can be guilty of harassment in the work place if the employer lacks integrity or honesty at work or when he conducts himself in an openly immoral manner or resorts to insult, slander or assault and battery against the worker.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously, some trades/professions will impose their own standards/expectations.



### Offsetting Earnings

An employer is able to offset an employee's earnings against a debt owed by the employee to the employer or his associate, relative or dependent.

### Payments For Maternity And Disability Leave

All pregnant workers are entitled to paid maternity leave of thirty (30) days prior to childbirth and forty-five (45) days after childbirth. As mentioned above, employees breast feeding their babies are entitled to an hour's paid break per day for 10 months after returning to work. This period can be extended on recommendation by a medical practitioner.

If the benefits for maternity leave are past due and the disability persists, the right of the benefit continues as subsidy for illness, in which case the term will initiate at the end of the subsidy for maternity. Subsidy for illness is granted from the fourth day of disability, until this one lasts, but no more than 26 weeks for the same illness.

### Compulsory Insurance

The employer is not obligated by law to acquire insurance for the employees. However, the employer can get insurance to cover certain aspects of the work or the work as additional protection for his or her employees.

### Absence For Military Or Public Service Duties

Guatemalan labor law does not provide for the employer to give employees leave for military or public service duties.

### Works Councils or Trade Unions

According to the Guatemalan Labor Code, a union is any permanent association of employers or workers or professionals belonging to an independent trade (independent workers), exclusively constituted for the study, improvement and protection of their respective financial and common social interests. The workers will not be able to be dismissed for taking part in the formation of a union. Workers must inform the General Inspection of Work in writing, either directly or by means of the delegation that they intend to form. Having written to the General Inspection of Work the workers will enjoy protection from dismissal for up to sixty (60) days after sending the notice.

Any worker who is over fourteen (14) years of age may join a union, but minors may not become members of its executive committee and advisory council. No worker can belong to two or more unions at the same time.

### Employees' Right To Strike

Guatemalan Labor Code states that a legal strike is the temporary suspension and abandonment of work in a company, agreed upon, executed and peacefully maintained by a group of three or more workers, having previously complied with the legal requisites, for the exclusive purpose of improving or defending those financial interests pertaining to them and which are common, to said group, before their employer. A legal strike suspends the labor contracts. In order to declare a legal strike the workers must: comply with the legal requirements, use all conciliatory procedures available and constitute at least two thirds of the workers of the mentioned company.

### Employees On Strike

Employment of employees is temporarily suspended during a strike.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

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# 04. Firing The Employee

### Procedures For Terminating the Agreement

The termination of a labor contract occurs when one or both parties decide to terminate the relationship. One party can terminate the contract or employment can be terminated by agreement. The actions of one of the parties can result in the contract being terminated. An employer must be able to demonstrate a "potentially fair" reason for dismissal. Whether the reason identified is fair, depends on the tribunal's view as to the reasonableness of the employer's actions.

### Instant Dismissal

The following are just causes which allow the employer to instantly terminate the labor contract without incurring liability:

- When the worker during the performance of his work acts in an openly immoral manner or insults, commits slander or assaults his employer or his representatives who are directing the work,
- When the worker commits any of the acts set out above, in a), against a fellow worker;
- When the worker insults, commits slander or assaults his employer or his representatives who are directing the work, outside of the workplace outside working hours. Employment will be terminated where there is no provocation but the worker can no longer work with the other workers / employer as a result of his actions;



- When the worker intentionally commits a crime or misdemeanour against the employer's / fellow workers / third party property e) when a worker reveals the secrets referred to in clause g; of Article 63;
- When a worker is absent for two complete consecutive working days or during six half working days in one calendar month without permission or a just cause;
- When a worker expressly refuses to follow the employer's health and safety procedures;
- When a worker infringes any of the prohibitions of Article 64, or of the duly approved internal work regulations, after the employer has given him one written notice. Notice will not be necessary in where a worker is in breach due to intoxication;
- When the worker has misled the employer as to his qualifications and ability to do the job;
- When the worker is guilty of a major offence or given a custodial sentence imposed by a court of law;
- When the worker breaches a term of the employment contract.

It is understood that if the dismissal is based on an act which is also prohibited by penal laws, the employer will have the right to bring a suit before the common penal authorities for such actions.

### Employee's Resignation

The employee may resign if the employer:

- Does not pay the worker the complete salary on the usual date and place that have been agreed upon. The deductions that have been authorized by the law are accepted;
- Lacks integrity or honesty at work, or when he conducts himself in an openly immoral manner or resorts to insults, slander or assault against the worker. A worker may also resign if the employer's agent is guilty of any of the behaviour listed above;
- Discriminates against or harasses a worker. A worker can also resign if he suffers discrimination or harassment by the employer's relative, dependent where the employer knew or authorized such action.
- Maliciously causes material damage to the tools or utensils of the worker;
- Or a member of his family or agent, Suffers from a contagious disease, provided the worker has been in immediate contact with the person to which this refers;
- Does not provide a safe working environment for the work and there is a real danger to the security and health of the worker or his family.

- Demotes a worker, pays the worker less or fundamentally changes the worker's working conditions.; and
- Fundamentally breaches the employment contract.

### Termination On Notice

Notice is not provided for in most employment contracts.

There is no minimum notice periods for Employers, but for employees notice periods are as follows:

a) Before six months of continuous services, at least one week's notice;

b) After six months of continuous services, but less than one year, at least 10 days' notice;

c) After one year of continuous services, but less than 5 years, at least 2 weeks' notice; and

d) After 5 years of continuous services, at least 1 month's notice.

In contracts with undefined term the first two (2) months are reputed as probation, and any party can unilaterally, without responsibility.

### Termination By Reason Of The Employee's Age

Employment can be terminated due to the employee's age but only once the employee reaches the applicable retirement age. The default retirement age is 65.

### Automatic Termination In Cases Of Force Majeure

The Guatemalan Institute of Social Security provides for certain situations where the ability to perform the contract may be impossible (e.g. unforeseen circumstances or accident, insolvency, bankruptcy of or liquidation of the company; or incapacity or death of the employer).

### Termination By Parties' Agreement

Parties to an employment agreement can agree to terminate the agreement.

### Directors Or Other Senior Officers

No special rules apply when dismissing a director or other senior officer.

### Special Rules For Categories Of Employee

The Guatemala Labor Code establishes specific rules for certain categories of employees. These rules need to be taken into consideration, depending on the job description.

### Specific Rules For Companies in Financial Difficulties

As discussed above under the heading Automatic Termination in Cases of Force Majeure.



### Restricting Future Activities

Guatemalan law tries to prevent any restrictions being impost on an individual's right to work. However, employers can protect their interests and add restrictive clauses into an Individual Labor Contract provided that, the worker would be compensated for such a restriction.

### Severance Payments

Normal contractual principles apply to severance payments included in the contract. In cases of redundancy and unfair dismissal, there are statutory payments, which are calculated by reference to the employee's age, length of service and salary (subject to certain statutory caps, reviewed annually). In cases of unfair dismissal only, the severance payment will include an additional compensatory element (damages) to reflect the losses suffered by the individual, but this is again subject to a cap (reviewed annually).

### Special Tax Provisions And Severance Payments

Employees must pay 5% when on income from Q.0.01 up to Q.300,000.00 or 7%, on income of Q.300,000.00 and over, in which case they are obliged to pay a fixed amount of Q.15,000.00 plus a further 7% on the exceeding amount. Severance payments are exempt of taxes.

### Allowances Payable To Employees After Termination

The employer does not have to pay any allowances to workers after termination of the employment agreement.

### Time Limits For Claims Following Termination

Employees have thirty (30) days to claim against their employer when fired or against any disciplinary action, from the date of the termination or disciplinary action. They also have twenty (20) days to, terminate the agreement with just cause, from the date the employer gave rise to its separation or indirect dismissal. Except for a provision to the contrary, all claims following termination, must be made within two (2) years.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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# Honduras

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Labor Ministry is the administrative institution where employees and employers can pursue conciliation. If conciliation fails, the employee can file a claim in the Labor Courts.

### The Main Sources Of Employment Law

The Main sources of employment law are: a) Labor Code and b) Hour basis employment law. These laws are related to secondary laws such as: Thirteen salary law, Fourteen salary law, and Minimum salary law.

Related to these laws are other secondary laws such as:the Childhood and Adolescence Code and Equal Opportunities for Women Law.

### National Law And Employees Working For Foreign Companies

The statutory rights under national law will apply to all individuals physically working in the Republic of Honduras, regardless of their nationality and regardless of the law governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

For national employees working in a foreign country for a subsidiary of a national company, the law of the subsidiary's country will be applied to these relations.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The Labor Code establishes that an employee can be hired either orally or in writing. Regardless of the form of agreement the law protects both parties (employee and employer). According to labor law the employer is responsible for producing a written agreement. If there is no written agreement the rights of the employee will take precedence in any dispute between the employee and employer.

The written agreement must comply with certain obligations (see "compulsory terms" below).

## Mandatory Requirements:

### Trial Period

In contracts for an indefinite or definite period, labor code establishes a trial period not exceeding sixty days, during which either party may terminate the employment relationship without any liability to the same.

### Hours Of Work

In Honduras there are three different monthly work hour options: 1) Day Shift: 8 hours a day, but 44 hours of work per week; paying 48 hrs a week.2) Night Shift: 6 hours a night, 36 per week; and 3) Mixed shift: 7 hours a day, 42 per week. The Labor Code includes extra hours and emergency situations that can increase or decrease these hours.

### Earnings

According to Minimum wage law, all employees must earn minimum wage. The average salary for 2014 is seven thousand lempiras (L.7,000.00) per month. Every year a public and private commission reviews the amount to be payed.

### Holidays / Rest Periods

The employee accrues 10 vacation days after the first year, 12 days after the second year, 15 after the third year and 20 days after the fourth year. These days may increase if stipulated in the Internal Ruling of the Company. National holidays are in addition to those days paid with full salary. The national holidays are: January 1, April 14, May 1, September 15, October 3, October 12, October 21, December 25, Thursday, Friday and Saturday of Holy week. Every worker is also entitled to enjoy a rest day for every 6 days of work.

### Minimum/Maximum Age

The minimum age to work is 16 years old but there are certain special requirements that need to be fulfilled until the person is 18 years old. These special requirements are: written permission from the parents, work permit to have an education, no exposure to hazardous work or heavy duty work and others. The working hours are less than those applied to people over 18 years.

There is no maximum age to work.

### Illness/Disability

The labor law and other complementary legislation in this matter, set mandatory requirements relating to illness and disability. This includes the right of the employee to receive compensation according to the professional risk that caused the illness or disability, from the National Institute of Social Security and the right to receive 67% of its salary from the National Institute of Social Security, as long as the employee is on sick leave, up to a maximum of seven thousand lempiras. Any difference upwards of 7 thousand lempiras must be payed by the employer. The Employer is under an obligation to maintain its registration at the National Institute of Social Security otherwise the employer will have to assume all the expenses and the salary of the employee.

### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.



### Pension Plans

For private sector employees, the only mandatory pension plan is the one established by the Social Security Institution.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

The Labor Law includes maternity leave and pay stipulations. The legislation also requires the employer to provide rooms in the workplace for breast feeding employees who have just given birth. There are no statutory regulations about paternity leave and pay, adoption leave and pay, parental leave and pay, or others family rights.

### Compulsory Terms

The employer must provide the employee with the following terms before the employee starts his / her employment: the names of the parties; the date when employment begins and when continuous employment began; contract duration; the scales and intervals of pay; the hours of work; place of work; job title/job description; names of the people that depend economically on the employee; certain information regarding grievance and disciplinary procedures; signature of the parties.

### Non-Compulsory Terms

The employer and the employee are free to agree to any other terms in addition to the compulsory provisions, provided that these terms are no less favourable to the employee than certain rights given in the Labor Code.

## Types Of Agreement

All employment relationships are contractual in nature, whether or not the terms have ever been reduced to writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term, specific work contract, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated.

## Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied in the employment relationship.

During the employment relationship an employee is under an implied duty to respect the confidentiality of the employer's commercial and business information. Therefore, information that an employee is expressly told is confidential is protected without covenant during employment.

After employment, only trade secrets are protected by the implied duty of confidentiality. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment. If an employee disclosures Trade secret information it is considered a crime.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The labour law does not specify rules to determine ownership of Intellectual property rights that are created during the employment relationship. However, Article 19 of the intellectual property legislation establishes that the economic right in IP arising from a contractual relationship are the property of the employer without prejudice to the moral rights of the employee.

### Hiring Non-Nationals

The labor law adopts the rule of equal treatment among foreign and national citizens and equal wages for equal work. Nevertheless, the employer is required to recruit at least ninety percent of Honduran workers. The Ministry of Labor in some justified cases could relax this restriction to certain employers for technical reasons and expand the number of non-nationals that can work for the employer.

In order to work as a foreign citizen in Honduras an individual must have a work permit and a resident permit.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to carry out.

### Outsourcing And/Or Sub-Contracting

The Labor Code regulates the relationship between employer, sub-contractor and employee. The employer and the sub-contractor are both responsible for the payment of the salaries of the employees.

There are specific rules relating to outsourcing, insourcing and where there is a change of outsourced service provider.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with common law contractual principles, an employer may not change any terms of the employee's contract without the employee's consent and, if it is changed, it cannot be to reduce the benefits the employee currently has.

### Change In Ownership Of The Business

When there is a change in ownership of a business (except a change merely in the shareholding ownership), all employees are automatically transferred to the new employer on the same terms and conditions. These rules apply also where only a specific part of a business changes ownership.



### Social Security Contributions

Employers and employees are required to make social security. Employees must pay 3.5% of 7,000.00 Lempiras, and employers 7.2% of 7,000.00 lempiras.

### Accidents At Work

Employers have a common law duty to have regard for the safety of their employees. It is compulsory for the employer to enroll all the Employees with the Honduran Social Security so the employees are covered in such cases and to protect the employers from any potential claim by employees in this regard.

### Discipline And Grievance

The current mandatory statutory steps require the disciplinary or grievance to be detailed to the other party in writing. The employer must hold an investigatory meeting and confirm the findings of the investigation to the employee in writing. The employee must be offered the opportunity to appeal the findings.

### Harassment/Discrimination/Equal pay

Employees are protected from discrimination on grounds of sex, age, sexual orientation, marital status, and race.

### Compulsory Training Obligations

There are no compulsory training obligations for employees but training may be required for the position that the employee will be applying.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts but only with the consent.

### Payments For Maternity And Disability Leave

Employees that are pregnant have the right to 10 weeks of rest, during which they haveare to be paid by the employer. Four weeks will be rest before the expected week of childbirth, and the other 6 weeks will be rest after the birth. Medical assistance will be carried by the social institution that protects maternity rights.

With regard to disability leave, if the employee is not enrolled in Social Security, the employer will be forced to pay an amount of money by way of compensation, which will be determined by the authority according to the circumstances of the case and considering if the disability is partial or complete. If the employee is enrolled in Social Security, this institution has to pay the compensation as well as the pension for the disability.

### Compulsory Insurance

There is no obligation of compulsory insurance for workers (only to register the employee at the Honduran Social Security).

### Absence For Military Or Public Service Duties

In Honduras, there is no compulsory military service.

There is no specific Act which determines the rights of an employee to time off work for certain public duties and services. The only provision regarding this is Article 95, Subsection 5 of the Labor Code, which states that employers are obliged to grant workers authorization to fulfill public service duties.

### Works Councils or Trade Unions

The constitution of a Trade Union does not need previous authorization of the employer, but in order to obtain legal personality, the Trade Union must be registered in the Record Book of Trade Unions of the Ministry of Work. To do so, a Trade Union must first make a charter and statutory rules that have to comply with the requirements of the Work Code. The minimum of members required for a Trade Union are 30.

An employee who is a member of a Trade Union has certain rights in relation to his employer. The most important of these rights is the fact that an employee member of the Board of Directors of the Trade Union cannot be fired by the employer unless there is a just cause duly authorized by the Ministry of Work. This right includes the benefit of the leader not to be moved to another position without his authorization. A Trade Union member has the right to take time off with pay for Trade Union duties. In addition, Trade Union members can access all the benefits of a collective agreement

### Employees' Right To Strike

The Work Code of Honduras recognizes the right for employees to strike. To be legal, the strike has to be properly authorized by the Work Ministry. The legislation requires that the strike has the purpose to improve and protect the rights of the employee and the conditions of work and the benefits included in the collective agreement.

### Employees On Strike

A legal strike suspends the obligation of the employees to provide service work in the businesses as long as the strike takes place. Employers cannot dismiss employees or extinguish rights and obligations arising from the employment relationship. The Labor Code also expresses that the employers cannot hire new employees during the strike. Strikes do not affect in any way the employees who are receiving wages or compensation for accidents, maternity, vacation or other similar causes.

If the strike is declared legal, the employer will be obliged to pay all the salaries to the workers on strike. If it is declared illegal, the Ministry of Labor will notify the employees that they have to reintegrate themselves back to their normal activities and work.

### Employers' Responsibility For Actions Of Their Employees

According to the rules of the analogy and the contractual liability set in the Civil Code of Honduras, employers are responsible for the damage caused by their employees, if they were acting in the complete course of their employment.



## 04. Firing The Employee

### Procedures For Terminating the Agreement

These are the ways to terminate an Agreement:

Fair Cause: When the worker has committed a serious offense as established in the Labor Code or in the Internal Rulings of the Company.

Without Fair Cause: The employer may dismiss an employee at any time and pay by law the indemnification established in the labor code.

When the employee is working under a contract with fixed time: The employee can be dismissed at any time alleging fair cause having the previous approval from the Ministry of Labor or when the contract expires.

In all cases the termination of an employment contract must comply with the terms of the contract. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair one.

### Instant Dismissal

The employer can dismiss the employee without any explanation or reason, as long as the employer pays the employee's compensation according to law.

There will always be a risk that the employee does not accept the payment and files for reinstatement.

### Employee's Resignation

The agreement can generally always be terminated by the employee's resignation.

### Termination On Notice

The parties can terminate the agreement on notice, pursuant to the terms and conditions stipulated in the employment contract or the law.

### Termination By Reason Of The Employee's Age

The employment can be terminated due to the employee's age but only once the employee reaches the applicable retirement age. The employee has the option to retire or continue working.

### Automatic Termination In Cases Of Force Majeure

The contract will be deemed "frustrated" where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace by earthquake, etc, are examples.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire based on the free will of the parties to contract and good faith.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of directors or other senior officers; in case of termination each individual labor contract applies.

### Special Rules For Categories Of Employee

There are no categories of employees to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous rules for protection from unfair dismissal. Pregnant women enjoy greater protection and benefits according to Honduran law.

### Specific Rules For Companies in Financial Difficulties

There are special rules which apply if a company is in financial difficulty. Companies must supply the final settlements for workers. In the event of liquidation, with the sale of the assets of the company, it will pay the final liquidations of the employees first.

### Restricting Future Activities

In Honduras there are no rules about restricting future activities.

### Severance Payments

The severance pay for employees should include vacation and seniority compensation. This compensation is paid by the employer. According to Honduran law this compensation is as follows:

One month salary for each year of work until the maximum of twenty five years.

### Special Tax Provisions And Severance Payments

The final settlement includes salary for days worked during the month andnot paid (these pay taxes), vacations not taken and unpaid, 13th and proportional 13th month salary, 14th and proportional 14th month salary, and indemnification for years worked.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

If the employee has been fired without a fair cause, the employee has the right to apply for reinstatement within 60 days after termination, in order to be able to take the employer to the Labour Court.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The Labour Code of the Republic of Honduras is characterized by protecting social benefits and for labour laws that guarantee minimum wages, which can be improved by great employment relationships, employment contracts or collective agreements. The rights granted in this code are inalienable.

After the renewal of two contracts in a year, the employee becomes permanent.

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# Hong Kong

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

In Hong Kong, employment disputes are resolved through a specialised dispute resolution procedure; the objective of which is to provide a more accessible and flexible procedure as compared with the formal rules and procedures in the District Court or the High Court. The Labour Tribunal is the specialised tribunal which has exclusive jurisdiction for most monetary claims based on breaches of the employment agreements or provisions of the Employment Ordinance. The Labour Tribunal provides a quick, informal and inexpensive means to deal with such claims. On the other hand, discrimination claims have to be brought in the District Court. For tortious claims, if they are based on the Employees' Compensation Ordinance, they have to be brought in the District Court. If a claim is based on common law, such claims are brought in the District Court if the size of the claim does not exceed HK$1 million, or in the Court of First Instance if the size of the claim exceeds HK$1 million.

### The Main Sources Of Employment Law

Hong Kong is a common law jurisdiction. All employment arrangements are governed by general common law principles of contract law, but there are important legislative requirements which over-ride those general principles. The most important piece of employment legislation is the Employment Ordinance. Statutory provisions under the Employment Ordinance provide a minimum level of entitlement and protection to an employee. Any contractual term which purports to contract out or extinguish or reduce such minimum entitlements and protection will be void. Anti-discrimination law mainly comprises of the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance. Under the Mandatory Provident Fund Schemes Ordinance, except certain exempted employees, every employer is required to enrol his employees to a mandatory provident fund scheme and both employer and employee are under obligations to make contributions to the fund. Under the Minimum Wage Ordinance, which is a recent enactment, except for certain catagories of employees, an employee is entitled to receive wages of not less than the statutory minimum amount in a wage period.

### National Law And Employees Working For Foreign Companies

Where employment is undertaken in Hong Kong, there is no legal principle that the law governing such employment must be Hong Kong law. In determining whether Hong Kong law applies to the employment, the first thing is to see if there is a choice of law clause agreed in good faith by the parties in the employment contract. Normally such an agreement will be given effect by the Court especially if Hong Kong law is chosen as the governing law. Absent such an agreement, it is necessary to determine the system of law which the employment contract has its closest and the most substantial connection. Working in Hong Kong is a very strong factor in favour of Hong Kong law governing the employment contract. However, if the parties have expressly agreed in good faith in the employment agreement that Hong Kong law does not govern the employment contract then this may be upheld. The only exceptions are the anti-discrimination statutes. They apply to all employers in Hong Kong except where their employees work wholly or mainly outside Hong Kong.

### National Law And Employees Of National Companies Working In Another Jurisdiction

In determining the law governing an employment contract, if the employment contract does not contain an express or implied choice of law clause agreed in good faith, the court will look at the legal system to which the contract in question has its closest and the most substantial connection. The process of determining the governing law is a balancing exercise on the part of the court.

Once the court has determined that the contract in question is to be governed by Hong Kong law, whether the employment is undertaken partially or wholly outside Hong Kong, is irrelevant save that anti-discrimination statues do not apply to an employment undertaken wholly or mainly outside Hong Kong.

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# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for an employment contract to be in writing.

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide a trial period, in practice known as 'probationary period', when engaging new employees, but it is common in practice to do so.

#### Hours Of Work

There is no restriction on the hours of work except in relation to young workers under the age of 18 years. They are only allowed to work up to 8 hours a day and 48 hours a week.



#### Earnings

The statutory minimum wage came into force on 1st May 2011 and the initial statutory minimum wage was set at HK$28.00 per hour. The statutory minimum wage rate was raised from HK$28.00 to HK$30.00 with effect from 1st May 2013.

#### Holidays / Rest Periods

An employee is entitled to the following holidays and rest periods: 1 rest day in every period of 7 days; 12 paid statutory holidays each year if any of the Lunar New Year holidays falls on a Sunday; or the day following the Chinese Mid-Autumn Festival falls on a Sunday, then the next day would be designated as an extra statutory holiday); and a minimum of 7 to 14 days (depending on length of service) paid annual leave.

#### Minimum/Maximum Age

There is generally a minimum age limit of 15 (which can be varied in certain cases) but there is no maximum age limit.

#### Illness/Disability

An employee is entitled to sickness allowance (equivalent to four-fifths average daily wages per day) if the sick leave is supported by a medical certificate and the sick leave taken is not less than 4 consecutive days. Discrimination on the ground of disability is an offence.

Disabled Employees are entitled to changes in the workplace to accommodate their disability provided that the provision of such changes will not cause unjustifiable hardship to their employers in terms of cost and reasonableness.

#### Location Of Work/Mobility

Where an employer does not expressly reserve the right to relocate an employee, an employee may only be required to relocate if such a term can be implied into the employment agreement. While the courts are usually willing to imply such a term, they will only do so if the relocation is reasonable.

If a mobility clause is clear, it may be exercised as it stands, without the addition of a requirement that the mobility clause be reasonable. On the other hand, it has been held that a mobility clause may be construed as subject to an implied requirement that the employer will give the employee reasonable notice before moving such an employee.

Notwithstanding the above, the Labour Tribunal tends to protect employees. Therefore, employers are advised to be ready to justify the exercise of a mobility clause on genuine operational requirements of the employer.

#### Pension Plans

An employer must enrol an employee in an MPF scheme (mandatory provident fund scheme) within 60 days of employment. An employer and an employee are each required to make a monthly contribution equivalent to 5% of the employee's wages to an MPF scheme. Both the employer's mandatory monthly contribution and the employee's mandatory monthly contribution are however capped at HK$1,250 each. An employee earning less than HK$7,100 per month (by virtue of the recent amendment which took effect from 1st November 2013) is exempt from making a contribution. Normally, an employee may only withdraw his accrued benefits in an MPF scheme when he has reached the age of 65.

Under the Employment Ordinance, the amount of severance payment/long service payment can be reduced by the amount of retirement scheme payment made to that employee (i.e. the employer's contribution) in respect of which that severance payment/long service payment is payable.

#### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A female employee is entitled to 10 weeks' maternity leave with pay. It is not at full pay but a pay equivalent to four-fifths of her average wages. Currently, there is no statutory paternity leave for the father, no adoption leave and no parental leave. However, a bill to amend the Employment Ordinance to provide for paternity leave will be gazetted on 28th February 2014 and tabled in the Legislative Council on 26th March 2014. The proposed amendment seeks to make 3 days' paid paternity leave a statutory benefit for working fathers.

Compulsory Terms

The above terms on holidays, sick leave, maternity leave, MPF scheme, as well as the minimum length of termination notice and amount of terminal payments (to be explained in the latter part of this chapter) all represent the minimum statutory protection to an employee which an employer is prohibited from contracting out of. In practice, an employer often provides an employee with better terms than the minimum statutory protection e.g. employers often grant sick leave and maternity leave with full pay instead of four-fifths of average wages. An employer does not have to provide these compulsory terms to employees in a specific format if there is no written contract.

Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that those agreed terms are more favourable to the employees than the statutory rights.

## Types Of Agreement

All employment relationships are eventually contractual in nature, whether or not the terms have ever been reduced to writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term, variable, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated unless the employment is for less than 4 weeks or less than 18 hours in each week.

## Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied into the employment relationship.

During employment, an employee is under an implied duty to respect the confidentiality of the employer's commercial and business information. Therefore, information that an employee is expressly told is confidential, and obviously is confidential, is protected without covenant during employment.

After employment, only trade secrets are protected by the implied duty of confidentiality. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment. Secret processes of manufacture, such as chemical formulae or designs or special methods of construction and other information which is of a sufficiently high degree of confidentiality, have been held to amount to trade secrets.

In addition to the implied duties, employers will often include in the employment contract an express term specifying the type of information that is a trade secret, and therefore protected, to prevent future disclosure. They may also include restrictive covenants as a means of protecting future confidentiality provided that the restrictive covenants offer no more than the protection of legitimate interest of the employer.



## Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally speaking, in every employment contract there is an implied term that any invention/discovery made by an employee in the course of employment is being held on trust by the employee for the benefit of his employer.

In particular, the invention/discovery belongs to the employer if:-

- it was made in the course of the employee's normal duties; or
- it was made in the course of duties specifically assigned to the employee;
- provided that an invention might reasonably be expected to result.

Further, if an employee, under an employment contract, is under a special obligation to further the interests of the employer's undertaking and an invention is made in the course of fulfilling this duty, then the invention belongs to the employer.

Generally speaking, any other invention made by the employee is taken to belong to the employee.

In the context of patent, if an employee makes an invention which results in the employer being granted a patent, compensation may be awarded to the employee by the court. Any term which diminishes the employee's right to the patent is unenforceable.

## Hiring Non-Nationals

Employers are obliged to ensure that all employees are entitled to work in Hong Kong. Any persons, other than those having the right of abode, right to land or unconditionally stay in Hong Kong, must obtain an employment visa from the Hong Kong Immigration Department before coming to Hong Kong for the purpose of employment. An employer has to provide supporting proof explaining why the post cannot be filled locally. The skill, knowledge, experience and qualifications of the employee should be highlighted to the Immigration Department to facilitate a successful application. Employing a person who does not have the required employment visa is a criminal offence.

## Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

## Outsourcing And/Or Sub-Contracting

Redundancy may result from outsourcing and/or sub-contracting thereby triggering liability to pay severance payment to those dismissed by reason of redundancy if they have been employed for at least 2 years. An employee is taken to be dismissed by reason of redundancy if the dismissal is due to the fact that the kind of work for which an employee is employed to do ceases or diminishes, or is expected to cease or diminish.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

An employer may not change any terms of the employment contract without the employee's consent unless such change is necessitated by statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his original position or to continue with the original terms in his employment contract) or by the genuine operational requirements of the employer's business. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change). In practice, however, the Labour Tribunal is reluctant to authorise unilateral variation on the ground of genuine operational requirements of the employer's business.

Generally, any change of terms to which the employee does not consent will amount to a breach of contract. If the change is a significant one which goes to the root of the contract, the employee is entitled to treat the contract as terminated. In so doing, the employee may also claim that he has been constructively dismissed and seek damages accordingly.

### Change In Ownership Of The Business

When there is a change in ownership of a business (except a change merely in the shareholding ownership, whereby all contractual obligations remain the same because the employing company is the same), the transferor's contracts with employees are automatically terminated and the transferor is liable to pay severance payment to those who have been employed for at least 2 years unless the new owner has offered re-engagement on identical or equivalent terms. The new owner must offer re-engagement on identical or equivalent terms at least 7 days before the date of transfer and the renewal of employment must take effect on or before the date of termination. If the employee refuses to take on such re-engagement, he will be regarded as being unreasonable and will not be entitled to severance as well as long service payment. On the other hand, the Employment Ordinance provides that, on the transfer of a business, an employee's continuity of employment is not broken. The effect is that the transferee of the business would take on the responsibility for making long service payment to the employee by reference to the employee's entire length of service (both before and after the transfer).

### Social Security Contributions

Employers and employees are not required to make social security contributions except contributions to a statutory retirement fund known as MPF scheme (mandatory provident fund scheme).



### Accidents At Work

Employers have a common law duty to have regard to the safety of their employees and are liable to pay compensation to an employee for negligence. Employers are also responsible under common law for accidents caused by the acts of their employees where the employees were acting in the course of their employment. It is compulsory for the employer to take out insurance to cover their liabilities both at common law and under the statutes.

In addition to common law duties, a number of additional obligations are imposed on employers through legislation (most significantly the Employees' Compensation Ordinance). Under the Employees' Compensation Ordinance, an employer is liable to pay compensation to an employee who suffers personal injury arising out of or in the course of employment, or to eligible family members of an employee who is killed in an accident. In addition the employer also owes specific statutory duties to members of the public who are affected by the activities of the employer, and other people's employees working on their premises (most significantly the Factories and Industrial Undertakings Ordinance). In some instances, a breach of the employer's statutory duties may give rise to both criminal and civil liability.

Unless the contrary is proven, an accident arising in the course of an employee's employment shall be deemed to have arisen out of that employment. Further, notwithstanding that the employee was at the time of the accident acting in a way contrary to statutory regulations or his employer's instructions, the accident to the employee shall be deemed to arise out of and in the course of his employment if the employee's act was done for the purpose of and in connection with his employer's trade or business.

An accident is also deemed to have arisen out of and in the course of an employee's employment if the accident happens when the employee is travelling as a passenger by any means of transport to and from his place of work with the express or implied permission on the part of the employer, provided that the transport by which the employee is travelling at the time of the accident is being operated by the employer or some other person pursuant to arrangements made with the employer and is not part of the public transport service.

However, the employee shall not be entitled to compensation if the injury in question (i) (other than an injury which results in partial incapacity of a permanent nature) does not incapacitate him from earning full wages at his employment; (ii) is a deliberate self-injury; (iii) is attributable to the employee's serious and wilful misconduct; or (iv) is deliberately aggravated by the employee. In scenarios (iii) and (iv), where the injury results in death or serious incapacity of the employee, the court on consideration of all circumstances may award compensation from the Employees' Compensation Ordinance or such part thereof as it shall think fit.

### Discipline And Grievance

Currently, there is no statutory rule which an employer has to follow before resorting to taking disciplinary action against an employee. There is also no mechanism to allow an employee to air his grievance, save that the Labour Department has a special Labour Relations Division to help settle labour disputes and claims by conciliation.

**Harassment/Discrimination/Equal pay**

Employees and workers are entitled to work free from discrimination and harassment on the ground of sex (including gender, marital status and pregnancy), family status (e.g. discrimination against an employee who has to take care of his/her child), disability (e.g. discrimination against an employee by reason of his/her mental/physical disability) and race.

Discrimination and harassment may occur in the arrangements for recruitment, promotion, transfer or training, the access to terms and conditions of employment, voluntary departure or redundancy schemes, or retirement policies and the procedures for handling complaints and grievances.

Employers are responsible for preventing discrimination and harassment in the workplace. This responsibility does not change irrespective of whether an employee works on a permanent, casual, full-time or part-time basis, or as a contract worker. Employers should also be aware that the person who harasses may be anyone that comes into contact with the employee such as a supervisor, a colleague, or even a client.

Employers may also be liable for acts of discrimination and harassment committed by their employees in the course of employment, regardless of whether the acts were done with the employers' knowledge or approval. However, it is a defence for the employers to show that they have taken reasonably practicable steps to prevent employees from doing such acts, for example, by implementing a policy against discrimination and harassment in the workplace.

Social gatherings involving employees immediately after work and for an organised party were held on the facts of a previous case to be within the course of employment even though the events take place outside the workplace or normal work hours.

Acts of sexual harassment may be done by any person to a man or a woman, and may be direct or indirect, physical or verbal. Here are some examples:

- unwelcome physical contact, such as hugging, kissing or touching;
- staring or leering;
- brushing up against the body;
- intrusive questions of a sexual nature about one's private life;
- sexually offensive gestures.

Some acts of sexual harassment may amount to criminal offences, for example:

- obscene phone calls;
- indecent exposure;
- sexual assault.



Sexual harassment also includes the creation of a sexually hostile or intimidating environment, for example:

- sexually suggestive comments or jokes;
- sexually explicit pictures or posters;
- insults or taunts based on sex;
- wolf whistling.

**Compulsory Training Obligations**

There are no compulsory training obligations for employees generally, but it is common for professional bodies to impose compulsory training schemes on their members by making renewal of their practising permit conditional upon fulfilment of compulsory training scheme requirements.

**Offsetting Earnings**

Offsetting earnings against an employee's debt is not allowed unless the employee has provided written consent. If the employee has given written consent, the deduction shall not exceed 50% of the wages payable to the employee each time.

**Payments For Maternity And Disability Leave**

An employee who has been employed for at least four weeks, with at least 18 hours' work in each week, is entitled to 10 weeks' maternity leave with pay. There is no disability leave though an employee may be entitled to sick leave with pay for attending medical treatment due to his disability.

**Compulsory Insurance**

All employers are required to have valid employees' compensation insurance policies to cover their liabilities both under the Employees' Compensation Ordinance and at common law.

**Absence For Military Or Public Service Duties**

There is no military service duty in Hong Kong. The main public service duty is juror duty. It is a criminal offence for an employer to terminate, or threaten to terminate, the employment of, or in any way discriminate against, an employee because he has served or is serving as a juror.

**Works Councils or Trade Unions**

The Employment Ordinance recognises the rights of employees to exercise a right to be a trade union member and participate in trade union activities. Discrimination against an employee for trade union involvement is a criminal offence.

Every employee has the following rights:

- to be a member or an officer of a trade union
- to take part in the activities of the trade union at any appropriate time, if the employee is a member or an officer of a trade union

Appropriate time means:-

- outside working hours; or
- during working hours by arrangement and with the consent of the employer.
- to associate with other persons for the purpose of forming or applying for the registration of a trade union.

An employer commits a criminal offence if he:

- prevents or deters an employee from exercising any of the above rights;
- dismisses, penalizes or discriminates against an employee for exercising the above rights;
- makes it a condition of employment that an employee must not exercise the above rights.

**Employees' Right To Strike**

Employees have the right to strike on condition that such right is exercised in conformity with the laws of Hong Kong. The right to strike is also recognised in Article 27 of the Basic Law.

**Employees On Strike**

It is very risky for an employer to dismiss an employee whilst he is on strike. The Employment Ordinance expressly provides that participation in a strike is not a ground for summary dismissal and so an employer has to be prepared to justify the termination otherwise it will be regarded as termination or discrimination for trade union participation. Termination or discrimination for trade union participation is a criminal offence.

**Employers' Responsibility For Actions Of Their Employees**

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

Personal Data Privacy At Work

From time to time, personal data of an employee are collected by an employer at various stages of the employment relationship, from recruitment stage to the time when the employee leaves the employment. The Personal Data (Privacy) Ordinance governs the collection, use and retention of personal data so collected by the employer, In essence, the collection and retention of personal data has to be for a lawful purpose, necessary for that purpose and adequate but not excessive. Personal data must be used with the employees consent and the employer is under a duty to prevent accidental use or misuse of personal data.



# 04. Firing The Employee

**Procedures For Terminating the Agreement**

In all cases the termination of an employment contract must comply with the terms of the contract. In most cases, employers need to follow specific procedures (e.g. provide sufficient termination notice or payment in lieu of notice) and make statutory terminal payments (e.g. severance or long service payments). There are also statutory restrictions on an employer's right to terminate. It is an offence for an employer to dismiss a pregnant employee or an employee who is on paid sick leave or who has served notice of pregnancy on her employer except in the case of summary dismissal due to an employee's serious misconduct. In such event, the court would examine closely whether the termination is justified. It is an offence for an employer to dismiss an employee for trade union membership or activities. It is also an offence to dismiss an employee injured in the course of his employment unless injury compensation has been agreed or the certificate on the extent of the injury has been issued.

**Instant Dismissal**

An employer may terminate an employment agreement by instant dismissal, but only if the employee is guilty of serious misconduct, fraud or dishonesty. However, even in such a situation the consent from the Commissioner of Labour is required in order to dismiss an employee injured in the course of his employment unless injury compensation has been agreed or the certificate on the extent of the injury has been issued.

**Employee's Resignation**

An employment agreement can generally always be terminated by the employee's resignation. Normally the contract will stipulate the notice period required.

**Termination On Notice**

Subject to the above statutory restrictions on an employer's right to terminate, the parties can terminate an agreement on notice. There are statutory minimum periods of notice which will override the contractual notice period, but the parties can agree to a longer period if they so wish. If the contract does not specify a notice period, the notice period shall not be less than one month if the employee has already completed his probation.

**Termination By Reason Of The Employee's Age**

Employment can be terminated due to the employee's age but only if a retirement age is specified in the contract. There is no default retirement age imposed by statute. Employees are not protected against age discrimination.

### Automatic Termination In Cases Of Force Majeure

The contract will be deemed "frustrated" where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace are examples of where the contract would be deemed frustrated.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire.

Where the parties agree to terminate the employment, they are not required to obtain the court's or regulatory body's approval before the termination is effective.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director or other senior officer's employment, but in the case of a company director termination of employment does not automatically end the directorship. Separate steps will be required to bring the directorship to an end pursuant to the Companies Ordinance. Notwithstanding any provision in the articles of association of a company, an ordinary resolution from shareholders is required to bring the directorship to an end.

### Special Rules For Categories Of Employee

There are no categories of employee to whom special rules apply, but certain categories (e.g. pregnant women and injured employees) benefit from more generous protection from dismissal.

### Specific Rules For Companies in Financial Difficulties

There are specific rules which apply when a business gets into financial difficulties. In order to recover debts owed by an insolvent employer, such as arrears of wages, wages in lieu of notice and severance payment, employees may need to present a bankruptcy or winding-up petition against their insolvent employer, usually with the assistance of the Legal Aid Department. At the same time, employees may also apply for an ex-gratia payment from the Protection of Wages on Insolvency Fund (the Fund) in respect of the wages, wages in lieu of notice and severance payment owed by their employer. An applicant has to make a statutory declaration of the information provided in the application form. He is also required to produce documents such as his employment contract, wage receipts and attendance records to support his application to the Fund. Once a winding-up petition has been filed or a resolution for voluntary winding up has been passed, all payments made by a company are void unless authorised by a court order.



### Restricting Future Activities

Generally clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable. The courts will uphold restrictions if they are drafted sufficiently narrowly. In short, such restrictions are only enforceable if they are reasonable. Essentially such restrictions must be designed to protect a 'legitimate business interest' and they should be no wider than is necessary to protect those interests. Further they must be clear and reasonable in duration and geographical scope. Typical clauses include those designed to restrict an employee from joining a competitor (or setting up in competition), from soliciting business from dealing with certain customers or from enticing other employees to leave.

Each case is considered on its own facts, so what might be considered appropriate for one individual may be held by a court to be unreasonable for another – even if the individuals work for the same employer.

### Severance Payments

An employer is required to pay severance payment when an employee, who has been employed for 2 years or more, is dismissed by reason of redundancy or is laid off due to a lack of available work. The amount of severance payment is two-thirds of the employee's last full month's salary (or two-thirds of HK$22,500, whichever is lesser), for every year of service, subject to a statutory cap of HK$390,000. An employer's contributions to the employee's retirement fund can be used to set-off against the severance payment.

### Special Tax Provisions And Severance Payments

If the severance payment is computed in accordance with the formula of the Employment Ordinance, it is exempt from income tax. However, if the amount paid is over and above the amount computed by that formula, the excess is taxable.

If an employee leaves Hong Kong upon termination of his employment, the employer is required to notify the Inland Revenue Department in writing of the expected date of departure of the employee at least one month prior to the departure by Form IR56G. The employer is also required to withhold any payments of money to the employee for a period of one month from the date on which the notification was given, or until a "letter of release" is received from the Inland Revenue Department, whichever is earlier.

### Allowances Payable To Employees After Termination

Employers are not required to contribute towards any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Claims in the Labour Tribunal have very tight time limits. Claims for severance payment must be made within three months after the employment was terminated. Claims relating to unreasonable termination, unlawful termination or unreasonable variation of an employment contract must be made within nine months after the employment was terminated. Claims for accident compensation under the Employees' Compensation Ordinance have a 24-month time limit.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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# Hungary

# Hungary

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Employment Tribunal has exclusive jurisdiction over all labour law related claims.

### The Main Sources Of Employment Law

Hungary has three major employment acts, which regulate four different categories of employees; employees working in the private sector, in the public sector at independent agencies and in government agencies (ministries, municipals, government offices) and those in state owned entities (hospitals, schools, etc.). This handbook will set out the regulations of the private sector which are governed by the Act 1 of 2012 on Labour Code ("Labour Code") including the regulations that govern both individual and collective contracts.

### National Law And Employees Working For Foreign Companies

The statutory rights granted under national law will apply to all individuals physically working in Hungary regardless of their nationality and regardless of the law governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

National Law also applies to employees working abroad temporarily.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

The employment contract must be in writing.

### Mandatory Requirements

#### Trial Period

There is no legal obligation to provide trial periods, otherwise known as 'probationary periods', when engaging new employees, but it is common in practice to do so. The maximum period is three months, however, the collective bargaining agreement may set out a longer trial period up to a maximum of six months.

#### Hours of Work

Subject to certain exceptions, the employees may only work 12 hours per day and 48 hours per week, including extraordinary hours.

#### Earnings

There is a restriction prohibiting employees from earning below a minimum hourly/weekly/monthly wage (which is reviewed annually). There are different rates depending on the qualification required for the fulfilment of the position.

There is an upper limit for the maximum income of executives in the public sector.

#### Holidays/Rest Periods

There is a requirement that employees must have 20 days paid holiday per year. The number of paid holidays increases with the age of the employee and other circumstances, i.e. children, young age of the employee, etc. There are also various compulsory daily and weekly rest periods and breaks which have to be observed.

#### Minimum/Maximum Age

There is a normal minimum age of 16 (which can be varied in certain cases), below which employees cannot work. Different rules (e.g. on working time) apply to children or young workers. There are no maximum age limits, however in order to receive pension, an employee must terminate its employment relationship. After an employee qualifies as a pensioner he/she may work simultaneously, however there is a maximum limit for the income of the pensioner per each year. If the salary of the pensioner reaches that maximum amount the state suspends the payment of the state pension for the remaining period of the relevant year.

#### Illness/Disability

Employees are entitled to 15 days paid sick leave per year. After 15 days the social security and the employer pay proportionally the employees' sick leave payment.

#### Location of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. In the absence of such information set out in the employment contract, the place where work shall be considered as the place of work. Mobility clauses can be included in the contract of employment, but they cannot be applied contrary to their objectives. Where the job requires travel to other locations, it is normal for the employer to reimburse all reasonable travel expenses. The maximum period of secondment ordered by the employer unilaterally is 44 working days per year, though the parties may mutually agree a longer period. 'Teleworking' is also acknowledged by the Labour Code, where the activities are performed on a regular basis at a place other than the employer's premises.

### Pension Plans

Employers do not have to provide their employees with pension schemes.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

A range of "family-friendly" rights exist, including maternity leave and pay, paternity leave and pay, adoption leave and pay, parental leave and pay, time off for dependants and part-time working. Employees who can satisfy the appropriate qualifying conditions for the right in question can enjoy, or can apply for, their statutory rights in this regard. Different rules apply to different rights, and it is not possible to summarise all the details (most of which are set out in various Regulations) within the scope of this book.

### Compulsory Terms

The employment agreement must include the following data: base salary, position and identity of the parties. The employees must also be informed of the person who exercises the employee's rights over them. Within 15 days from the execution of the employment agreement an employee must be informed of the following: (i) the regular working hours; (ii) the other component elements of the remuneration; (iii) the date of payment of salaries, the frequency of the salary payment; (iv) the number of days of paid annual leave and the procedures for allocating and determining such leave; (v) the rules governing the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated; (vi) whether a collective agreement applies to the employee; and (vii) the employee's scope of work.

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to these compulsory provisions (e.g.: non-compete agreement).

## Types Of Agreement

Contracts of employment exist in several different forms: fixed term, indefinite term, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated.

The Labour Code prevents employees from being treated less favourably than other employees because of their working part-time or working on a fixed term contract.

## Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied into the employment relationship.

During the employment relationship an employee shall keep confidential all business secrets that came to his/her knowledge during or in connection with the employment. Therefore, information that an employee is expressly told is confidential, and obviously is confidential and business secrets are protected without covenant during employment. Further, the employee may not disclose such data that came to his/her knowledge in connection with the employment and the disclosure of which may be detriment to the employer or other person.

After employment, only business secrets are protected by the duty of confidentiality without any compensation. Business secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment.



In addition to the implied duties, employers will often include in the employment contract an express term specifying the type of information that is a trade secret, and therefore protected, to prevent future disclosure. They may also include restrictive covenants as a means of protecting future confidentiality (see below).

## Protection of personal rights/Personal data protection

There are strict rules on collecting and processing of employees' personal data during the recruitment period and the employment relationship as well and in certain cases the consent of the worker is needed.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights.

## Hiring Non-Nationals

Employers are obliged to ensure that all employees are entitled to work in Hungary. Different requirements apply depending on the nationality/status of the individual concerned. In broad terms, EEA nationals (subject to certain exceptions) have an automatic entitlement to work in Hungary, no work permit is required. Non EEA employees require a work permit to work in Hungary.

An employer will be liable to a penalty if he/she employs someone who is not entitled to work in Hungary.

## Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

## Outsourcing And/Or Sub-Contracting

There are specific rules relating to outsourcing, in-sourcing and where there is a change of the employer. The change of the employer (i.e. the so called transfer of undertakings) is regulated by the Labour Code. The circumstances of in- and outsourcings shall always be reviewed on a case by case basis, since in- and outsourcing may also result in the application of the transfer of undertaking rules.

In situations where transfer of undertaking rules apply, employees carrying out the work in question automatically transfer with the work and thereby become employees of the new entity carrying out the work. Hungarian law does not allow 'cherry picking', i.e. the new employer has to take over all employees affected by the transfer. The employees must generally remain on exactly the same terms of employment as they enjoyed prior to the transfer. The employee has the right to terminate his employment relationship within 30 days from the date of transfer if the transfer involves a substantial change in his working conditions. In this case the employee is entitled to be released from work for at least half of the notice period and severance pay as it is at termination by notice issued by the employer.

The works council shall be informed about the planned transfer at least 15 days prior to the transfer date by the new and the old employer. Further, the employers shall initiate negotiations with the works council. In the absence of a works council, the transferor (old) employer shall inform the affected employees at least 15 days prior to the transfer taking place. The transferring and the receiving employer shall be jointly and severally liable for employees' demands which arose before the date of transfer, provided that these demands are enforced by the employee's within one year from the transfer date.

A transfer of undertakings of itself cannot constitute an appropriate basis for the termination of the employment by the employer. Such termination would be considered unlawful.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with contractual principles, parties shall be entitled to amend employment contracts by mutual consent under the rules relating to the conclusion of employment. The employee has the right to pursue a claim in connection with any amendment of the employment contract implemented by the employer's unilateral decisions.

There is a new relevant rule in this regard: employers shall amend the employment contract based on the employee's proposal to part-time work covering half of the daily working time until the child reaches the age of three.

### Change In Ownership Of The Business

When there is a change in ownership of a business the transfer of undertaking rules do not have to be applied.

### Social Security Contributions

Employers and employees are required to make social security contributions (rates are determined annually).

### Accidents At Work

Employers must ensure the safety of their employees by providing a safe working environment (e.g. providing protective equipment). The employer is liable to provide compensation for damages caused in connection with the employment relationship including the damages caused by an accident at work. It is also considered as accident at work if the accident happens while the workers are travelling to or from work. It is not compulsory, but recommended for the employer to have insurance to cover potential claims by employees in this regard.





### Discipline And Grievance

Disciplinary actions may either be regulated by collective bargaining agreements or by the employment agreement. Disciplinary action may only impose such sanction as amends the terms of the employment for a fixed term. The material consequences may not exceed the employee's monthly salary. Disciplinary actions must be in writing, and decisions have to include reasons.

### Harassment/Discrimination/Equal pay

Each natural or legal person has the right to lodge a complaint to the Equal Treatment Authority about the violation of equal rights or to start a legal action at the labour court.

Employees are protected from discrimination on grounds of sex, age, sexual orientation, marital status, race, religion or belief, disability, part-time status and fixed-term status.

Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), on termination or even after the employment has ended (for example in writing the reference).

In the case of discrimination on grounds such as sex, race, age or religion, the discrimination may be direct (for example refusing to employ a man or woman), or indirect (for example by imposing a condition which is irrelevant to the job but is such that fewer people of a particular group can qualify). In other instances, such as disability discrimination, there is no specific distinction between direct and indirect discrimination.

The employer is expected to comply with the principle of equal treatment in the following cases:

a) access to employment, especially in public vacancy advertisements, hiring, and in the conditions of employment;

b) establishment and termination of employment;

c) in case of employment equal pay shall be provided for equal work;

d) in organizing work or public service, the same conditions shall be created at work service, qualification or vocational training, retraining, and work experience for each employee or civil servant;

e) provisions made before the employment or other relationship related to employment have commenced;

f) no retribution shall be shown against those who has lodged complaints for discrimination; and

g) during grievance procedures and processes aiming to define the liability of the employee for damages caused.

The injured party or their representative has to prove the likelihood of that:

- the injured person or group has suffered disadvantage or the immediate risk of suffering of this exists; and
- the injured person or group possesses a protected characteristic defined in the Equal Treatment Act.

If the injured party has sufficiently evidenced the above circumstances, the respondent has to prove that:

- the circumstances that have been proved to be likely by the injured party do not exist, or
- it has observed, or in respect to the relevant relationship was not obliged to observe, the principle of equal treatment.

If the Equal Treatment Authority has established that the principles of equal treatment have been violated, it may

- order that the situation constituting the violation of law shall be eliminated;
- prohibit the continuation of the violation of law;
- publish its decision establishing the violation of law;
- impose a fine from fifty thousand (cca. EUR 160) to six million HUF (cca. EUR 19,000).

Damage can only be awarded by the labour court, and so to get compensation the victim has to sue the violator at court.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/expectations.

### Offsetting Earnings

It is possible for employers to offset earnings against an employee's debts, but not where such offset would reduce the employee's salary under the statutory minimum pension. However, the employer may only make a deduction from the employee's wages if it is required by a statutory or contractual provision; or if the employee has given his prior written consent to the deduction.

### Payments For Maternity And Disability Leave

Employees will benefit from certain payments subject to satisfying the relevant necessary requirements. To trigger statutory maternity pay entitlement, a woman must accrue at least 365 days employment during the two years prior to the birth of the child.



The employees are entitled to 15 days/year sick leave payment. During this period they receive 70% of their wages.

After sixteen days, with regard to disability leave/sickness absence, an employee will be entitled to receive statutory sick pay (which is currently 60% of the average salary) from the sixteenth day of consecutive absence. The statutory provisions established a daily maximum amount of the sick leave payment.

The first 15 days of the sick leave is paid by the employer, after the sixteenth day the employer has to pay 1/3 of the sick leave payment and the remaining 2/3 is covered by the social security system.

### Compulsory Insurance

No compulsory insurance is prescribed by the Hungarian law, other than the statutory social security insurance.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

There are two different ways to establish a trade union: (i) ten employees may establish an independent trade union, or (ii) they can join an existing external trade union and form a sub section.

An employee who is an official of a trade union (whether independent or external) has certain rights in relation to his employer. For example, dismissal for membership of, or for taking part in the activities of, an independent Trade Union is automatically unfair for the purposes of unfair dismissal and higher awards of compensation may, in some circumstances, be made. Action sort of dismissal of an employee or subjecting an employee to a detriment for membership of, or for taking part in the activities of, an independent Trade Union, gives the employee the right to complain to a tribunal which may award him or her compensation. A Trade Union official has the right to time off work without pay to take part in Trade Union activities. In addition, certain Trade Union officers have the right to take time off with pay for Trade Union duties. The termination of certain Trade Union officers is possible only if the superior body of the local trade union gives it consent.

Under the Hungarian Labour Code employer has a duty to inform the works council regularly on certain issues. In other cases the prior opinion of the works council shall be sought. The employer shall initiate negotiations with the works council in case of transfer of undertakings and collective redundancies.

Trade unions that are represented in a workplace – meaning that they have a body or representative there - are entitled to exercise various rights including the conclusion of a collective agreement. They also have the right to request information in connection with the employees' economic and social interests from the employer. In case of an employer's action or decision from the part of the employer, the trade union is entitled to state its opinion and initiate a consultation in connection thereof.

Employees are entitled to establish a workers' council if the company has more than 50 employees. In case of 15 employees, employees are entitled to nominate a representative who is called a shop steward.

### Employees' Right To Strike

The Hungarian Constitution provides for the employees' right to strike, the details are regulated in the Act on Strike. The employees have to consult for at least seven days with the employers before going to strike. The seven days period is not required if the employees join a solidarity strike, thus they join a strike of employee working for another employer.

### Employees On Strike

Employees on strike may not receive their salary. Members of the works council may neither cooperate in the strike nor encourage the employees on strike. Employees on legal strike are protected, however employers may dismiss the employees if it is proven that the strike was illegal.

### Employers' Responsibility For Actions Of Their Employees

Employers in principle are responsible to a third party for damages caused by their employees related to their employment.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

In all cases the termination of an employment contract must comply with the terms of the contract. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair dismissal. An employer must be able to demonstrate a "fair, clear and reasonable" reason for dismissal. Whether a dismissal for the reason(s) identified is nevertheless unfair depends on the tribunal's view as to the reasonableness of the employers' actions. Currently, a failure to comply with the minimum statutory procedures (see discipline and grievance, above) will result in an automatic unfair dismissal.

### Instant Dismissal

Both the employer and the employee can terminate an employment relationship with immediate effect if the other party (i) wilfully or by gross negligence commits a grave violation of any substantial obligations arising from the employment relationship; or (ii) otherwise engages in conduct rendering further existence of the employment relationship impossible. No deviation from these provisions shall be considered valid. Termination for serious cause with immediate effect must still comply with the requirement to provide "fair, clear and reasonable" reasoning.



### Termination During Trial Period

Should the parties agree on a probation period, it is also possible to terminate the employment relationship with immediate effect and without reasoning during the trial period.

### Employee's Resignation

The employment relationship can be terminated by the employee's resignation without reasoning. The minimum notice period is 30 days, however the employment contract may stipulate a longer period. If the employee resigned, he/she shall work during the entire notice period.

The employee may terminate fixed-term employment with a notice period if continuing the employment would cause a serious disadvantage to the employee. In this case, the employee must give reasoning in the termination letter. In the case of permanent employment, the termination need not include any reasoning.

### Termination on Notice

Employers can terminate the employment relationship by notice, however they must provide "fair, clear and reasonable" reasoning and there may still be liability for unfair dismissal. The minimum period of notice is 30 days and depending on the period of permanent employment, the period of notice increases with the time of the duration of the permanent employment. The requirement for "fair, clear and reasonable" reasoning must still be complied with. An employee may be dismissed only for reasons in connection with his/her ability, his/her behaviour in relation to the employment relationship or for reasons in connection with the employer's operations.

### Termination By Reason Of The Employee's Age

In Hungary there is no automatic termination of employment relationship if an employee reaches a certain age. Furthermore, it is prohibited to terminate an employment relationship because of the age of the employee. However, if an employee qualifies as pensioner (i.e. if he/she has reached the age of retirement and has the mandatory service time or if he/she receives pension for other reasons) the employer may terminate the employment relationship without reasoning and without paying severances.

If an employee has only 5 years before reaching the age of retirement (currently 62 years for those born before 1952), the employer may only terminate the employment relationship with "justified reasoning".

### Automatic Termination In Cases Of Force Majeure

The contract will be deemed "frustrated" where intervening events make its continued performance impossible. Death of the employee or the dissolution of the workplace without succession is one example. However Force Majeure events do not automatically terminate an employment relationship.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire. The only requirement is that the agreement should be in writing and must expressly highlight the termination date. This applies to all employment relationship terminations.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of other senior officers' employment. However, for executive officers (e.g. managing directors) there are special rules set out in the Labour Code for example reasoning is not required for termination on notice. If the senior officer is also a director in a business organisation the rules of the Labour code shall be applied in accordance with the company law rules.

### Special Rules For Categories Of Employee

There are no categories of employee to whom special rules apply, but certain categories (e.g. pregnant women, those who take care of his/her child, time for incapacity of work, etc.) benefit from more generous rules for protection from dismissal.

The employer may terminate fixed-term employment with a notice period in certain limited cases (e.g. during the liquidation or bankruptcy process; because of the competence of the employee; or if, owing to serious external circumstances, continued employment cannot be expected from the employer.

The employer may terminate fixed-term employment with immediate effect without reason. However, if it does so, the employee must be given a fee for the period remaining on the fixed term, capped at 12 months.

### Specific Rules For Companies in Financial Difficulties

The employment might be terminated by a reason relating the operation of the company.

### Restricting Future Activities/ Non-competition agreement

There may be an agreement between the employer and the employee for up to two years following the termination of the employment relationship that the employee shall not act against the rightful economic interests of the employer after the termination of the employment. The employer is obliged to pay an appropriate compensation to the employee. The amount of the compensation is at least 1/3 of the employee's salary applicable on the termination date, but depending on the circumstances (e.g. geographical area covered by the restriction) the amount paid by the employer may be higher.



### Severance Payments

Upon certain types of termination employees are entitled to the following amounts: payment for the notice period and mandatory severance payment regulated by the Labour Code or by the employment agreement.

In cases of termination of the employment relationship by succession, termination on notice provided that the reason of termination was not the behaviour or poor performance of the employee), or by the employee with immediate effect, the employee is entitled to severance payment. This does not apply to those employees who are regarded as a pensioner. The amount of the severance payment is regulated by the Labour Code. The minimum amount is one month's payment after at least three years of employment.

### Special Tax Provisions And Severance Payments

There are special tax provisions for severance payments in the public sector. In the private sector the tax and social contributions on severances are the same as those on salaries.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Claims must be issued within 30 days from the disclosure of the statements (e.g. termination letter) to the Employment Tribunal. If the party has not met the deadline, a proof might be submitted within 6 months.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

In Hungary, the labour authorities examine the agreement of independent contractors (freelancers) with special care and are entitled to reclassify such agreements by applying serious sanctions simultaneously. This risk can be mitigated if special care is taken when drafting the agreements with freelancers.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

White-Collar Employees: Disputes relating to employment of private individuals are generally adjudicated by trial courts, namely District Courts and some High Courts. However, if an employment contract provides for resolution of dispute through arbitration, then arbitration would be available.

Blue-Collar Employees: The Industrial Disputes Act 1947 provides for Courts of Inquiry to inquire into industrial disputes, although it is not very common. There are also Labour Courts, Industrial Tribunals and National Tribunals for adjudication of industrial disputes.

Labour Courts adjudicate disputes relating to discharge, dismissal, reinstatement of workmen, grant of relief to workmen wrongfully dismissed, legality of strike or lock out etc.

Industrial Tribunals generally adjudicate disputes relating to leave, rules of discipline, closure of establishments, hours of work, rest intervals, bonus, provident fund, gratuity, etc.

National Tribunals primarily adjudicate disputes which, in the opinion of the Central Government involve questions of national importance or are likely to affect industrial establishments in more than one state.

The Employees' State Insurance Act 1948 provides for Employees' Insurance Courts for adjudication of disputes relating to rate of the contribution payable by an employer in respect of an employee.

### The Main Sources Of Employment Law

Under the Constitution of India, labour is a subject in the Concurrent List where both Central & State Governments can enact legislation. As a result, National and State Legislations, Statutory Rules framed thereunder and Case Law (developed by various Courts) are the main sources of Employment Law. The Indian Contract Act 1872 and prevailing customs govern the clauses of the employment agreement.

### National Law And Employees Working For Foreign Companies

Generally, Indian laws apply equally to all persons who work within the territory of India, whether for Indian companies or for offices of foreign companies and prevail over any contrary provisions of the employment agreement. However, there may be some exceptions depending on the nature of the employment (such as a managing director / CEO or an officer in-charge, etc.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Certain national enactments are applicable to Indian employees working abroad such as social security legislations including the Employees' Provident Fund and Miscellaneous Provisions Act 1952 and Payment of Gratuity Act 1972. (Please refer to the Section entitled Social Security Contributions for further details.).

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Except for some State specific requirements by which an employer is expected to issue a letter covering certain aspects of employment, there are no stipulated legal requirements as to the prescribed form of an employment agreement. The prevailing practice is either that the employer issues an appointment letter listing the terms and conditions of employment, which is then signed by the employee; or the employer and employee enter into a bilateral written agreement.

An employment agreement can be in oral form. The acceptance of such contract must be absolute and unqualified, be expressed in some usual and reasonable manner as provided under the Indian Contract Act, 1872. However, a written employment agreement is preferred to avoid disputes at a later stage.

Generally, for blue-collar employees, it used to be common for there to be no employment agreement executed between the employer and employee, but instead, appointment letters were issued. However, it is now increasingly common to produce formal employment agreements with the employees.

### Mandatory Requirements:

#### Trial Period

There is no legal requirement to provide for a trial period or a period of probation, in the case of white-collar employees or blue-collar employees. Notwithstanding the above, depending upon the applicability of Industrial Employment Standing Orders Act, 1948, the initial period of probation, in case of blue-collar employees, could be three (3) months. As a matter of practice companies do have probation period and extension of probation period if required either in the Handbook/ Company Policy or in the Letter of Appointment.



#### Hours Of Work

White-Collar Employees: The hours of work of any employee are ordinarily governed by the terms of the employment agreement.

Such employment agreements should conform with the Shops and Establishments Acts enacted by individual states in India (or the Factories Act 1948, if an employee works from an office located within a factory premises). As a result, conditions such as hours of work may differ from state to state and also depending upon the nature of establishment. The requirement of overtime, over a certain number of hours, may also change based on the Shops and Establishments Acts, etc, as applicable. For instance, the Bombay Shops and Establishments Act 1948 stipulates the maximum hours of work as 9 hours per day and 48 hours per week in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres or other places of public amusement or entertainment.

Blue-Collar Employees: For blue collar employees working in non-manufacturing establishments the hours of work will be governed by the State specific Shops and Establishments Act. For blue collar employees working in manufacturing establishments, the Factories Act 1948 stipulates that an adult employee may be required to work for a maximum period of 9 hours per day and 48 hours per week, excluding overtime, and 10 hours a day and 60 hours a week, including overtime. Overtime work is subject to a maximum of 50 hours in any quarter. A child or adolescent will not be allowed to work beyond a maximum period of 4½ hours per day. (Please refer to the section entitled "Minimum/Maximum Age – Blue-Collar Employees" wherein the age group categorising a person as a child or adolescent is specified.)

#### Earnings

White-collar employees: Earnings are mutually agreed upon by the employer and employee and this clause forms an essential term of the employment agreement.

Indian law entitles employees to twice the ordinary rate of wages in respect of overtime work.

Blue-Collar Employees: The Central or State Government fixes the minimum rates of wages payable to employees under the Minimum Wages Act 1948 and reviews such minimum rates of wages every 5 years. For instance, depending upon the area of operation, the minimum rates of daily wages may range from (or more):

| | | |
|---|---|---|
| Rs. 182 to Rs. 203 or more | in the case of | unskilled workers |
| Rs. 187 to Rs. 222 | | semi-skilled workers or unskilled |
| Rs. 204 to Rs. 241 | | skilled or clerical workers |
| Rs. 222 to Rs. 268 | | highly-skilled workers or graduates and above |

The Payment of Bonus Act 1965 entitles employees in establishments (having 20 or more employees) to payment of a bonus on the basis of profits, production or productivity.

The Payment of Wages Act 1936 prescribes a time-limit within which wages payable to employees must be disbursed by the employers and ensures that no unauthorised deductions are made by employers.

### Holidays / Rest Periods

White-collar employees: Depending upon where a person is working, the holiday entitlement is generally governed by the holidays announced by the relevant State. Generally, an employee would be entitled to mandatory weekly holiday, (eg. Sundays), national holidays (such as Independence Day, Republic Day etc.) and State holidays. In addition to the above, employees may be entitled to paid leave for a number of days as stipulated in the Shops and Establishments Acts of each state or Factories Act, as applicable.

Rest periods are also prescribed by the Factories Act or Shops and Establishments Acts, as applicable. For instance, the Bombay Shops and Establishments Act 1948 stipulates that every shop and commercial establishment shall remain closed on one day of the week, and a maximum of 5 hours of work followed by an interval of at least one hour for rest and a maximum of 3 hours of overtime.

Blue-Collar Employees: For blue collar employees working in non-manufacturing establishments, the holidays/rest periods will be governed by the State specific Shops and Establishments Act (and also Industrial Employment Standing Orders Act, 1948, depending upon its applicability). For blue collar employees working in manufacturing establishments, the Factories Act 1948 provides for a mandatory weekly holiday, compensatory holidays and specifies that no person will be required to work for more than ten days consecutively without a holiday. This act further stipulates intervals of rest of at least half an hour following a maximum of five hours of work and provides for annual leave with wages.

The Weekly Holidays Act 1942 provides for the grant of a weekly holiday to blue-collar employees in shops, restaurants and theatres without any deduction or abatement of wages.

### Minimum/Maximum Age

White-collar employees: The minimum age for employment in any establishment is 15 years of age in certain trades. However, in practice employees who are considered suitable for such employment are at least 20 years old.

Blue-Collar Employees: Any child who is younger than 14 years of age is statutorily barred from employment. Adolescents aged between 15 and 18 require a certificate of fitness to be employed in certain trades.

The maximum age for employment of white-collar or blue-collar employees is whatever age is stipulated by the employer.

### Illness/Disability

In case of illness, an employee (white-collar or blue-collar employee) is entitled to paid sick leave, the duration of which varies from industry to industry or state to state.

Alternatively, white-collar employees are entitled to paid sick leave as specified in their employment agreement.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 provides for encouragement of employment of persons suffering from specified disabilities.

### Location Of Work/Mobility

Location of work and mobility are mutually agreed by the employer and employee (white-collar or blue-collar employee) verbally or in the terms of the employment agreement.

### Pension Plans

Under the Employees' Provident Funds and Miscellaneous Provisions Act 1952 (applicable to establishments where 20 or more white-collar and/or blue-collar employees are employed) employees are entitled to receive a pension. From the monthly contributions payable by the employer towards the Employees' Provident Fund, 8.33% of the employee's pay is remitted by the employer to the Employees' Pension fund contribution (please refer to the section entitled "Social Security Contributions" wherein the details relating to contributions to the Provident Fund are specified). The Central Government will also contribute to the fund at the rate of 1.16% of the pay of the employee.



### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The Maternity Benefit Act 1961 is applicable to women engaged in white-collar employments in the public sector, as well as blue-collar employments. This act entitles women to receive maternity benefit before and after childbirth for a maximum period of 12 weeks, of which not more than 6 weeks can precede the date of expected delivery. The legislation also prescribes for payment of medical bonus and nursing breaks after birth until the child attains the age of 15 months.

Benefits pertaining to adoption and paternity are allowed only to Government employees.

The Government of India has ordered that female Government employees are further entitled to:

- Maternity leave of up to 180 days,
- "Child Care Leave" of a maximum two years during her entire service, and
- "Child Adoption Leave" of up to 180 days.

The Government of India has entitled male Government Servants (including apprentices) to paternity leave of 15 days within six months of the date of adoption. In the private sector, paternity leave is not ordinarily granted.

### Compulsory Terms

Barring limited requirements in some State specific statutes which make certain aspects mandatory, it is customary to specify certain terms in the employment agreement such as names and addresses of parties, job title, duties, responsibilities and job description of the position held by the employee, salary and emoluments, date of commencement of employment, hours of work, probation period, if any, confirmation upon completion of period of probation, entitlement to leave, provisions relating to confidentiality and intellectual property, performance review and bonus, dispute resolution and termination of employment.

### Non-Compulsory Terms

The employer and employee are free to mutually agree upon other non-compulsory terms, provided they are not contrary to statutory provisions.

## Types Of Agreement

The various kinds of employment agreements may be categorised as:

Fixed-Term employment agreements: which have a fixed duration and expire on a designated date or on completion of a project.

Full-time employment agreements: which contain compulsory terms governing employees who work on a full-time basis.

Contracts of Apprenticeship: The Apprentices Act 1961 regulates the training of apprentices and governs the terms to be incorporated in a contract of apprenticeship. This act is applicable to blue-collar as well as white-collar employees, as apprentices are classified under the enactment as trade apprentices, graduate and technician apprentices and technician (vocational) apprentices.

## Secrecy/Confidentiality

Almost every contract of employment in India contains a privacy and confidentiality clause. A breach of confidentiality may serve as grounds for termination of employment. An employee is duty-bound to maintain secrecy/confidentiality of sensitive information gathered in the course of employment, whether or not the employment agreement contains a specific clause to that effect.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally, ownership of inventions or other IP rights is contractually provided for in the employment agreement. In the absence of any such express or implied contractual provision, ownership of IP rights is governed by applicable laws.

Patents: The mere existence of an employment agreement does not, in itself, disqualify the employee from obtaining a patent for an invention made by him during his term of service, even though:

- the invention may relate to subject-matter useful to the employer,
- the employee may have used the employer's time, servants and materials in completing his invention, or
- the employee had allowed his employer to use the invention during his employment.

Under the Patent's Act, the true and first Inventor is the first owner of the work/invention and there is no automatic assignment of such work/invention in favour of the employer. For that reason, it is advisable that the employer takes appropriate steps to ensure that such invention/work is assigned in its favour.

The Copyright Act 1957 lays down the general rule that the author of a work will be the first owner of copyright therein.

Further, this act stipulates that in case of a work made in the course of the author's employment or apprenticeship, the employer can be deemed to be the first owner of the copyright therein, in the absence of any agreement to the contrary. It is however preferable that an employee signs a specific assignment agreement in this respect.

Both under the Copyright Act and the Patents Act, any assignment has to be in writing. It has to identify the work, so strictly speaking a blanket assignment or assignment of future work is not possible.

### Hiring Non-Nationals

Companies in India can hire non-nationals. The Indian Government has begun to enforce a new quota system that seeks to limit the number of foreign nationals in the country.

The Ministry of Labour and Employment, Government of India, issued guidelines in 2009 stating that no employment visa will be issued to foreign nationals in any sector unless the individual is drawing a salary in excess of USD 25,000 per annum. However, this condition is not applicable to (i) Ethnic cooks (ii) Language teachers (other than English language teachers) and (iii) Translators and staff working for the concerned Embassy/High Commission in India. Further, foreigners coming to India on Project Visas for executing Steel and Power Sector Projects are also exempt from the requirement of minimum floor salary being in excess of USD 25,000 per annum.



The salary threshold limit of USD 25,000 per annum is worked out taking into account salary and other allowances paid to the foreigner. However, it excludes perquisites like housing, telephone, transport, entertainment etc.which are received in kind. In general, employment visas are only issued to foreign nationals who are highly skilled and/or qualified professionals and who are engaged or appointed by a company/organization/industry/undertaking in India, on contract of employment basis. Employment visas are not granted to foreign nationals for jobs for which qualified Indians are available or for routine, ordinary, secretarial / clerical positions. Further, it is essential that an employment visa applicant is sponsored by an entity in India.

### Hiring Specified Categories Of Individuals

In the private sector there is no classification of individuals for employment.

A percentage of posts for white-collar as well as blue-collar employees are reserved for employment in the Government, in public sector units, and in certain educational institutions, for Scheduled Castes and Scheduled Tribes with inadequate representation in these services and institutions. Caste, gender, state of domicile, rural people, religion, physically handicapped persons, members of the armed forces etc are some of the criteria used to identify under-represented groups.

### Outsourcing And/Or Sub-Contracting

In the case of an outsourcing arrangement in India, the company to which work is outsourced is responsible for its blue-collar and white-collar employees. If such employees breach any obligations relating to data protection and confidentiality, a number of civil and criminal remedies are available under various Indian laws to the outsourcing company against such employees, as well as the company to which work is outsourced.

If a blue-collar employee is hired as "contract labour" through a contractor (or sub-contractor), the main employer continues to be responsible to such an employee in case the contractor fails to provide wages or facilities for health and welfare of the employee, such as canteens, rest-rooms, drinking water and first aid facilities. In case of failure of the employer to make such provisions, penalties of imprisonment and fines are prescribed.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

In the case of both white-collar and blue-collar employees, the employer can make changes to the employment agreement provided such changes are not unilateral or illegal. Otherwise, the employer can change the terms of the agreement with the due consent of the employee.

Depending upon the level of work that a blue-collar employee is being engaged, either an employment agreement or an appointment letter is entered into by the employer and blue-collar employee.

### Change In Ownership Of The Business

White-Collar Employees: In case of change of ownership of the business (transfer of a business division from one company to another), the company policy and the arrangement between the new company and the old company determines the employment, termination or retention of employees. However, transfer would require consent of an employee.

Blue-Collar Employees: In case of change of ownership of the business, every employee who has been in continuous service for at least one year is entitled to receive one month's notice and 15 days' average pay as severance payment (unless the contract provides for better terms and conditions) as if such a person had been terminated.

However, such notice or compensation may not be payable when the service of the workman has not been interrupted by such change of ownership of business; and the terms and conditions of service applicable to the employee after such change in ownership are not less favourable than those applicable to him before such change of ownership of business. In such cases, the old employer may terminate the employment of the employees without the need to comply with giving notice or compensation and the new employer may hire on a continuity basis. It is pertinent to note here that without consent, workmen cannot be forced to work under different management and in that event workmen are entitled to retirement/retrenchment compensation in terms of Industrial Disputes Act, 1947.

### Social Security Contributions

Both white-collar and blue-collar employees are entitled to social security contributions, such as provident fund and gratuity.

The Employees' Provident Funds and Miscellaneous Provisions Act 1952 provides for contribution by the employer as well as employee at the rate of 12% of the basic wages, dearness allowance and retaining allowance, (if any) to the Employee's Provident Fund Scheme. The Employees' Provident Funds and Miscellaneous Provisions Act 1952 is also applicable to foreigners (international workers) coming to work in an establishment in India to which this Act is already applicable.



Gratuity is payable to an employee upon termination of his employment after he has rendered continuous service for at least 5 years. The completion of five years of continuous service is not applicable in case of termination of services of an employee due to death or disablement. The amount of gratuity payable to an employee must not exceed Rs.10 Lacs (equivalent to approximately GBP 13,908.46).

### Accidents At Work

White-Collar Employees: If an accident/death takes place in a workplace while the employee was discharging his duties and if the employer had been negligent, then such employer is liable to pay compensation.

Blue-Collar Employees: The Employee's Compensation Act, 1923 deals with accidents at work for blue collar employees in certain employments. The Act states that the employer is liable to pay compensation to employees for injuries suffered due to accidents at work if the accident took place during the course of employment or if the employer had not maintained the machinery in good working condition.

The employer will not be liable to pay compensation if the accident occurred while the employee was intoxicated or did not follow safety measures as laid down by the employer.

An employer is responsible to pay compensation to the dependants of the employee, in the case of the death of an employee in the course of the discharge of his employment duties.

In some establishments, the Employees State Insurance Act, 1946, may also be applicable to certain employees. This Act also provides benefits in case of accidents at work for certain categories of employees (mostly blue-collar employees). However, if certain employees are covered by this Act, then they are not eligible to benefits under the Employee's Compensation Act, 1923.

### Discipline And Grievance

- Disciplinary actions

  White-Collar Employees: Generally, establishments have their own disciplinary policy, violation of which will be regarded as an offence. Examples of such violations are physical violence while on duty, theft of, or damage to employer's assets, falsification of company data, and unauthorised disclosure of confidential information. Such violations may lead to termination of employment and prosecution.

  Blue-Collar Employees: Every establishment has its own disciplinary rules, breach of which may lead to either termination of employment or prosecution of the employee. No such disciplinary action will be taken against any employee unless he is given reasonable opportunity to be heard and the provisions of Industrial Disputes Act 1947 are followed.

- Grievance Redress

  White-Collar Employees: Redress of grievances of white-collar employees will be governed by company policy and the terms of the appointment letter or employment agreement.

  Blue-Collar Employees: The Industrial Disputes Act 1947 directs the employer of every industrial establishment wherein 20 or more workmen are employed to provide for a grievance redressal committee to adjudicate employee grievances.

  In the case of an industrial establishment wherein less than 20 workmen are employed, the establishment will have to give the employeean opportunity to be heard and a fair disciplinary proceeding must be conducted.

**Harassment/Discrimination/Equal pay**

Under the Indian laws, any kind of harassment or discrimination in the workplace based on sex, religion and caste is strictly prohibited. In the case of any such harassment, the law provides for inquiry into the matter and termination of employment of the guilty employee.

The law also prescribes equal pay for men and women performing work of the same or a similar nature.

**Compulsory Training Obligations**

The employer is responsible for the compulsory training of both white-collar and blue-collar employees if the employment requires special skill and expertise.

**Offsetting Earnings**

White-Collar Employees: In case of any loss or damage incurred by an employer due to any act or omission of an employee, the employer may be indemnified by proportionately offsetting the earnings of the employee if permitted by the employment agreement or company policy.

Blue-Collar Employees: The wages of an employee can be deducted if the employer has incurred any loss or damage due to the neglect or default of the employee.

**Payments For Maternity And Disability Leave**

- Maternity Leave

  Maternity benefit is payable by the employer to female employees (blue-collar or white-collar Government employees) at the rate of the average daily wage for the period of absence due to pregnancy.

- Disability Leave

  The Employees' Compensation Act 1923 entitles every employee to compensation depending upon the extent of disablement in case of injury suffered in the course of employment.



**Compulsory Insurance**

The law imposes an obligation on employers to take compulsory insurance for blue-collar employees engaged in essential services in factories, mines, major ports, plantations etc. There is no such provision stipulated by law in relation to white-collar employees.

**Absence For Military Or Public Service Duties**

There are no legal provisions regarding absence of any employee for military or public service duties.

**Works Councils or Trade Unions**

The law permits blue-collar employees to form trade unions and requires such trade unions to be registered. The purpose of such trade unions is to settle disputes connected with employment or non-employment, or conditions of labour, through collective bargaining on behalf of the employee.

**Employees' Right To Strike**

The Industrial Disputes Act 1947 stipulates that a blue-collar employee may go on strike provided such strike is legal. The Supreme Court has come down heavily on illegal strikes. The Industrial Disputes Act 1947, deals with respect to strikes in public utility services. However, no specific law deals with strikes in private employment except in certain circumstances where an employer has to ensure that no closure or strike can be initiated.

**Employees On Strike**

An employer (public utility services, etc.) cannot fire an employee taking part in a legal strike, i.e. a strike where the employer is given prior notice, and the strike is held within 14 days of such notice.

**Employers' Responsibility For Actions Of Their Employees**

According to the principle of agency, an employer is responsible for the actions of its employees so long as the employee acts within the scope of his duties.

# 04. Firing The Employee

### Procedures For Terminating the Agreement

White-Collar Employees: The procedure for terminating employment will be governed by the terms of the employment agreement. Such provision has to conform with the Shops and Establishment Acts of each state. Generally, the Shops and Establishment Acts require a notice in writing, or wages in lieu of such notice, to be given to the employee. For example the Bombay Shops and Establishment Act requires at least 14 days' notice to be given in writing, (in case of an employee who has been in continuous employment for at least 3 months) or 30 days' notice in writing (in case of an employee who has been in continuous employment for at least a year) or wages in lieu of such notice.

Blue-Collar Employees: No employee who has been employed for less than one year (240 days in a year) can be fired unless he is given one or three months notice (as applicable depending upon an establishment having up to 100 or more such employees) or payment in lieu thereof and compensation as per the Industrial Disputes Act 1947. There may also be a requirement to notify the government authorities, or to obtain prior government approval (depending upon an establishment having less than 100, 100 or more than 100 such employees, respectively). The employer may also be required to comply with the last-in-first-out rule.

In both the cases, whether white-collar or blue collar employees, in case the terms of appointment letter or employment contract provide longer notice period or better severance compensation, then such terms of appointment letter or employment contract would prevail over law.

### Instant Dismissal

White-Collar Employees: Dismissal of such employees will be governed by terms of the employment agreement.

In cases of a major breach of disciplinary rules, the employment of white-collar employees may be terminated without notice provided it is not prohibited by the appointment letter, employment agreement or company policy. Some state laws may require an inquiry before such termination without notice.

Blue-Collar Employees: An inquiry must be conducted in cases of breach of disciplinary rules and the employee must be given the opportunity to be heard. Pending such inquiry, the employee may be suspended and his employment may be terminated if his guilt is established in such inquiry.



### Employee's Resignation

The procedure for resignation by an employee is governed by the terms of the employment agreement. Most of the Shops and Establishments Acts requires the employee to give a written notice, or wages in lieu of such notice. For example the Bombay Shops and Establishment Act requires an employee to give 14 days' notice or payment in lieu thereof, in case the employee has been in continuous employment for at least 3 months. In case the employee has been in continuous employment for at least one year this Act requires the employee to give at least 30 days' notice in writing or payment in lieu thereof.

Blue-Collar Employees: Resignation by a blue-collar employee will be governed by the terms of the appointment letter or the employment agreement or relevant legislation, as applicable.

### Termination On Notice

White-Collar Employees: The law requires an employer to give notice in writing or pay salary in lieu of such notice if he wishes to dismiss an employee. Such clauses are recorded in the employment agreement but the employer could also follow the statutory right even if certain aspects are not covered in the agreement.

Blue-Collar Employees: The Industrial Disputes Act, 1947 provides that no employee in any industry, who has been in continuous service for not less than one year, can be dismissed unless one month's notice or payment in lieu of such notice is given.

### Termination By Reason Of The Employee's Age

The Employees' Pension Scheme 1995 (applicable to blue-collar employees and white-collar Government employees) states that superannuation or retirement benefits will be payable to an employee on attaining the age of 58.

The retirement age for white-collar or blue-collar employees engaged in the private sector is not stipulated by law but by company policy.

### Automatic Termination In Cases Of Force Majeure

TWhite-Collar Employees: Automatic termination in cases of force majeure is possible if provided for in the employment agreement.

Blue-Collar Employees: No employee can be automatically dismissed.

As per the Industrial Disputes Act 1947 where an undertaking is closed down on account of circumstances beyond the control of the employer (and not by reason of financial difficulties, losses, expiry of lease or license) every workman who has been in continuous service for at least one year will be entitled to compensation of a maximum of 3 months' average pay.

### Termination By Parties' Agreement

The employment of any white-collar or blue-collar employee may be terminated at any time by mutual agreement (in writing or verbal) between the employer and employee.

### Directors Or Other Senior Officers

The Companies Act 1956 permits a company to remove a director before expiry of his period of office by passing an ordinary resolution.

The employment of senior officers can be terminated as specified in the employment agreement.

### Special Rules For Categories Of Employee

White-Collar Employees: There are no statutory provisions pertaining to special rules for categories of employees. Such rules may be governed by the terms of the employment agreement or company policy.

Blue-Collar Employees: The Industrial Disputes Act 1947 provides for compensation of 15 days' pay for each completed year of service upon termination of employment in an industrial establishment where 50 or more workmen are employed.

The Maternity Benefit Act 1961 declares it unlawful for an employer to discharge or dismiss an employee on account of absence during her pregnancy or to deprive her of maternity benefit and/or medical bonus.

The Employees' State Insurance Act 1948 provides that employer cannot dismiss, discharge or reduce or otherwise punish an employee receiving sickness benefit.

### Specific Rules For Companies in Financial Difficulties

Once a company unable to pay its debts or an insolvent company is wound up in accordance with the provisions of Companies Act 1956, the employees (whether white-collar or blue-collar employees) are automatically discharged (but would be eligible to receive severance compensation etc).

### Restricting Future Activities

It is prevailing practice to include non-compete clauses in employment agreements restraining employees from undertaking employment with a similar organisation for a certain period of time after cessation of employment. The Courts in India have declared that such non-compete clauses/agreements can have effect only during the subsistence of services. Post-termination they are deemed to violate public policy and are therefore void as per the Indian Contract Act 1872. Any agreement between the employer and employee which restrains the employee from exercising a lawful profession, trade or business of any kind, is to that extent void.



### Severance Payments

White-Collar Employees: There are no specific provisions for severance payments for white-collar employees. Entitlement to severance payments is governed by the company's policy and the terms of the employment agreement. In practice, severance pay is calculated as 15 days of gross pay for every completed year of service.

Blue-Collar Employees: An employee who has been in continuous service for at least one year is entitled to be paid compensation equivalent to 15 days' average pay for each completed year of service at the time of termination of employment.

### Special Tax Provisions And Severance Payments

Severance Payments are not a part of the salary and are subject to tax deduction at source.

### Allowances Payable To Employees After Termination

Provident Fund is payable to an employee (white-collar or blue-collar employee) upon termination. Gratuity is payable only after the employee has completed 5 years of continuous service. Accrued but unused annual /privilege leave is also payable to an employee. No other allowance is payable to an employee after termination of his employment.

### Time Limits For Claims Following Termination

As per the Limitation Act 1963, mostly relevant for white-collar employees, money claims (including claims relating to provident fund and gratuity) must be initiated within 3 years of the date when it was due from the employer. However, gratuity will not be payable if the employee is found guilty of fraud. In the case of blue-collar employees, with respect to any statutory dues, the claim should be filed in a reasonable period but in exceptional circumstances, this period could be longer also.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Children below the age of 14 years old are prohibited to work in any establishment.

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# Indonesia

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DNC Advocates At Work

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are 4 (four) types of industrial disputes i.e. disputes of right, disputes of interest, disputes over termination, and disputes among labour unions. The disputes may be settled through the Industrial Relation Tribunal (Pengadilan Hubungan Industrial) or arbitration (based on the agreement between the parties).

The industrial relation tribunal has the authority to adjudicate all industrial disputes, while the arbitration only covers the settlement of (i) disputes of interest, and (ii) disputes among the labour unions. There are legal remedies in the form of cessation and civil request to the Supreme Court regarding disputes of right and disputes over termination.

### The Main Sources Of Employment Law

The main sources of employment law include (i) Law No. 13 Year 2003 concerning Manpower ("Manpower Law") which govern the working relationship between the employer and the employee, (ii) Law No. 21 Year 2000 concerning Labour Union ("Labour Union Law") which govern the incorporation, right and obligation of a labour union, and (iii) Law No. 2 Year 2004 concerning the Settlement of Industrial Relation Dispute which govern the settlement of industrial disputes.

Please note that there are several provisions in the Manpower Law which have been annulled by Constitutional Court Judgment. For further details with respect to the Articles that are annulled, please see below.

### National Law And Employees Working For Foreign Companies

The Manpower Law will apply to all national employees who work either for a local company or a foreign company in Indonesia as a mandatory rule.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Provided that the Manpower Law is the governing law of the working agreement between the parties in another jurisdiction, Indonesian Law regulates that companies shall obtain written license from the Minister of Manpower and Transmigrations along with the requirements and documents required for such obtainment. Such working agreement shall be made in Indonesia and before the related institutions officer.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The working agreement may be made in writing or orally. However, there are several working agreements that should be made in writing as required by the relevant regulation, such as a definite period of employment, cross area interwork (antar kerja antar daerah), cross country interwork (antar kerja antar negara), and onshore sea working employment.

## Mandatory Requirements:

### Probation Period

The probation period is limited to 3 (three) months and can only be applied to an indefinite period of employment. The probationary period shall be clearly stipulated in a working agreement, or where there is no working agreement the employee has been informed orally and it has been stipulated in an assignment letter. During the probation period, the employer may terminate the employee, without notice and obligation to pay termination fee provided that the termination clause for the probationary period has been agreed upon by both parties beforehand.

### Hours Of Work

Subject to certain business sector and works, the maximum hours of work is 40 (forty) hours in a week. The arrangement could be 7 (seven) hours in a day for 6 (six) work days in a week or 8 (eight) hours a day for 5 work days in a week.

There is limitation for overtime which is no later than 3 (three) hours in a day or 14 (fourteen) hours in a week. Please note that the employer is prohibited from employing female employees under 18 (eighteen) years old for night shifts (from 23.00 P.M until 07.00 A.M). The same also applies to pregnant employees whose obstetrician has provided a recommendation or statement that the night shift would be harmful to her safety and health. There are also several regional regulations that prohibit women from being employed on night shifts, except in specific kinds of work such as nurseries.

Pursuant to Ministry of Manpower and Transmigration Regulation No. 102/MEN/VI/2004 regarding Overtime Working and Overtime Working Payment ("Minister Regulation 102/2004"), an employee who responsible as a decision maker, planner, executor of the company to running its business, is not eligible for overtime payment due to the nature of the position.

### Earnings

There is a minimum wage that shall be fulfilled by the employer to its employee, including during the probation period. The minimum wage is determined by the Governor of each province in Indonesia, and will be evaluated annually. Thus, the minimum wage will vary depending on the province. In some provinces, there may also be a sectoral minimum wage, (i.e. the minimum wage applicable in certain industry sectors) and city minimum wage (i.e. the minimum wage applicable in certain cities within the province). Both are should not be lower than the minimum wage of the province.

### Holidays / Rest Periods

The employee is entitled to a minimum period of 12 (twelve) work days of rest per year after working for 1 (one) year consecutively, and at least 2 (two) months long rest divided at year 7th and 8th after working for 6 (six) years consecutively. There are also public holidays and mandatory leave periods (cuti bersama) which are stipulated by the government through the national calendar. The employer may apply different entitlements to rest periods depending on the position of the relevant employee, subject to the minimum rest period as mentioned before.

### Minimum/Maximum Age

The minimum age is 13 (thirteen) years old and only limited for light work to the extent that the job does not disrupt any physical, mental and social developments and subject to the different specific rules and regulations in relation thereto. The maximum age will depend on the employer's policy.



### Illness/Disability

An employer is obliged to employ disabled workers in a ratio of 1:100, which means that there should be at least 1 disabled employee in a company of around 100 employees. The employer is obliged to provide protection to the said employee in accordance with the type and severity of their disability.

### Location Of Work/Mobility

The location of work shall be specified in the working agreement. Specifically, employed children should have a separate working location from adult employees. Should the job require travel and other expenses to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses to employee based on prior agreement/confirmation from the employer.

Please also note that the employer has an obligation to provide transportation for female employees that leave to and from work between 23.00 PM until 05.00 AM. In certain regional areas, the in-charge government institutions constitute that workers within their area, should be recruited from the area within the Company's location.

### Pension Plans

There is no rule with respect to pension plans, however there is a retirement security (jaminan hari tua) under the Employee Social Security Program (Jaminan Sosial Tenaga Kerja - "Social Security") as governed by Government Regulation No. 14 Year 1993 regarding Implementation of Employee Social Security Program, as amended by Government Regulation No. 84 Year 2013 ("Government Regulation No. 14/1993"). However, please be informed that since November 2011, the management of Social Security has been assigned to the Social Security Provider Agency (Badan Penyelenggara Jaminan Sosial Tenaga Kerja – "BPJS").

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

There are specific regulations for pregnancy and maternity, but there are no specific regulations for paternity and adoption. However, the employee is entitled to be absent from work because of getting married, attending a marital ceremony of their children, having their children circumcised or baptized, or because the employee's wife gives birth to a baby, or suffers miscarriage, or because the spouse, children-in-law, parents or parent-in-law of the employee or a member of the employee's household passes away.

Female employees are entitled to a 1,5 (one and a half) months period of rest before and after giving birth, based on the time calculation by the obstetrician or doctor. This maternity leave may be extended with the recommendation from a doctor or obstetrician. In addition, the employer is obliged to provide proper opportunities to female employees whose babies still need breastfeeding, to breast-feed their babies during working hours.

### Compulsory Terms

The working agreement in writing should include (i) the name, address, and business type of the company (employer), (ii) name, gender, age, and address of the employee, (iii) position and scope of work, (iv) location of work, (v) salary and method of payment, (vi) the work requirements including the rights and obligations of the employer and the employee, (vii) commencement and the period of the working agreement, and (viii) date and place of the working agreement made and undersigned by the parties.

The working agreement should not contravene with prevailing company regulations, collective working agreements, laws and regulations. Otherwise, the provisions in the working agreement will be void and the provisions in the prevailing regulations will be applied.

### Non-Compulsory Terms

The parties are free to include any other terms and conditions to the working agreement, to the extent that it will not contravene and/or violate the prevailing laws and regulations.

### Types Of Agreement

There are 2 (two) types of working agreement which are an indefinite period working agreement ("Indefinite Working Agreement") and a definite period working agreement ("Definite Working Agreement"). The probation period is up to a maximum of 3 (three) months and are only applicable to Indefinite Working Agreements (see "probation period" above").

Definite Working Agreements can only be applied to (i) work that needs to be performed and completed in one go or which is temporary by nature, (ii) work for a fixed period of time but no longer than 3 (three) years, (iii) seasonal work, or (iv) work that is related to a new product, a new activity or an additional product that is still in the experimental stage. Definite Working Agreements can only be extended once for maximum period of 1 (one) year, with written notice at least 7 (seven) days prior to the expiry period. In certain circumstances, the Definite Working Agreement can be renewed once for a maximum period of 2 (two) years.

### Secrecy/Confidentiality

There are rules applicable to secrecy and/or confidentiality in employment relationships. The employee shall protect the trade secrets of the employer (company) during and/or after the employment relationship. The employer may include a non-solicitation and/or non-competition clause in the working agreement (see "Restrictive Future Activities below"). In general, the Indonesian Penal Code has categorized disclosure of any restricted information by the employee as a criminal action with a maximum 9 (nine) months' imprisonment. There are also several specific laws governing the disclosure of restricted information.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The person who creates inventions or other intellectual property (IP) rights is the owner of the said invention or IP rights even though such inventions or other intellectual property (IP) rights were found during working hours, unless agreed otherwise in an agreement made between the employer and the employee.

### Hiring Non-Nationals

Foreign employees can only be employed for certain positions and periods of time. The employer is obliged to fulfil the requirements under the prevailing regulations which are (i) foreign employee utilization plan (Rencana Penggunaan Tenaga Kerja Asing), and (ii) written permission to employ the foreign employee from the Minister of Manpower and Transmigration or appointed officials (Izin Menggunakan Tenaga Kerja Asing). The aforesaid requirements can only be commenced after the foreign employee has obtained a work visa from the immigration bureau. Further, the employer shall appoint a national employee as an accompanying working partner intended for transfer of technologies and expertise.

Violation upon the said provisions above would be categorized as a criminal act under Indonesian Manpower Law, with imprisonment from 1 (one) year to a maximum of 4 (four) years and/or with penalty sanctions from Rp 100,000,000 toa maximum of Rp 400,000,000. There are also administrative sanctions which apply in accordance with such violations conducted by the employer.



The foreign employee is prohibited to be placed in a position that deal with personnel and/or occupy certain positions. An individual employer is prohibited to employ foreign employee.

### Hiring Specified Categories Of Individuals

There are restrictions on the type of work that could be undertaken by certain employees, specifically for children and women employees, such as: i) Jobs relating to machinery, aeroplanes, installation, and other equipment; ii) harmful working environments (physically, biological, and chemical harm); iii) buildings, roads, bridge construction; iv) traditional loading with loads over 12 kg for boys, and over 10 kg for girls; and iv) with working hours between 18.00 P.M to 6 A.M; etc, (whilst, for female employees please see "Hours of Work").

### Outsourcing And/Or Sub-Contracting

Outsourcing and/or sub-contracting can only be conducted to the extent that such work is not directly connected to the production process and limited to several working classifications, which are (i) cleaning service businesses, (ii) catering businesses, (iii) security services, (iv) services in oil and mining companies, and (v) transportation services for the workers.

Please note that nowadays, pursuant to the Constitutional Court Judgment on 2011, the status of the outsourced employee can be considered as an Indefinite Working Agreement, if the cooperation agreement between the outsourcing company and the client company did not stipulate the transfer of the employee's rights. Thus, such provision restates the rights of the employee that is already accommodated for by the Manpower Law, in accordance with the avoidance of multi interpretation.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

An annulment and/or amendment of a working agreement only can be done upon the consent from the employer and the employee.

In the event that there is a collective working agreement in which the working agreement is made together between the employer and labour union on behalf of the employees ("Collective Working Agreement"), then any amendment to the Collective Working Agreement shall be discussed with the labour union and shall be made by consent between the employer and the labour union. The amendment of the Collective Working Agreement shall be an integral and inseparable part of the ongoing, effective and valid Collective Working Agreement.

### Change In Ownership Of The Business

In the event that change of ownership of the business occurs, either the (new) employer or the employee may choose to continue or discontinue the employment relationship. In this case, the employee is entitled to be provided with a severance payment in the amount as regulated under the Manpower Law.

### Social Security Contributions

Government Regulation No. 14 Year 1993 requires certain contributions from employer and employee for the social security contribution (see "Compulsary Insurance" below).

### Accidents At Work

The employer is required to provide safety and health protection for their employees. Occupational safety and health efforts are intended to provide guarantee of safety and increase the level of health of the employees by preventing occupational accidents and disease, controlling hazards in the workplace, health promotion, medical care and rehabilitation. Pursuant to that matter, the employer is obliged to provide occupational safety and health management which shall be integrated with the company management system.

### Discipline And Grievance

The Employer may terminate an employee who has been absent from work for 5 (five) or more consecutive workdays without any written notification (explaining the reason for the absence from work) supplemented with valid evidence to support the authenticity of the explanation and provided that the employer has properly summoned the employee twice in writing. Such absenteeism may terminate the employee's working agreement and the employee is terminated as if they had resigned from their duties.

### Harassment/Discrimination/Equal pay

Employees have the right to have the same opportunity to get a job and to receive equal treatment without any discrimination by the employer. Please note that Indonesia Manpower Law provides laws and human rights protection towards all employees for an equal chance of working, free of discrimination either inside or outside the working environment.

### Compulsory Training Obligations

There are no compulsory training obligations to be conducted by the employer. However, the employer is responsible for the improvement and/or development of the employee's competence through training, while the employer who employs a foreign worker has an obligation to educate and train its Indonesian citizenship employees who assist such foreign workers in the transfer of technologies and expertise from the said foreign worker in accordance to qualification of the said foreign worker position.



### Offsetting Earnings

The offsetting of earnings can be conducted by the employer if regulated in the working agreement and/or collective working agreement and/or by the prior consent of the employee.

### Payments For Maternity And Disability Leave

In the case of maternity, the employer is prohibited from terminating the employee. Any termination conducted during pregnancy will be declared null and void and the employer is obliged to re-employ the employee.

An employee who is disabled as a result of any working accident and therefore unable to perform their work, may request termination of employment after they have been in such condition for more than 12 (twelve) months. Termination based on this condition entitles the employee to receive the following rights: i) severance payment equivalent to two months' pay, ii) reward payment for the working period equivalent to two months' pay, and iii) compensation amounting to one month's pay.

### Compulsory Insurance

Pursuant to Law No. 3 Year 1992 regarding Employee Social Security Program (Jaminan Sosial Tenaga Kerja) as amended by Law No. 24 Year 2011 regarding Social Security Provider Agency ["Social Security Law"], an employer who employs 10 (ten) or more employees, or pays salary of at least IDR 1,000,000 (one million Rupiah) per month for each employee, shall enrol the employees with Social Security.

Social Security provides for (i) working accident security, (ii) death security, (iii) retirement security and (iv) healthcare security. In addition, the healthcare security may be excluded in cases where the employer has provided better healthcare security insurance to its employees.

### Absence For Military Or Public Service Duties

There is no regulation relating to military or public service duties since there are no recognised mandatory military courses or public service duties in Indonesia.

### Works Councils or Trade Unions

Works Councils or Trade Unions are known as the labour union (serikat pekerja). Pursuant to Labour Union Law, the labour union can be established by at least 10 (ten) employees and shall possess its own articles of association and bylaws.

A labour union can perform a number of different roles and functions. In particular, it can:

- negotiate the settlement of industrial relation disputes;
- act on behalf of the workforce or an individual employee for cooperation;
- act as an agent to promote harmonization and best practice for industrial relations;
- lobby and promote the rights and interests of its members;

- organise, carry out and take responsibility for the conduct of a strike in accordance with regulation, and
- act on behalf of employees to fight for their rights with respect to share ownerships over the company.

**Employees' Right To Strike**

Employees are entitled to conduct a strike as result of a failed negotiation between the employer and the employees. The strike shall be performed in legally, orderly and peacefully manner in accordance to the prevailing laws. Employees shall not be prevented to use their rights to strike and thus several protections are granted to employees on strike.

**Employees On Strike**

In the event the strike is illegally performed, the employer may take temporary action by (i) prohibiting employees on strike from being present at locations where production processes normally take place, or (ii) prohibiting employees on strike from being present at the employer's premises.

In contrast, if the strike is legally performed, then the employer is prohibited from (i) replacing striking employees with other employees from outside the company, or (ii) imposing sanctions on or taking retaliatory actions in whatever form against striking employees and officials of labor unions during and after the strike is performed by them.

**Employers' Responsibility For Actions Of Their Employees**

The employer is responsible for the acts and any damage caused by their employees and/or other persons appointed to represent their affairs, except when such action is conducted outside the employment's course.

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# 04. Firing The Employee

**Procedures For Terminating the Agreement**

The employer is encouraged to do their best to prevent the termination of the employment relationship. However, if termination is inevitable then the employer should conduct negotiations with the employee or the labour union (if the said employee is a member of a labour union). If negotiations fail, the employer has to obtain a stipulation from the institute for the settlement of industrial relation disputes.

In some cases, the employer may terminate its employee by a notice of termination (see "Termination on Notice" below).



**Instant Dismissal**

Instant dismissal only can be done by the employer to the employee in a probationary period and to the employee who has been imposed by 3 (three) consecutive warning letters. In the latter instance, it does not eliminate the employer's obligation to follow the termination procedure, nor the employee's right to file a claim against the company for the termination.

**Employee's Resignation**

The employment relationship may be terminated by the employee's resignation. Unless agreed otherwise by the parties, the resignation shall be submitted at least 30 (days) prior the effective date of the resignation and cannot be proposed by the employee if such employee is being bound by a definite period of time working agreement in return for the training provided.

In addition, an employee is only entitled to compensation (uang penggantian hak) and/or other payment as agreed by the parties and the detachment / separation payment (uang pisah – which amount shall be regulated under the working agreement) if the said employee is not directly represent the employer.

The termination based in the employee's resignation shall be carried out without the decision from the institute for the settlement of industrial relation disputes.

**Termination On Notice**

The termination notice only can be conducted by the company if the employee has committed a violation under the working agreement, company regulations or collective working agreement and has been given 3 (three) consecutive warning letters. Otherwise, the termination needs to be approved by the institute for the settlement of industrial relation disputes.

**Termination By Reason Of The Employee's Age**

The employer has the right to conduct termination by reason that the employee has entered into pensionable age. Subject to the agreement made between the parties, the employer may not provide or only can only pay a certain amount of the severance payment if the pension fund as detailed above in point "pensions plans" has been paid in full by the employer. Otherwise, the employer shall provide the employee with a severance payment in the amount as regulated in the prevailing regulation. However, this kind of pension fund is different with the severance payment that shall be received by the employee in accordance with Manpower Law. In addition, those pension funds cannot supersede the senior live security as regulated in the prevailing regulations of Social Security.

**Automatic Termination In Cases Of Force Majeure**

There are no specified provisions for automatic termination in case of force majeure. However, the employer may terminate its employee in the event that a force majeure occurs with an obligation to provide severance payment as regulated under the Manpower Law.

### Termination By Parties' Agreement

There is no rule concerning termination based on parties' agreement. There is only termination by the employer or the resignation proposed by the employee. Therefore, in practice, in the event that the parties have agreed on the termination, then the employee will provide a resignation letter and the employee will only be entitled for compensation (uang penggantian hak) and/or other payment as agreed by the parties (see "employee's resignation" above).

### Directors Or Other Senior Officers

There is no rule regarding directors or other senior officers. However, there are several kinds of Directors in Indonesia, one type is a Director who has been appointed by the General Meeting of Shareholders, and the other is obtained by promotion. In addition, there are certain positions that are not eligible for overtime payment due to the nature of the position (please see "Hours of Works" above).

### Special Rules For Categories Of Employee

Manpower Law gives certain specifications to the categories of employee based on its nature of area of each company's business, as follows: i) area of energy and mineral resources business, ii) area of general mining business, and iii) area of fisheries business. Otherwise, Manpower Law does not give any certain categories of employees.

### Specific Rules For Companies in Financial Difficulties

Employers may terminate the employment relationship with an employee where the company has to be closed down due to continual losses for 2 (two) years and/or in the event of insolvency. Further, related to the company's financial difficulties, Indonesia Manpower Law also gives the possibility for the company to terminate the employment if the company is in bankruptcy or being dissolved. In this respect, employees shall be entitled for severance pay as regulated under such Manpower Law.

### Restricting Future Activities

There is no prohibition under the prevailing regulation that prohibits the employer to have a non-competition and/or non-solicitation clause in the working agreement which will restrict the employee's future activities. However, in practice, it will be difficult to implement unless the employer is willing to litigate with their former employee by filing a breach of contract claim.

### Severance Payments

In cases of termination, the employer is obliged to pay (i) a severance payment (uang pesangon), (ii) a gratuity payment (uang penghargaan masa kerja) and (iii) compensation (uang penggantian hak). The amount and eligibility of the employee to receive such payments depends on the length of service with the employer as covered under Indonesian Manpower Law.



### Special Tax Provisions And Severance Payments

The salary and the severance payment provided to the employee are subject to income tax.

### Allowances Payable To Employees After Termination

There is no obligation for the employer to pay any allowance to the employee after termination.

### Time Limits For Claims Following Termination

Previously, an employee whose employment is terminated without the decision from the institute for the settlement of industrial relation disputes and disagrees with such termination, may file a lawsuit with the institute for the settlement of industrial relation disputes within a period of no later than 1 (one) year from the date on which their employment relationship is terminated. Subsequently, the Constitutional Court has annulled the time limitation, and therefore there is no time limit for claims toward the termination of an employee by the employer.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None.

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## 01. General Principles

**Forums For Adjudicating Employment Disputes**

There are a number of forums to which an employee and employer can turn in order to enforce their rights under common law and relevant legislation. The Employment Appeals Tribunal ("EAT") is the traditional forum for unfair dismissal claims. However it is also the forum for determining complaints both at first instance and on appeal in a number of other employment law areas, such as the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, the Payment of Wages Act 1991 and the Redundancy Payments Act 1967-2007.

The Rights Commissioner Service deals with trade disputes under the Industrial Relations Acts 1969-1990 and also has functions under various pieces of protective employment legislation, including the Adoptive Leave Acts, 1995-2005, the Maternity Protection Acts 1994-2004 and the Organisation of Working Time Act 1997. A party to a dispute may object to a Rights Commissioner's investigation where the case has been referred under the Industrial Relations Acts, 1969–1990 or under the Unfair Dismissals Acts, 1977–2007. Where such an objection is made, the Rights Commissioner cannot investigate the case. The applicant can instead request the Labour Court or, depending on the legislation, the EAT to hear the case. A similar right of objection does not apply for referrals under the other Acts. A Rights Commissioner investigates such cases in the first instance.

The Labour Relations Commission was established as a forum for promoting the improvement of industrial relations and to provide the Rights Commissioner Service.

The Labour Court is also a forum for redress at first instance or on appeal in a number of areas.

The Equality Tribunal adjudicate on claims under the Employment Equality Acts 1998-2004. Claims taken pursuant to this Act may be the subject of mediation through equality mediation officers. Failing mediation, the matter will be determined by equality officers whose decisions may be appealed to the Labour Court.

It is worth noting that the Government, in 2011, announced far-reaching changes to the above described regime. It has announced plans to develop a replacement two-tier structure by merging the activities of the National Employment Rights Authority, the Labour Relations Commission, the Equality Tribunal and the first instance functions of the Employment Appeals Tribunal into a new Body of First Instance. It is intended that the appellate functions of the Employment Appeals Tribunal will be incorporated into an expanded Labour Court.

The Body of First Instance will be a single portal of entry for all employment and equality related information requests and employment and equality rights complaints, claims and referrals. It will also encourage employers and employees to resolve issues at workplace level thereby reducing the number of cases going forward for inspection or adjudication. This will involve early review of the facts and an intervention to seek early resolution as an alternative to a formal hearing or inspection.

All appeals will be heard by a single appeals body formed by integrating some of the functions of the EAT into the Labour Court. The upper tier body will assume responsibility for all legal and appellate functions currently exercised by the Labour Court and the Employment Appeals Tribunal. It will act as a court of final appeal against the recommendations from the Body of First Instance. All cases will have the option of having an appeal heard by a three person tribunal of the appellate body and the only further appeal that will be available will be to the High Court on a point of law.

In 2014, the Government announced that it intended to shortly publish legislation to implement these changes. It is anticipated that the Workplace Relations Bill will be published at some point in 2014, possibly during the first quarter.

The Health and Safety Authority is responsible for the promotion and enforcement of workplace health and safety in Ireland. The HSA monitors compliance with occupational health and safety legislation and in the event of breaches, conducts prosecutions. It has also taken responsibility for bullying and harassment intervention.

The civil courts remain available to employees for the determination of common law actions such as wrongful dismissal, breach of contract and injunctive relief. They also serve in certain circumstances as an appellate body from decisions made by various tribunals and courts under statute.

### National Law And Employees Working For Foreign Companies

The Irish Constitution provides generally for the right to earn a livelihood. The specifics of Irish employment law are governed by statute and common law. The employment sphere is tightly regulated by legislation and in excess of 25 Acts of parliament (many of which derive from European law) govern diverse aspects of the employer-employee relationship. In addition to Irish and European legislation, agreements with trade unions, custom and practice and the specific terms and conditions of individual contracts also govern the employment relationship. Case law (from the courts, the ECJ and the various employment rights bodies) and non-binding codes of practice are also relevant.



### National Law And Employees Working For Foreign Companies

Once an employee is working in Ireland, they can claim the benefit of Irish employment legislation irrespective of the law governing their contract of employment and irrespective of whether their employer is an Irish company.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights applicable in a particular jurisdiction will usually apply to an employee if the employee is physically present and working in that jurisdiction. Therefore an Irish employer may not be able to prevent employees who are working abroad from relying on protections afforded by the employment law applicable in that country simply because their contract states that it is subject to the law of Ireland.

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# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Irish employers are not obliged to enter into a contract of employment with their employees. However, the Terms of Employment (Information) Act 1994 makes it mandatory to furnish certain information (such as remuneration levels and nature of the work) in writing. Written contracts are the norm and employment relationships ungoverned by written contracts are unusual.

### Mandatory Requirements:

#### Trial Period

Employers are not required to offer a trial or probationary period to new employees. It is common practice, however, for a trial period of (usually) between three and six months to be provided for in employment contracts. There is nothing to prevent an employer from disposing of the employee's services at the conclusion of the probationary period if the employer is not satisfied with the employee's performance.

#### Hours Of Work

Irish working hours are governed by the Organisation of Working Time Act 1997. This comprehensive legislation provides for a number of additional protections including maximum working hours at night and regular rest breaks. The core principle is that the maximum average working week for the majority of employees cannot exceed 48 hours. Certain types of employees are dealt with differently, including the army and the police force.

#### Earnings

The National Minimum Wage Act, 2000 allows the Government to set a minimum wage. The current rate is €8.65 an hour. The legislation provides for a staggered system of rates for employees under 18 and trainee employees.

#### Holidays / Rest Periods

Holiday entitlements are set out in the Organisation of Working Time Act 1997. In addition, holiday entitlements are almost always provided for in contracts of employment. The 1997 Act provides for a minimum of four weeks paid holidays per annum, although there is nothing to prevent an employer from offering a longer holiday allowance. The Act also sets out a mechanism for calculating leave where an employee has worked for less than one calendar year.

### Minimum/Maximum Age

The working hours of all persons under the age of 18 are regulated by the Protection of Young Persons (Employment) Act 1996. As a general rule, persons under 16 cannot be in full-time employment although employers may employ such persons to do "light work" (work for a fixed number of hours per day).

### Illness/Disability

No legislation specifically governs sick leave entitlements. However, it is usual for an employee's contract of employment to provide for a (usually short) period of paid sick leave dependent upon production of a doctor's certificate. Unless provided for in individual contracts of employment, sick leave for longer than one month is usually unpaid. Provision is made in Irish law for state-provided illness benefit (subject to sufficient social insurance contributions) which can be claimed during periods of unpaid sick leave.

In line with the provisions of the Employment Equality Act 1998 and 2004, employers are precluded from discriminating against disabled employees in the course of their employment. Equally, disabled interviewees cannot be treated differently to non-disabled interviewees. "Disability" is given an extremely broad definition in the 1998 and 2004 Acts.

### Location Of Work/Mobility

The Terms of Employment (Information) Act 1994 provides that an employer must appraise the employee in writing of the place where they will carry out their work. This is usually referred to in the contract of employment.

### Pension Plans

Employers are under no obligation to operate or contribute to an employee pension plan. However, employers must facilitate employee access to Personal Retirement Saving Accounts.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

All female employees (entirely irrespective of length of service or working hours) are automatically entitled to Maternity Leave. The basic entitlement is 26 weeks maternity leave (during which the employee is entitled to state-provided maternity benefit) together with 16 weeks additional maternity leave (during which the employee has no entitlement to state-provided maternity benefit). Many Irish employers pay their employees during the first 26 weeks but it is highly unusual to do so during the second 16-week period.

Employers are under no obligation to pay employees during Adoptive Leave, although contracts of employment may allow for this (it remains quite rare in practice). The basic entitlement is to 24 weeks Adoptive Leave (during which the employee is entitled to state-provided benefit) together with 16 weeks additional unpaid Adoptive Leave (during which the employee is not entitled to state-provided benefit).

A parent is also entitled to take Parental Leave for each child born or adopted. The leave must be taken before the child reaches eight years of age, except where the child has a disability. In such cases, the age limit is 16 years. For adopted children, if the child is aged between six and eight years at the time of the adoption, the leave must be taken within two years of the adoption order.

The amount of parental leave that can be taken was increased to 18 from 14 weeks in 2013.

There is no statutory provision for Paternity Leave in Irish law. However, a father is entitled to leave from his employment if the mother dies within 32 weeks of the birth of the child.

### Compulsory Terms

The Terms of Employment legislation provides that an employer must provide certain terms in writing. These include the title or nature of the work, the date employment began, amount of pay, details of rest periods, sick leave, pension and notice periods.

### Non-Compulsory Terms

Leaving aside the mandatory provisions of the Terms of Employment legislation, which must be provided to an employee in writing, any employer and employee are free to include any terms they wish in a contract of employment.



## Types Of Agreement

It is usual for the employment relationship to be governed by a formal contract of employment, frequently incorporated into a letter from the employer to the prospective employee which becomes binding when signed by both parties.

- Agency Workers

  Legislation enacted in 2013, the Protection of Employees (Temporary Agency Work) Act, provides that an agency worker is entitled to the basic working and employment conditions they would benefit from if they were employed directly by the third-party employer.

  The Act provides that the following qualify as basic working and employment conditions:

  - Pay;
  - Working time;
  - Rest periods;
  - Rest breaks;
  - Night work;
  - Overtime;
  - Overtime; Annual leave; or
  - Public holidays.

There is one very significant exemption that relates to pay alone (commonly referred to as the 'Swedish Derogation'. The Act provides that the obligation to provide the same basic working and employment conditions to agency workers does not apply to pay if:

- Before the worker and employment agency enter into a contract of employment, the agency notifies the worker that the provisions of the Act relating to equal pay will not apply; and
- Between assignments, the agency worker is paid at least half of the pay to which they were entitled during their last assignment.

## Fixed-Term Employees

Fixed-term employees cannot be treated in a less favourable manner than comparable permanent employees unless the employer is able to justify (by reference to objective factors) any different treatment.

## Part-time Employees

Equally, employees with part-time contracts cannot be treated in a less favourable manner than comparable permanent employees unless the employer is able to justify any different treatment by reference to objective factors.

### Secrecy/Confidentiality

Irish law provides for an action for "breach of confidence" where a person discloses confidential information imparted to him in circumstances where he was under an obligation not to disclose it. Irish employment contracts will generally always, where appropriate, include an enforceable confidentiality clause. Inclusion of such a clause in an employment contract is critically-important in certain sectors where an employee may have access to patents or design processes.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Irish employment contracts will invariably provide that the ownership of any intellectual property created by the employee in the course of employment will vest in the employer. Where this is not provided for, certain statutes will automatically provide that the employer owns the right to the creation. However, the rules are somewhat opaque and it is best practice to make specific provision in the contract of employment.

### Hiring Non-Nationals

It is a criminal offence to employ a person who is not entitled to work in Ireland. A non-national may not be employed without a valid employment permit allowing them to work in Ireland.

### Hiring Specified Categories Of Individuals

There are limited restrictions on the employer's right to hire. Certain persons cannot be required to perform certain duties. Children under a certain age, for example, cannot be employed for more than a fixed number of hours per day.

### Outsourcing And/Or Sub-Contracting

An employee works under a contract of service. An independent contractor provides services under a contract for services. In Ireland, the statutory protections afforded by employment statutes in most cases only apply to those deemed to be employees. In addition, an individual's status as an employee or self-employed person will affect whether an employer has certain tax obligations in respect of that individual. In circumstances where an employer seeks to outsource work by hiring independent contractors rather than employees, this distinction between a contract of service and a contract for services is a very important one.

The test is as to whether a worker is an independent contractor or an employee is a qualitative one and there is no single factor which determines whether a worker is an independent contractor or an employee. It is necessary to look at the totality of the situation, with no single factor being determinative of the relationship. The more indicators of an independent contractor relationship that are present, the more likely the contract will be deemed to be a contract for services. In general terms, the more business-like the relationship overall and the greater the capacity of the service provider to generate a profit by reference to the level or efficiency of their work, the more likely the relationship will deemed to be a contract for services.



In practice, the Irish Courts/EAT has examined the true nature of the parties' legal relationship. Depending on the particular facts, it would not be unusual for the Courts/EAT to find that the so-called "independent contractor" is in fact an employee and that the termination of the contractual arrangements between the parties amounts to an unfair dismissal.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

An employer cannot make changes to the contract of employment without the consent of the employee. It is advisable to obtain the written consent of an employee to any variation in the terms and conditions of employment as a purported change in the terms and conditions of the contract will not otherwise be enforceable.

### Change In Ownership Of The Business

The law applicable to a change in ownership of a business (i.e. a transfer of undertakings) in Ireland is the European Communities (Protection of Employees on Transfer of Undertakings Regulations) 2003 (the "2003 Regulations").

The 2003 Regulations provide that when a business (or part of a business) is transferred legally from one employer (the "transferor") to another (the "transferee"), employees are protected in the event of the change of employer and their terms and conditions transfer automatically and unchanged to the new employer. It is a defence for the employer to show that changes in the terms and conditions of employment or termination of contracts of employment are required for "economic, technical or organisational reasons".

The 2003 Regulations apply to any transfer of an undertaking, business or part of an undertaking or business from one employer to another employer as a result of a legal transfer or a merger. Share sale transfers do not constitute a transfer because there is only a change of the underlying ownership. Charities are included in the definition of an undertaking.

All rights and obligations from contracts of employment, including continuous service, remuneration, holidays and other benefits are transferred.

In respect of pension rights, the transfer of obligations does not include an obligation to set up, fund and maintain a pension scheme. There is, however, an obligation to ensure that the interests of employees and persons no longer employed in the transferor's business are protected in respect of rights conferring on them immediate or prospective entitlement to old age benefits, including survivor benefits.

Employers must engage in an information and consultation process with employee representatives (or employees themselves) at least 30 days in advance of the transfer or where that is not reasonably practicable, "in good time" in advance of the transfer.

### Social Security Contributions

Social insurance contributions in Ireland are referred to as PRSI (Pay Related Social Insurance) contributions and they entitle employees to a number of benefits.

An employer in Ireland must account to the State for PRSI in respect of its employees. The amount paid is directly related to an employee's earnings and the type of work they are employed to do. Employers must deduct PRSI contributions directly from the employee's wages. Similarly, each employer must pay a PRSI contribution for the employee.

### Accidents At Work

Employers must ensure that they provide a safe working environment to their employees under the applicable Health and Safety legislation. Employers are categorically required to carry out a health and safety assessment of the workplace and prepare a health and safety statement describing the procedures in place to protect their employees. The employees themselves have the right to access to this statement. Health and Safety Inspectors (under the auspices of the Health and Safety Authority) are statutorily-entitled to inspect workplaces.

### Discipline And Grievance

While Irish employers are not specifically required to implement either (1) grievance or (2) disciplinary procedures, it is highly advisable to have written policies in place in relation to both. The Irish courts and statutory employment tribunals will expect fair procedures to be followed by employers in disciplining employees and the absence of a process will be poorly regarded.

A disciplinary procedure will be expected to include a number of stages (typically verbal warning/first written warning/second written warning) and an employee must be given an opportunity to improve at each stage. In addition, a final appeal (to a figure in management not previously involved in the process) is usual.

Likewise, the courts will expect an employer to have a fair process in place whereby employees are given an opportunity to ventilate their grievances.

### Harassment/Discrimination/Equal pay

Both sexual and non-sexual harassment (including bullying in the workplace) are prohibited by Irish equality legislation. In addition, it is very common for employment handbooks to treat either as a disciplinary offence.

Discrimination is prohibited under the Employment Equality legislation. An employer may not discriminate between employees under a number of headings including gender and disability.

Similarly, an employee is entitled to equal pay for equal work and may bring a claim to the Equality Tribunal where he or she believes that their employer is contravening this.



### Compulsory Training Obligations

There are no compulsory training obligations with general applicability. However, an employer is obliged under the Health and Safety legislation to provide employees with a safe work environment and adequate training is an inherent component of this. An obvious example is to ensure that manual handling employees are trained in correct lifting procedures.

### Offsetting Earnings

The Payment of Wages Act 1991 prohibits deductions from an employee's wags save for "authorised deductions". Authority to make deductions from an employee's wages may be given in one of three ways: by statute, by express contractual term or otherwise by written consent.

### Payments For Maternity And Disability Leave

Pregnant employees are not automatically entitled to paid maternity leave. It is, however, commonplace for the first period of 26 weeks to be paid. An employer will generally expect the employee to account for the state-provided maternity benefit. Identical provisions exist in respect of paid Parental and Adoptive leave.

Employers are under no obligation to pay their employees while absent from work by reason of illness or disability although contracts of employment will generally provide for a limited period during which the employee will be paid. Employees absent because of illness or disability will generally be expected to account to the employer for state-provided benefits if they continue to be paid.

### Compulsory Insurance

Irish employers will generally always maintain employer's liability insurance and public liability insurance. Certain sectors (the legal sector, for example) will require additional insurance coverage including professional indemnity insurance.

### Absence For Military Or Public Service Duties

Most Irish citizens are eligible to be called for jury service. Employers are required to pay employees while serving on juries and employees may not lose any employment entitlements or rights while serving on juries. There are currently no obligatory military duties in Ireland that employers are required to facilitate.

### Works Councils or Trade Unions

All Irish employees have a Constitutional right to join a trade union. However, the employee who exercises such a constitutional right cannot insist that an employer recognise their union. The right conferred by the Constitution is an individual personal right and does not carry with it the obligation on an employer to recognise the trade union. Recognition of a trade union by an employer may arise by express agreement, but also be implied agreement (e.g. course of dealing between the parties or by the recognition of a trade union for certain purposes such as disciplinary hearings).

Ireland prohibits the military and the police (Garda Síochana) from forming and joining ordinary trade unions or from striking. Both groups are allowed to be represented by associations.

### Employees' Right To Strike

In Ireland there is no right to strike but rather there is a freedom in certain circumstances to strike, in that immunities from legal restrictions on strikes and industrial actions will be conferred provided certain conditions are met.

The Industrial Relations Act 1990 permits peaceful industrial action such as strikes (with the exception of the police and military) and picketing which a union takes in "contemplation or furtherance of a trade dispute." A trade dispute is defined as: "any dispute between employers and workers which is connected with the employment or non-employment, or the terms or conditions of or affecting employment, of any person."

Before starting a legal industrial action, a union must win a majority of votes cast from a secret membership ballot. It also must give an employer seven days notice before striking. If licensed unions follow the procedures set forth in the 1990 Act before striking, both they and their members are sheltered against legal action and retaliation.

Failure to adhere to these required steps risks exposure to litigation (including an application for an injunction prohibiting the industrial action) being issued by the employer.

### Employees On Strike

Employers in Ireland tend to discontinue the payment of wages or salary to those of its employees who go on strike.

Striking union members are protected by the Unfair Dismissals Acts which prevents employers from firing certain workers and also from selectively rehiring certain workers amongst those who were on strike or who were locked out.

### Employers' Responsibility For Actions Of Their Employees

An employer will be liable for the wrongful acts performed by an employee in the course of his/her employment, including wrongful acts performed in circumstances (i) where the employer has directly authorised those wrongful acts, (ii) where the employee performs a wrongful act which is not directly authorised by the employee but which is a means of carrying out an instruction of the employer which may in itself be lawful and (iii) where the wrongful act is not authorised by the employer but is so closely connected with another act which is authorised by the employer that the employer is liable for that act also.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

The contract of employment will generally always set out the procedures that must be followed in order to terminate employment. Very few employment contracts omit a disciplinary procedure and an employer will be expected to comply with fair procedures and with the terms of the contract governing discipline/dismissal. Failure to do so can lead to a successful claim for unfair dismissal.

### Instant Dismissal

Contracts of employment will usually specify the types of conduct that warrant summary dismissal. Typical instances warranting summary dismissal include fighting, theft, damage to property or reporting for work under the influence of alcohol or drugs.

### Employee's Resignation

There is nothing to prevent an employee from ending the employment relationship by tendering their resignation. The contract of employment will generally always stipulate a fixed notice period although it is possible for the employee to negotiate a shorter period. If there is no contract of employment or if the contract is silent regarding notice periods, the Minimum Notice and Terms of Employment legislation sets out certain minimum notice periods, dependent upon length of service.

### Termination On Notice

An employer can terminate the contract of employment on notice to the employee but applicable Unfair Dismissals legislation allow an Irish employee to seek redress in circumstances where they have been unfairly dismissed from employment.

A dismissal is automatically presumed to be unfair unless there are substantial grounds justifying the dismissal. The employer must demonstrate grounds justifying dismissal and it is required to furnish, on request, a written statement setting out the reasons why the employee was dismissed. The legislation provides that a dismissal will be deemed not to be unfair if it results wholly or mainly from a number of factors including capability/competence, conduct, redundancy or inability to work.

### Termination By Reason Of The Employee's Age

There is no compulsory retirement age in Ireland. For those working in the public sector, certain statutory retirement ages may apply. For all other employees, the Employment Equality Acts 1998-2004 allow Irish employers discretion in fixing compulsory retirement ages. This means that a contract of employment can include an express retirement age clause. However, if the employee works beyond this date, or if there is no express contractual retirement age, the employee may argue that forced retirement is discriminatory on grounds of age.

### Automatic Termination In Cases Of Force Majeure

Frustration of a contract of employment can occur:

- where there has been such a change in the circumstances that the performance of the contract has become unlawful;
- where events make it physically impossible for the contract to be performed; or
- where, although performance is physically possible, there has been such a change as to destroy the whole object of the contract and to make performance no longer commercially viable.

Examples of frustration of a contract in an employment situation include: complete destruction of the workplace, imprisonment of an employee or death or serious accident or illness rendering the future performance of the employee's obligations impossible (or entirely different from that which is set out in the contract of employment.)

In should be noted that in the case of illness, if there is a prospect of the employee recovering, the contract may not be frustrated and clear evidence that the contract is impossible to perform will be required.

### Termination By Parties' Agreement

There is nothing in Irish law preventing an employer and employee agreeing terms for the termination of the employment or agreeing, in particular cases, to waive the contractual notice provisions. In addition, a contract will usually provide that an employee can be paid in lieu of notice.

### Directors Or Other Senior Officers

Irrespective of the seniority of the employee, the contract of employment will govern the relationship and there are no specific rules governing the employment of directors or other senior employees. However, senior employees are more likely to be held to the strict notice periods in their contracts and may have to comply with a restraint of trade clause. Also, in circumstances where a director's contract of employment is terminated, the cessation of his/her directorship does not automatically follow. Further procedural steps must be taken in order to end the directorship.

### Special Rules For Categories Of Employee

Certain employees are afforded greater protection. Pregnant women cannot be dismissed under any circumstances while on maternity leave, for example. In general, however, there are no legislative provisions mandating special treatment for certain employees.



### Specific Rules For Companies in Financial Difficulties

The Irish State operates an Insolvency Payments Scheme designed to protect entitlements of employees whose employer has become legally insolvent. Employees may claim arrears of pay, holiday pay, pay in lieu of statutory notice and various other entitlements.

In the case of the redundancy of an employee, in the first instance it is up to the employer to pay the statutory redundancy lump sum to all eligible employees. The Social Insurance Fund (SIF) finances a 60% redundancy rebate payment to employers who pay their eligible employees their full statutory redundancy entitlements.

### Restricting Future Activities

Restraint of Trade clauses are relatively common in Irish employment contracts. It is not unusual, for example, for an employee to be restrained from taking work from clients/customers of his former employer for a fixed period of time.

### Severance Payments

In the case of redundancy and unfair dismissal, statutory payments may be made to an employee which are calculated by reference to the employee's length of service (in the context of a redundancy) and/or the employee's financial loss (in the case of an unfair dismissal), both of which are subject to a statutory maximum.

In the case of ex-gratia severance payments made to employees upon termination of their employment, normal contractual principles apply.

### Special Tax Provisions And Severance Payments

All payments relating to the termination of employment, whether paid at the time of termination or thereafter, are subject to taxation. Taxation applies whether the payments are agreed as part of a settlement or an ex-gratia payment and where awarded by a rights commissioner, EAT or the courts. The applicable taxation provisions are contained in the Taxes Consolidation Act 1997.

The statutory redundancy payment is tax-free.

### Allowances Payable To Employees After Termination

Save where contractually obliged, employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Most claims to the Employment Appeals Tribunal and the Rights Commissioner Service must be taken within 6 months of the date of dismissal/date of the incident. This 6 month time limit may be extended to 12 months in exceptional circumstances.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The Employment Appeals Tribunal may not award costs against any party unless, in its opinion, a party has acted frivolously or vexatiously, in which case such costs are confined to a specific amount in respect of travelling expenses and any other costs and expenses reasonably incurred by the other party in connected with the hearing, but shall not include any amount for the attendance of counsel or solicitors, officials of a trade union or representatives from an employers' association. Therefore, the legal costs in defending an EAT claim, whether successful or otherwise, will not be recoverable.

It is also important to note that the EAT does not compensate claimants for damages relating to stress, personal injuries, defamation or inconvenience. Compensation is limited to actual financial loss of up to two years' gross remuneration; gross remuneration can include not only salary but also the cost to the employer of other benefits provided to the employee. The dismissed employee must seek alternative employment after his/her dismissal and failure to do so will be taken into account when assessing compensation.

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# Israel

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Labor Courts have exclusive jurisdiction over claims concerning employment relations and labor, Collective Agreements, social security and welfare disputes including National Insurance.

### The Main Sources Of Employment Law

State Laws, Collective Agreements, Extension Orders of Collective Agreements and Court precedents.

### National Law And Employees Working For Foreign Companies

The protective employment legislation applies equally to all individuals working in Israel, regardless of their nationality, unless the employment agreement prescribes priority to the foreign law and its terms do not contradict the protective sections in the Israeli Labor Laws.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no special form of agreement as far as personal employment contracts are concerned, but the employer must provide the employee with a written notice specifying his/her main employment terms, or any changes thereof.

### Mandatory Requirements:

#### Trial Period

There are no legal requirements relating to trial periods. However, Collective Agreements generally provide for a trial period.

#### Hours Of Work

The maximum working week is 43 hours. In a six-day week the maximum hours per day is 8, whereas in a five-day week it is 9. The Minister of Labor is entitled to authorize an extended working hours per day or per week for particular occupations. For overtime work (in respect of which there are legal limits) an additional payment should be added, as provided by law.



#### Earnings

There are minimum wage restrictions. According to Sections 14, 14A and 15 to the Minimum Wage Law 1987, and to an amendment to the Collective Agreements Law in 2009, it is now a criminal offence for an employer to breach the minimum wage requirements under said law and under an extension order. It should be emphasized that officers and directors of a corporation may be liable, personally, to any offence in this respect. In addition, it should be noted that any wage that is not paid on time may cause a very severe judicial or administrative fiscal penalty or sanction to be imposed on the employer. While the judicial sanction (delayed wage compensation) is within the discretion of the labor tribunal, the administrative sanction is within the discretion of the authority.

#### Holidays / Rest Periods

Minimum of 14 days paid vacation days in the first year of employment and up to a maximum of 28 days after the seventh year of employment (the numbers relate to calendar days and not working days).

#### Minimum/Maximum Age

Minimum - 14 years old (however, employees aged between 14 to 18 years old are subject to certain restrictions); Maximum - 67, when the employee may be forced to retire, unless otherwise provided in the employment agreement.

#### Illness/Disability

1.5 days for each month of employment up to a maximum of accumulated number of 90 sick days.

#### Location Of Work/Mobility

There are no mandatory requirements relating to location of work, or mobility clauses. However, in cases where a transfer of the employment location is deemed to cause a substantial detriment to an employee e.g. the new workplace is much farther from the employee's residence and no compensation is paid to him for extra travel time and travel expenses, the employee may resign and will be deemed to be fired with all the consequences in his favour resulted therefrom (e.g. severance payment, etc.).

#### Pension Plans

There is a mandatory pension plan, restated under an extension order of a Collective Agreement. The amount to be provided under the plan has been increased on a yearly basis, and is currently 17.5% in 2014. The employer pays two-thirds of the contribution and the employee pays one-third. It is worth noting that the contributions in most voluntary pension plans are higher than 17.5%, often in the rate of 18.333% - 21%.

#### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

There are several arrangements in this field, e.g. maternity leave and a very detailed adoption law.

#### Compulsory Terms

The written admittance notice of an employee must specify the following: identity of the parties, commencement of employment (and if it is for a fixed period), job description, name of the employee's direct supervisor, wage and payment day, regular working day or week, employee's rest day, types of welfare payments made by the parties, and if the employer is a party to a Collective Agreement - the name of the relevant employee's union. Other terms may be deemed compulsory by law, e.g, advance notice of termination.

#### Non-Compulsory Terms

The parties are free to agree on other non-compulsory provisions, but such provisions must not derogate from the employee's rights under the Labor Laws or the applicable Collective Agreements or Extension Orders.

### Types Of Agreement

There are no rules for different types of agreements but some sectors are subject to specific references in the statutes, which will deem to be integral part of the employment agreement, e.g. civil service regulation for public employees.

### Secrecy/Confidentiality

Except for jobs, in the defence field, there is no statutory obligation of secrecy/ confidentiality. However, it is common, both in collective agreements and in personal contracts, to include secrecy and confidentiality obligations and ownership of intellectual property rights.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The IP rights may be determined under the relevant employment agreement. If not, there are statutory provisions which determine ownership of IP, under certain circumstances, including the rights of an employee-inventor in the invention.

### Hiring Non-Nationals

There are specific rules about hiring non-nationals. Non-national employees as well as their employers, must obtain working permits.

During recent years, the employment of a non-national without permits may result in the employer committing a criminal offence.

### Hiring Specified Categories Of Individuals

There are specific rules about hiring specified categories of individuals:

Employment of children under the age of 15 is allowed only during the summer holiday.

Night work of youths (under 18) is prohibited unless authorized by the Minister of Labor.

There are restrictions on women's work and especially pregnant women.

Working during rest days is prohibited but there are exceptions for specific occupations, which have been authorized by the Minister of Labor. It should be noted that working on a rest day entitles the employee to a substitute day of rest and to an additional payment of 50% to his salary, for working on the rest day.

### Outsourcing And/Or Sub-Contracting

There are specific rules about outsourcing and sub-contracting. In general, new legislation protects the employees of manpower companies, and in services such as: cleaning, security and catering. It overlooks the agreement between the formal employer and the actual employer. In addition, there are certain statutory requirements regarding equalization of the wages and social benefits of the actual employers' employees in similar work, and the manpower company's employees, after a short period of employment by the actual employer.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

A private employment agreement which is not for a fixed period is binding for as long as it exists. Therefore, it cannot be altered unilaterally, unless provided for in the agreement. However, upon reasonable prior notice, the employer is allowed to present changes in the terms of employment to the employee. Any change in the terms of employment to the detriment of the employee, grants the employee the option to resign and to be deemed to be fired with all the consequences in his favour resulted therefrom (e.g. severance payment, etc.). In any event, each party may terminate such employment agreement on reasonable prior notice (but not less than provided by law). If the employer exercises such right, the employee will be entitled to all his rights (e.g. severance payment). Different rules might apply under a Collective Agreement.

### Change In Ownership Of The Business

There are the following possibilities:

a) The seller (first employer) dismisses all the employees and pays them all the social benefits that they are entitled to, e.g. severance payments. However, in case that an employee continues to work in the same working place, his seniority for social rights (e.g. annual leave, etc.) shall be kept as from the date of commencement of his/her work with the first employer;

b) There is an agreement between the first employer and the buyer of the business, according to which the buyer assumes all the duties and obligations towards the employees of the first employer. In such a case, those employees who chose to stay can enjoy all the rights they accumulated during their previous employment (e.g. pension, leave, severance payment etc.). The other possibility is: the employee resigns. In such a case, the employee will have all the same rights as that employee would have in the case of dismissal.

### Social Security Contributions

There are compulsory social security payments, to be done by both the employer and the employee. Social security in Israel includes payments for the following matters: age allowances, payments for work accidents and illness, maternity payments, payments to dependants in case of death of the insured employee and unemployment allowances. For this purpose, the employer pays his part and the employee's part is deducted from his salary. In addition there is a compulsory health insurance which all residents must pay. In the course of employment, it is the duty of the employer to deduct the appropriate sum from the salary in this regard. All deductions as well as the payments of the employer should be transferred promptly to the Institution of the National Security.

### Accidents At Work

There are special laws regarding safety in work and rights of employees in cases of accidents at work. The main entitlement is to receive an allowance for an accident at work from the INS.

### Discipline And Grievance

In Collective Agreements there are rules relating to discipline and grievance procedures. In the public sector (such as the state and the municipalities), there are disciplinary codes and tribunals that have wide authority to deal with and punish for disciplinary offences.

### Harassment/Discrimination/Equal pay

There are laws relating to sexual harassment, discrimination and equal pay. Sexual harassment is also a criminal offence. Discrimination on the basis of gender, sexual orientation, personal status, pregnancy or parenting, age, race, religion, nationality or country of origin, political orientation, army service and participation or non-participation in union activity, is prohibited. The right for equal pay for the same work is recognized in the laws relating to discrimination.

### Compulsory Training Obligations

There are no rules relating to compulsory training obligations.

### Offsetting Earnings

There are rules relating to the offsetting of earnings, which severely limit the right of the employer to do so.

### Payments For Maternity And Disability Leave

There are special laws relating to payments for maternity/childcare, etc. Generally, the employer does not bear such payments and they are paid by the INS. In respect of disability, the entitlement to a period of leave is either regulated in the National Insurance Law, or it is included in the rights for paid sick leave. It depends on various factors eg if the employee is recognised as an "invalid" by the INS and what has caused his disability.

### Compulsory Insurance

There are no rules relating to compulsory insurance, except for the social national insurance and the compulsory pension.

### Absence For Military Or Public Service Duties

There are rules relating to absence for military or public service duties. In brief, the law provides that the employee's place of work is preserved and that he will be paid the regular amount of his salary by the national social security if he is absent from work for military or public service duty.



### Works Councils or Trade Unions

There are laws relating to agency fees and union member fees. The Collective Agreements Law sets the criteria for an organization to gain union status. The Labor Law in Israel pays special attention to the employees' right of organization.

### Employees' Right To Strike

The right to strike exists, subject to some limitations in vital services, and provided advanced notice is given by the representing union, unless an applicable Collective Agreement states otherwise.

### Employees On Strike

There are no special legal rules relating to employees on a strike. Generally, such employees are not entitled to salary during the strike. On the other hand, they are protected, except in cases of gross misconduct and other misbehaviour on the part of the employees, from any claim for damages by the employer or third parties relating to the strike, as long as the strike is "legal" (e.g. the required notice was given).

### Employers' Responsibility For Actions Of Their Employees

In tort cases, the employer is responsible for the actions of his employees if the employee has carried out the action within the scope of his work. There are some exceptions, e.g. when the employee intentionally ignores his employer's instructions, or if the damage was caused when the employee acted in his own right and not for the employer.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

There are specific procedures which have to be followed to terminate the employment agreement. The termination must comply with the employment agreement or the applicable Collective Agreement. The dismissal must be made in good faith and there must be a hearing. An advance written notice is required under special laws and the employee must receive full pay during the notice period.

### Instant Dismissal

Under certain circumstances, such as criminal acts, gross misconduct or serious disciplinary violation, an employer can terminate an agreement by instant dismissal, as specified in collective agreements or in the employment agreement. In other cases, the employer may terminate the employment relationship immediately by paying wages in lieu of notice. There are cases when the employer must delay immediate dismissal and wait for the ending of the criminal or disciplinary proceeding. In such a case, the employee may be suspended, and then he will be entitled to payment according to the relevant employment agreement (in most collective agreements, the entitlement is for half the employee's salary for a period of 6 months and for a full salary thereafter). If the employee is acquitted, the employer should reinstate his full salary.

### Employee's Resignation

The agreement can be terminated by the employee's resignation. However, according to the law, after one year of employment, the employee must give notice of at least one month, in advance.

### Termination On Notice

The parties can simply terminate an agreement on notice if not prescribed otherwise in the employment agreement. The minimum notice period is one month provided the employment is over a year.

### Termination By Reason Of The Employee's Age

Once the employee reaches retirement age, an agreement can be terminated by reason of the employee's age, unless otherwise provided in the agreement.

### Automatic Termination In Cases Of Force Majeure

There are no special legal rules in this respect.

### Termination By Parties' Agreement

Normally, employment can be terminated by the parties alone by mutual agreement.

An approval from a court or other regulatory body is not required before such termination. However, there are instances in which a termination of this kind requires special care. For instance, if such an agreement is made with a pregnant woman it may look suspicious because such a dismissal requires prior administrative approval.

### Directors Or Other Senior Officers

There are no separate legal requirements for firing directors or other senior officers. Normally, they are not subject to collective agreements because they work under personal employment contracts. A member of the Board of Directors is also subject to additional restrictions under the Companies Law. It should be emphasised that a Director acting as such is not an employee.

### Special Rules For Categories Of Employee

The categories of employees for whom special rules apply on termination are as follows: a) Pregnant women – during pregnancy and maternity leave and shortly thereafter; b) Employees who have filed a complaint against the employer due to corruption.

### Specific Rules For Companies in Financial Difficulties

There are laws which apply when a business gets into financial difficulties. These include legal rules relating to liquidations, insolvency and freeze orders.



### Restricting Future Activities

In general, any restriction on the freedom of occupation is prohibited.

Any clause which restricts future activities must be explicitly stated in the employment agreement, must relate to the legitimate business interests of the employer, must be reasonable in scope and duration, and must be reasonable in light of the nature of the position of the relevant employee.

### Severance Payments

Severance payment is payable subject to the employee having completed at least one year of employment with the same employer or at the same place of employment. Severance pay is equal to one month's wage for every year worked and may be denied in certain cases prescribed by law. According to the law, a pension plan normally absorbs the provisions for severance payment, and thus an employee for which such provisions and payments to a pension plan were made, is not entitled in addition to severance payment from the date payment to the pension fund had started.

### Special Tax Provisions And Severance Payments

Severance pay is tax free provided it does not exceed the amount equal to one month's wage for every year worked, and subject to a maximum amount prescribed by law. In cases where the salary is low the authority may exempt up to 150% of the salary for each year up to the permitted ceiling.

### Allowances Payable To Employees After Termination

Except for the compulsory pension mentioned above, where an employer is required to pay every month for the future pension of its employees and payment to the INS, employers are not required to contribute towards any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

There are time limits for claims following termination. Claims concerning severance pay must be brought within 7 years. Claims concerning annual leave must be brought within 3 years. The limitation period for a claim for delayed wage compensations is one year, and if the delayed salary shall have been paid already – 60 days.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

A new Enforcement of the Labor Laws Law has come into force lately. This law is quite extreme and imposes liability on the employer and sometimes also on its directors and executives, for breaching one or more of over 150 employment duties specified in the Labor Laws. The sanctions against the employer and its officers may be criminal, civil and administrative, and be accompanied by considerable fines.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Labour Tribunals (or, under certain conditions, arbitration boards) have jurisdiction for adjudicating employment disputes.

### The Main Sources Of Employment Law

Several legal sources apply to employment relationships: international treaties, EC law; the Italian Constitution; national (or, for certain aspects, regional or provincial) laws; regulations issued by the relevant authorities (such as the Labour Ministry, tax or social security authorities); national, local or company labour agreements; employment agreements.

### National Law And Employees Working For Foreign Companies

As a general rule, Italian labour law should apply to all employees working for foreign companies in Italy.

Non-national employees, temporarily seconded from non-national employers to Italy, are entitled to the same terms and conditions of employment as national employees.

### National Law And Employees Of National Companies Working In Another Jurisdiction

General international law principles apply to employees of national companies working in another jurisdiction.

Whichever law governs the employment relationship, there are certain compulsory Italian rules which will always apply and which parties cannot opt out of.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

As a general rule, employment contracts do not necessarily need to be in writing.

Only specific clauses in employment contracts (namely probation clauses and post-employment non-competition covenants) or peculiar employment contracts (eg fixed-term, part-time, and apprenticeship employment contracts) are required to be in writing.

### Mandatory Requirements:

#### Trial Period

As a general rule, employees may be employed under probation, if (i) the probation period clause is entered into in writing, before, or upon commencement of the employment; (ii) the concerned employee is duly informed of the assigned duties, on which he is "tried".

National collective agreements specify the maximum duration of any probation period, shall not exceed six months.

#### Hours Of Work

Under Italian law, working time includes any period of time during which the employee is present at the workplace and at the disposal of the employer. According to the case law, it also includes other periods during which the employee is not actually present at the employer's premises, e.g. during business trips or working in temporary yards.

The ordinary weekly working time of a full-time employee is 40 hours per week. Collective agreements may provide for a lower number of hours and may calculate ordinary working time as an average for a period which may not exceed one year.

Full-time and "vertical" part-time employees may be required to work overtime, if the applicable collective agreement provides for it. The employer and the employee may agree to overtime, within certain maximum limits and/or due to a peculiar situation.

Employees working overtime are generally entitled to be paid for overtime and/or to paid leave. Please note that general provisions on working time and overtime do not apply to specific kinds of employees, e.g., all employees having managerial duties.

#### Earnings

All employees should receive an adequate and sufficient remuneration, which according to case law, should not be lower than the minimum wage set by the national collective agreement of the relevant sector or industry.

The annual base salary is paid in 13 monthly instalments (the 13th one in December of any relevant year. Some national collective agreements provide for a 14 monthly instalment of annual salary, generally to be paid in July.

#### Holidays / Rest Periods

Under Italian law, employees are entitled to:

- rest breaks of no less than 10 minutes for every 6 worked hours (short rest breaks are also granted to employees continuously using VDTs);
- a daily rest period of 11 hours in each 24 hour period;
- a weekly rest period of 24 consecutive hours (on top of the 11-hours daily rest above) in each 7-days period, normally on Sundays. The standard reference period for the "no less" than calculation of the weekly rest entitlement is 14 days;
- 4 weeks of annual leave; 2 weeks of this leave should be enjoyed in the same year in which such days-off become due. The remaining 2 weeks can be carried over but must be taken in the following 18 months. The employer shall pay the employee in lieu of untaken holiday upon termination of the employment, no such payment being allowed during he employment.

### Minimum/Maximum Age

As a general rule, employees must be 16 years or older, provided that they have duly complied with rules relating to attending school.

Recent law provisions allow, under certain conditions, for young apprentices to work, instead of attending school, during their last year of school.

### Illness/Disability

Employees on sick leave are entitled to continue their employment and receive sick pay (under certain circumstances, covered by the relevant social security authorities), until a certain "grace period", set by the collective agreement, expires.

According to the main trend of case law, employees suffering an illness due to a breach by the employer of health and safety duties, may not be dismissed upon the expiration of "grace period".

Employees who, during their employment, become unable to carry out their duties, should be assigned to different vacant positions compatible with their disability.

### Location Of Work/Mobility

As a general rule, employees may be unilaterally transferred from one business unit to another one, because of reasonable technical, organizational or production needs. Further restrictions set by law or collective agreements may apply to certain categories of employees (unions representatives, employees having a certain age and/or seniority, employees assisting relatives suffering handicaps).

Such mandatory limits do not apply to business trips and to temporary assignments to new workplaces which may be freely decided by the employer.

### Pension Plans

The relevant public pension fund grants retirement pensions to all retired employees having reached a certain age and/or a certain number of years of payment of social security contributions.

Integrative pension plans have acquired an increasing importance in the last few years. Most employees join the pension plan governed by industry collective national labour agreements and are financed (in whole or in part) with TFR accruals (see below).

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

Legislative Decree 151/2001 grants women workers special protections during pregnancy and after birth, until the child is one. Such workers are entitled (and obliged) to take paid leave two months before birth until the expiry of the third month following birth.

Pregnant workers may commence their maternity leave one month before birth. In this situation, the employee shall remain on leave until the expiry of the fourth month following birth. Pregnant workers may start their maternity leave at any time should they have health problems during pregnancy or if their working conditions may expose her and the child to possible risks.

Female workers are entitled to enjoy additional leave of up to a maximum of 6 months (10 months, if they are the only parent) in the first eight years of the child's life ("so-called "parental leave"). When the mother returns to work following maternity or parental leave she is entitled to return to the same job or to another job of the same level.

Once the employee has returned to work she is entitled to two-hours daily rest during the first year of the child's life and to take leave if her child falls ill up to the age of 8 (for children aged between 3 and 8, however, such leave shall not exceed 5 days per year).

During pregnancy, and before the child is one-year-old, female workers may be dismissed only in exceptional cases. During the same period, female workers are entitled to resign without any notice and to be paid indemnity in lieu.

In certain cases, male workers are entitled to paternity leave, parental leave and daily rests. Generally speaking male employees have the same rights as the ones granted to female workers. Male employees enjoying paternity and/or parental leave or daily rests also enjoy the same protection from dismissal and resignation as female employees.

Pursuant to section 26 of the Legislative Decree 151/2001, in the case of adoption of a minor, the adoptive mother (or father) is entitled to 5 months maternity (or paternity) leave.

In the case of pre-adoption assignment (so-called "affidamento") of a minor, leave of up to three months may be taken in the five months following such affidamento.

The same parental leave granted by law to "natural" parents also applies in cases of adoption or affidamento of a minor.



### Compulsory Terms

As mentioned above, employment contracts do not necessarily need to be in writing. In principle, the mere performance of work under the direction and control of a subject is sufficient to establish an employment relationship, because all its main terms and conditions are provided for by the applicable laws and collective agreements. There are, therefore, no terms and conditions that should necessarily be agreed upon (even remuneration, in the absence of any agreement, might be set by the relevant Labour Court). However:

- terms and conditions of employment should not be less favourable than the ones set by law or the applicable collective agreement and;
- in the 30 days following the commencement of employment, each employee should be informed in writing of the main terms and conditions of his employment. Some of the above information may be provided de relato, i.e. by making a generic reference to the applicable collective agreements.

### Non-Compulsory Terms

Parties to an employment agreement are free to agree non-compulsory terms such as those providing for a probation period, part-time hours of work, variable remuneration, post-employment non-compete covenants.

Such (non-compulsory) clauses, where agreed upon by the parties, should however be compliant with the applicable laws and regulations (e.g. limiting the maximum duration of probation period, setting for conditions of validity of non-compete covenants).

## Types Of Agreement

Besides the "normal" (full-time or part-time) open term employment agreements, Italian law allows employers to execute several kinds of "flexible" employment agreements, such as fixed-term employment agreements, apprenticeship agreements, "job-on-call" agreements.

These "flexible" employment agreements may only be entered into provided that (strict) substantial and formal requirements are satisfied. Failure to satisfy these requirements will generally mean that such agreements will be deemed as a normal open-term employment contract.

## Secrecy/Confidentiality

Under Italian law, employees may not disclose confidential information about the business and the methods of production. There are also criminal offences for those who fail to safeguard professional business secrets.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Employees specifically employed to carry out inventive activities, are not entitled to any specific compensation (other than their monthly salary) for the inventions they make.

Employees working on industrial inventions in the context of their employment, without being employed nor remunerated to invent, may be entitled to an "equitable compensation" (providing that the same are registered).

In both cases, inventions belong to the concerned employers, but the concerned employees should be acknowledged as the inventors.

Employers whose employees make an invention outside the context of their employment, but in the employer's business area, only have an option to use or buy the invention.

Similar provisions apply to "opere dell'ingegno" (creative works, such as articles, books and software).

### Hiring Non-Nationals

EU citizens are entitled to freely work in Italy as employees or self-employed, with the only obligation to provide information and documentation about their employment to the relevant municipality authorities.

As a general rule, non-EU citizens may come to work in Italy only if provided with a "work permit.", The relevant authority will only issue a "work permit" if:

- the concerned non-EU citizen is offered employment and accommodation by an Italian employer;
- the maximum number of new non-EU citizens allowed to come to work in Italy, as set by the Italian Authorities on an annual basis, is not already reached (such limits do not apply to some categories of foreign workers, e.g., executives or highly specialized personnel); and
- there is no reason of public order to refuse the work permit.

### Hiring Specified Categories Of Individuals

Depending upon the number of employees, public and private employers are required to hire a minimum number of disabled personnel:

- 1 disabled employee, if the employer employs between 15 and 35 employees (only in the case of new hiring);
- 2 disabled employees, if the employer employs between 36 and 50 employees; and
- 7% of the total number of all employees, if the employer employs more than 50 employees.



### Outsourcing And/Or Sub-Contracting

Under Italian law where there is a work or service contract, the principal is jointly liable with the contractor (and any sub-contractor).

for remuneration, social security charges and withholding tax due to the contractor's (or sub-contractor's) employees assigned to the performance of the contract, within two years from the termination of the contract; and

for those damages, suffered by the contractor's (or sub-contractor's) employees assigned to the performance of the contract, that were not indemnified by State insurance against industrial accidents and occupational diseases. This liability of the principal applies in the case of the assignment to contractors of works within the principal's premises, or within a business unit of the principal's business, or within the principal's production cycle.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

The employer may assign the concerned employee to different duties, provided that this does not entail a down-grading.

Any down-grading, even agreed upon by the concerned employee, is unlawful, except (a) when the concerned employee may not continue carrying out his previous duties (namely, during pregnancy, or as a result of a disability), or (b) when down-grading is the only alternative to a possible redundancy of the concerned employee.

### Change In Ownership Of The Business

Where there is a transfer of a business (or part thereof), the following rights and protections apply:

- the employees pertaining to the transferred business or part of business have the right to continue their employment with the transferee. The employees retain all the rights from their previous employment agreement;
- the transferee shall comply with all economic and legal benefits granted by national, local, and company collective agreements entered into by the transferor from the date of the transfer until their expiry, unless the transferee already follows other collective agreements of the same level;
- the transferor is jointly liable with the transferee, for all credits that the transferred employees had at the time of the transfer, unless the employee releases the transferor from the obligation under the original employment relationship through a specific procedure;

- the transfer of a business does not qualify per se as a legitimate ground for the employee's dismissal.

Whenever the concerned transferor employs more than 15 employees - irrespective of the number of employees transferred - the transferor and the transferee should initially inform and consult the union representatives of the envisaged transfer, following a procedure that should start at least 25 days before the transfer.

### Social Security Contributions

Employers are obliged to pay social security contributions (financing retirement pensions, as well as maternity, disability and some unemployment treatments) to the relevant public pension fund.

Most contributions (approximately 25% of employee's gross remuneration) are a cost to the employer but a smaller part (approximately 9% of employee's gross remuneration) is a cost to the employee and withheld from the employee's gross remuneration.

### Accidents At Work

Employers shall pay insurance premiums to a public fund covering damages to Employee's health and (temporary or permanent) disability which arise from accidents at work or industrial diseases.

### Discipline And Grievance

Before taking any disciplinary measures (with the only exceptions being oral reprimands), the employer should carry out the following procedure:

- the employer must send the employee a letter with a detailed description of the grievance(s);
- the employee has the opportunity to submit his written or oral defence to the employer within five days of receipt of the disciplinary letter;
- after receiving the employee's defences (or if the employee has not submitted any defence within five days), the employer may apply the proper sanction to the employee.

Italian law also requires the employer to display a disciplinary code in a place accessible to all employees.

### Harassment/Discrimination/Equal pay

The Italian Constitution and several laws and regulations prohibit any kind of direct or indirect discrimination before, during and upon termination of the employment (including molestation and sexual harassment, which are deemed as gender-based discriminatory acts).

Discriminatory acts are null and void and, under certain conditions, may entail regulatory or even criminal law penalties for the employer.



### Compulsory Training Obligations

Employers have to provide health and safety training to employees for the purpose of avoiding or limiting the risk of accidents at work.

Apprentices are also entitled to attend training courses to obtain certain skills or qualifications.

### Offsetting Earnings

An employer may offset debts due from an employee against the employee's salary.

Under certain conditions, employees' credits (to salary, allowances, indemnities and perquisites) may be assigned to, or distrained by, third creditors.

### Payments For Maternity And Disability Leave

Maternity and disability leave is generally covered by the relevant social security authorities, although contributed to by employers.

National collective agreements may require employers to integrate such pays, so as to allow the concerned employees to receive full salary during their leave.

### Compulsory Insurance

Besides compulsory insurance against accidents at work and industrial diseases (see above), national collective agreements may require employers to execute insurance policies in favour of executives or other specific categories of employees.

### Absence For Military Or Public Service Duties

Under certain conditions, employees carrying out military or specified public service duties may have the right to suspend their employment and not be dismissed during such duties or to enjoy some leave.

### Works Councils or Trade Unions

Employees are free to organize a trade union and to carry out union activities.

Italian law grants specific rights and protections to certain unions that achieve a certain level of "representation" in a company. To get such recognition the union must execute a collective agreement which is applied by the company.

Special role and entitlements are granted to the "most representative" unions at national level.

There are several smaller trade unions with each one representing all employees (excluding executives, represented by their own unions) working in the same industry.

The most important collective agreements are executed at national level by industry unions and the corresponding employers' associations. The CCNLs provisions may be incorporated and, under certain conditions, amended by local, company and/or business unit agreements.

### Employees' Right To Strike

The right to strike is set out in the Italian Constitutional Chart. In specific areas of "essential public services" (e.g. public transports, hospitals), where a strike not only impacts the employer's business but the whole community, unions calling a strike shall comply with a regulatory procedure and ensure that a minimum number of services are constantly available to the public.

Pursuant to section 28 of the Italian law no. 300 of 1970, unions suffering an undue limitation of their freedom, activity or right to strike (and, in general terms, an infringement of their rights) may file a lawsuit against the employer responsible for such undue conduct and obtain an injunction which, orders the employer to cease such conduct.

### Employees On Strike

The right to strike may be freely exercised by all employees, provided that it does not cause damage to the employer's "productivity" (i.e. the employer's machinery, devices etc.).

Employers are not allowed to take measures to contradict the exercise of such constitutional rights. In particular employers may not take disciplinary measures against employees on strike nor are they allowed to employ new staff (directly, or through a labour agency) to minimize the effects of the strike on the normal running of the business.

### Employers' Responsibility For Actions Of Their Employees

There is a civil liability imposed on all employers for all and any damage that their employees may have caused to third parties during their work.

Under certain conditions, crimes committed by employees in the interest of their employers may expose the employers to the same criminal law sanctions as the employee.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

An employer must give notice of dismissal in a written letter, which must specify the reasons for the termination.

Companies employing more than 15 employees who intend to lay off 5 or more employees working in the same business unit or province in 120 days because of "a reduction or transformation of business or labour" (so-called collective dismissals), should carry out an information and consultation procedure involving trade unions and labour authorities. This consultation procedure should last an average of 75/80 days.

If the dismissal is based on disciplinary reasons, the above-mentioned disciplinary procedure should be carried out in the first instance.

### Instant Dismissal

Employees may be dismissed without any notice, or paid in lieu of notice (after a disciplinary procedure has been carried out, however), because of a "just cause", i.e. a reason of such seriousness that the employer is not in a position to continue the employment any longer, even on a temporary basis.

According to case law, a dismissal for a "just cause" is lawful only if it is an "immediate reaction" by the employer to a very serious breach by the employee of one of his material duties. Employees can also be instantly dismissed if the employee has done something outside of his employment (e.g. committing a crime) that makes the employer lose all trust in him.

### Employee's Resignation

Employees under a permanent employment contract may resign at will.

Employees under a fixed-term employment may resign before the expiry date of their employment only because of a "just cause", without giving any prior notice.

To be effective, resignations (as well as mutual termination agreements) must satisfy certain procedural requirements, aimed at ensuring that the employee genuinely consents to terminate his employment. In the absence thereof, employees may revoke their resignations (or mutual termination agreements).

### Termination On Notice

In addition to "just cause" reasons, employees under permanent employment may also be dismissed for a "subjective" or "objective" reason, with prior notice (the duration of which is set by the applicable collective agreement).

An "objective reason" is defined by law as a reason relating to the production activity, the organization of work and the regular functioning of the business. A "subjective reason" consists of a serious failure on the part of the employee to fulfil his contractual obligations, which is not serious enough to amount to a "just cause" reason for dismissal.

During the notice period, employment continues "as usual". Any suspension of service (e.g. due to sick leaves) will also mean that the notice period will be suspended.

According to the main trend of case law, if employers so decide, employment may immediately terminate; in this case, the employee is entitled to indemnity in lieu of notice.

### Termination By Reason Of The Employee's Age

Employment relationships may not automatically be terminated by reason of the employee's age.

Under certain conditions, however, employees who become entitled to pension payments may be freely dismissed without the limits and protections normally applicable to unlawful dismissal.

### Automatic Termination In Cases Of Force Majeure

Whilst extraordinary cases of force majeure (such as a long imprisonment ofthe employee or the revocation of certain regulatory authorisations necessary to carry out certain duties), do not result in the automatic termination of employment, they may allow the employer to terminate the employment relationship.

### Termination By Parties' Agreement

An employment relationship may terminate as a result of the mutual consent of both parties, whether expressed in an agreement formally entered into by the parties or arising from the conduct of the parties.

### Senior Officers

Specific rules govern the termination of senior officers (dirigenti).

Under Italian law, a dirigente employed under a permanent employment contract may be dismissed by giving notice at any time (or, by giving payment in lieu of notice) provided there is no "just cause" reason.

National collective agreements, where applicable, provide that the dismissal of a dirigente must be "justified". Should the relevant labour court or arbitration board rule that the dismissal is not "justified", the employer is condemned to pay a "supplementary indemnity", which is determined by the collective agreement. The collective agreement provides for a minimum and maximum amount.

In the case of a dismissal exclusively based on discriminatory reasons, the dirigente is entitled to the same protections as "common" employees (see below).



### Specific Rules For Companies in Financial Difficulties

Several labour laws specifically apply to companies involved in insolvency procedures or in financial difficulties.

Under certain conditions an employer may temporarily avoid or postpone laying off its employees, by suspending such employees from work and allowing them to receive social security treatment (replacing their salary during such suspension).

### Restricting Future Activities

Post-employment non-competition covenants should be entered into in writing, and be limited in terms of duration, geographical extension and "object". Adequate consideration for entering into such a covenant should be given to employees.

Where any of the above conditions are not met, the non-competition covenant is null and void.

Non-competition covenants may have a maximum durations of 3 years for "common" employees and of 5 years for dirigenti.

### Severance Payments

The individual dismissal of an open-term employee is deemed unlawful where it is not justified by a "just cause", or a grounded reason; null and void, where it is grounded on a discriminatory or illicit reason, or is communicated orally; and ineffective, where the employer fails to comply with procedural, or formal requirements.

The collective dismissal is deemed unlawful, where the employer fails to comply with due criteria, upon "selection" of employees to be made redundant; it is deemed ineffective, where the employer fails to comply with collective dismissal procedure.

If the dismissal is null and void, the employee is entitled to reinstatement, and to the payment of damages, amounting to salaries and social contributions until reinstatement, with no threshold. Instead of being reinstated, the employee may opt for an indemnity of 15-months pay.

Protections granted by law in case of unlawful and/or ineffective dismissal vary, depending on the average number of employees working for the employer.

Should the company employ more than 15 employees within a business unit or municipality (or more than 60 as a whole).

if the dismissal is unlawful: depending on several issues, the employer may be required either:

- to reinstate and to pay damages, not exceeding 12-months pay; or
- to pay an indemnity only, ranging from 12- to 24-months pay;

if the dismissal is ineffective, the employee is only entitled to an indemnity, ranging from 6- to 12- months pay.

Should the company employ a lower number of employees (less than 15 in the same business unit or municipality, and less than 60 as a whole):

if the dismissal is unlawful: the employer may choose between re-employing the employee or, alternatively, paying him damages ranging from a 2.5 to 6 months - pay (this maximum amount may be higher under certain conditions);

if the dismissal is ineffective: the employee should be entitled to continue his employment and to compensation for damages equal to the salary that he would have received if he had not been dismissed.

### Special Rules For Categories Of Employee

Employees under a fixed-term employment may be lawfully dismissed before the expiry date only for "just cause". If there is no "just cause" the employer shall compensate the employee for the remainder of the term.

Fixed-term employees, re-characterised as open-term ones, are entitled to damages which can range from a minimum of 2.5 months to a maximum of 12 months salary.

### Special Tax Provisions And Severance Payments

Payments made by the employer in consideration for the employee's consent to terminate the employment are not subject to social security contributions. Income tax will be withheld but at lower rates than common remuneration.

### Allowances Payable To Employees After Termination

Pursuant to section 2120 of the Italian Civil Code, upon termination or expiry, for any reason, of employment, employees are entitled to an allowance (called "trattamento di fine rapporto" or "TFR") which should be accrued by the employer during the employment.

A law, which came into force in July 2007, provides that (depending on the total number of the employer's workforce and on the concerned employee's choice) as of 1st July 2007, TFR accruals may continue being accrued by the employer, or set aside in a special fund held by the relevant social security authority or paid to an integrative pension fund.



### Time Limits For Claims Following Termination

Italian laws sets out different limitation periods for different types of employment claims.

Dismissed employees should challenge their dismissal in the 60 days and file a lawsuit in the 180 days following notice of dismissal. These statutes of limitation also apply to employees challenging their assignment to a new place of work and to claims related to re-characterisations of labour relationships. As a partial exception, re-characterisations of fixed-term relationships into open-term ones should be challenged in the 120 (instead of 60) days, and a lawsuit should be filed in the 180 days following expiry of the term.

There is a general 5-year statute of limitations for money/benefits owed to employees. This 5 year period starts to run from the moment the credit is accrued, or otherwise as of the date of termination of the employment, depending on whether they benefit of "tutela reale" or not, in case of unlawful dismissal (see above).

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Civil courts handle ordinary litigation and provisional disposition procedures (summary proceedings) for employment disputes. In some large-scale district courts, there are special departments exclusively handling labour disputes. There is a special mediation and hearing procedure for individual labour disputes called Rodo Shinpan (industrial tribunal), which is comprised of a judge and two other members appointed respectively from the labour and employer sides. (this was introduced in 2006). The Labour Relations Commissions (LRC), under administrative agencies, cover unfair labour practice disputes with labour unions or the members thereof, but decisions of the LRC may be contested in the civil courts.

### The Main Sources Of Employment Law

The main source of employment law is legislation, such as the Labour Standards Act ("LSA"), Labour Contract Act ("LCA"), Equal Employment Opportunity Act, Childcare and Nursing-Care Leave Act, or Labour Union Act ("LUA"). However, legislation is supplemented by judicially created doctrines to a large extent.

### National Law And Employees Working For Foreign Companies

As to the application of national law, there are some special rules for employment contracts. If the parties failed to make choice of the law of the place which will govern them, employment contracts are presumed to be most closely connected with the law of the place where the work is carried out and therefore, they will be governed by such law. Where the work is not to be carried out in a particular place, the parties will be governed by the law of the place of business through which the employee was engaged.

Even if a law other than the law of the place with which the contract is most closely connected was chosen as the governing law, when the employee indicates to the employer his or her intention that a particular mandatory rule from within the law of the place with which the employee is most closely connected should apply, such mandatory rule will also apply. The employee can make this election even after the dispute arises.

### National Law and Employees from National Companies Working in Another Jurisdiction

Whether Japanese law will be applied to the employment contract with employees of Japanese companies working outside Japan will be determined according to the special rules regarding application of the national law for employment contract as explained above.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Certain important terms and conditions of the employment agreement have to be in writing and handed to employees at the start of their employment. In many cases, employers hand employees "Rules of Employment". "Rules of Employment" have to be prepared by employers who continuously employ 10 or more employees at any one work place. The "Rules of Employment" stipulate the important working conditions, which will uniformly apply to those employees unless there is any special agreement more favourable to an individual employee.

### Mandatory Requirements:

#### Trial Period

The trial period cannot be extended unless the "Rules of Employment" sets out reasons for the extension of the period and the extended period, etc.

#### Hours Of Work

Overtime work (exceeding 40 hours per week or 8 hours per day), without certain statutory procedures, is illegal. Extra pay for overtime work, whether legal or illegal, is required. However, such extra pay for overtime is not required to be paid to "persons occupying supervisory or management positions" (so-called "Supervisors and Managers"). "Persons occupying supervisory or management positions" refers to those who are in positions integrated with top management in terms of decisions or other administration regarding working conditions of subordinates or other day-to-day company operations. Whether a person falls within this category is determined by taking into consideration his or her duties and responsibilities, discretion to manage his or her own work hours, and the level of remuneration; it is not simply based on his or her title.

#### Earnings

The employer must pay the employee a wage not less than the minimum wage under the Minimum Wages Act. The minimum wage is fixed according to region.

As to the payment of salary, except for a few exceptions, salary should be paid in cash, in full, at least once a month and directly.

#### Holidays / Rest Periods

One day holiday per week is required.

The employer must allow a rest period of a minimum of 45 minutes if the employee works more than six hours in one day, or a rest period of a minimum of one hour if the employee works more than eight hours in one day.



#### Minimum/Maximum Age

Employers are prohibited from hiring children under the age of 15. More specifically, once a child turns 15, he/she cannot be employed until the first March 31 after his/her 15th birthday.

The mandatory retirement age may be prescribed in the "Rules of Employment". Employers are required to raise the mandatory retirement age stipulated in the "Rules of Employment" or provide a re-employment scheme, for their employees up to 65 years old. Effective as of April 1, 2013, the amended law prohibits the employer from setting selection criteria for employee participation in such re-employment scheme by including such criteria in a labour-management agreement.

#### Illness/Disability

Employers are not required to provide paid sick leave to an employee for an illness or injury resulting from non-job-related causes. However, employers often implement the system of "suspension from work" in the "Rules of Employment" for the purpose of delaying dismissal due to such illness or injury.

The Act for Employment Promotion, Etc., of the Disabled requires employers to employ a certain percentage of physically disabled or intellectually challenged persons. If an employer cannot achieve this percentage, it must pay money to a relevant government agency for the support of disabled people. (The above Act was amended in June 2013. Effective as of April 1, 2016, the amended law will prohibit unjust discriminatory treatment by reason of handicap in labour and employment and place an obligation on employers to take measures with the purpose of improving conditions that would otherwise impede the handicapped from working. Also, effective as of April 1, 2018, the amended law will include for the first time mentally handicapped persons in the calculation of the statutorily required rate of employment of handicapped persons in addition to the physically and intellectually handicapped. It is expected that the statutorily required rate of employment of handicapped persons will rise drastically.)

#### Location Of Work/Mobility

There are no mandatory requirements relating to the location of work/mobility. However, the employer's right to order relocation and reshuffling can be limited under the employee's relevant agreement or can be treated as invalid because of abuse of employer's right.

#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

Any pregnant employee is, upon her request, entitled to go on maternity leave six weeks before her due date. Employers must not have employees work within the period eight weeks after childbirth. However, should an employee wish to return to work after six weeks following childbirth, she may do so, but only for duties that a doctor has recognized would not adversely affect her health.

Women employees raising an infant below the age of one may request time to care for the infant of at least 30 minutes twice a day, in addition to the statutory rest period.

Under the Childcare and Nursing-Care Leave Act, an employee (whether male or female) who is raising a child and has custody (whether natural or adopted) under the age of one (or one year and six months of age in specific cases), who lives in the same household, may request childcare leave for a specified period of time.

#### Pension Plans

There is compulsory participation in government pension insurance (kousei-nenkin-hoken). Under the scheme, benefits will be provided to insured persons or their survivors when they retire from their working-lives, become handicapped, or die. Company pension plans are not mandatory, but are sometimes introduced in Japanese companies and are regulated by the Corporate Pension Act.

Under the Childcare and Nursing-Care Leave Act, an employee (whether male or female) who is raising a child and has custody (whether natural or adopted) under the age of one (or one year and six months of age in specific cases), who lives in the same household, may request childcare leave for a specified period of time.

### Compulsory Terms

When entering into an employment agreement, the wages, working hours and other working conditions must be clearly stated to the employee. Certain important conditions that relate to the following terms of employment should be clearly stated in writing: 1) period of employment, 2) the workplace and type of work, 3) starting time and finishing time, rest periods, days off, leave, change in shifts (in case employees work in two or more shifts), 4) wages (except retirement allowances etc.), the dates for closing account for wages and for payment of wages, and 5) retirement (including grounds for dismissal).

In respect of leave, the LSA requires employers to provide their employees with annual paid leave in the amount of 10 days upon working 6 months consecutively (subject to reporting to work for 80% or more of working-days in the preceding 6 months) and increase up to 20 days depending upon years of service with the same employer.

Also, there are some other compulsory terms which employers may wish to include in the agreement. For example, an employer cannot subject employees to any disciplinary action, including disciplinary dismissal, unless provisions regarding the reasons and the sort of disciplinary action have been set out in the "Rules of Employment".

### Non-Compulsory Terms

Japanese law, including Japanese labour law, includes certain default provisions which apply where a contract is silent. The parties may agree to the same or additional terms in an employment agreement, except where such terms include provisions that would violate Japanese public policy or which terms may be said to be prohibited by mandatory law.

### Types Of Agreement

There are two main types of employment agreements, a regular employment agreement (without term) and a non-regular employment agreement. Non-regular employment agreements include 1) fixed term agreements and 2) agreements with part-time workers. However, independent contractors or extra-company workers under contract hire agreements and dispatch workers from temporally-employment agencies do not have any employment agreement with companies where they work.

### Secrecy/Confidentiality

The confidentiality obligation of the employer in respect of employees' personal information is clarified by the Act on the Protection of Personal Information and the guidelines issued by the Minister of Health, Labour and Welfare.

Employees owe a duty of confidentially and good faith to the employer. As such employees are prohibited to disclose trade secrets under the Unfair Competition Prevention Act and other confidential information. Such duties are often agreed in writing in employment agreements or employees have to submit separate written pledges.



### Ownership of Inventions/Other Intellectual Property (IP) Rights

Under the Patent Act, if an employee has obtained a patent for his/her invention which falls within the scope of the business of the employer, which was achieved by acts categorized as present or past duties of the employee ("employee invention"), the employer will have a nonexclusive license on the patent right for such employee invention. The employer may acquire the right to obtain a patent or patent right for the employee invention, if there is a provision to such effect in the employment contract or "Rules of Employment". In such cases, the employee has the right to receive reasonable remuneration.

### Hiring Non-Nationals

Non-nationals are required to obtain certain types of residence status under immigration control law in order to legally work in Japan.

### Hiring Specified Categories Of Individuals

There are specific rules which apply to disabled workers which are set out above.

### Outsourcing And/Or Sub-Contracting

Employers using sub-contracted workers may not give direct instructions to such workers. Employers using dispatched workers may give direct instructions provided the employers comply with restrictions under the Workers Dispatch Act. However, in the past five to ten years, there has been an ever increasing number of companies which work around the Worker Dispatch Act by giving direct instruction to sub-contracted workers ("disguised sub-contracting"). Companies engaging in such disguised sub-contracting are subject to administrative penalties.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

Under the LCA, in principle, an employer cannot change any of the working conditions that constitute the contents of a labour contract in a manner disadvantageous to the employee even by changing the "Rules of Employment", without the agreement of the employee. Notwithstanding the above, the employer can change the "Rules of Employment" unilaterally if the employee is informed of the change and if the change is reasonable. In determination of the "reasonableness" of the change, the disadvantage to be incurred by the employee, the need for changing the working conditions, the appropriateness of the contents of the changed "Rules of Employment", the status of negotiations with a labour union etc., or any other circumstances pertaining to the change to the "Rules of Employment" will be looked at.

### Change In Ownership Of The Business

There are no rules which apply when there is a change in the ownership of the business.

### Social Security Contributions

Health insurance and the government pension insurance (kousei-nenkin-hoken) are compulsory social security contributions. Unemployment insurance and workers' accident compensation insurance also require employer contributions.

### Accidents At Work

The LSA provides that employers are required to provide compensation to employees who suffer injury, illness, or death at or from work. The Industrial Accident Compensation Insurance Act provides for mandatory insurance to cover most of such employers' statutory liability under the LSA.

### Discipline And Grievance

An employer cannot subject employees to any disciplinary action unless provisions regarding the reasons and the sort of disciplinary action have been set out in the "Rules of Employment". Furthermore, if the disciplinary action lacks objectively reasonable grounds and is not found to be an appropriate response to the act committed by the employee, such disciplinary order will be treated as an abuse of rights and be invalid under LCA.

### Harassment/Discrimination/Equal pay

The LSA covers equal pay between the sexes. Under the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, employers must provide equal opportunity with regard to the recruitment and employment for all persons irrespective of gender. Effective as of July 1, 2014, the amended ordinance will prohibit employers from requiring their employees to accept relocation to a different geographical area upon being recruited, employed, promoted or having their job category changed without any rational reason.

With regard to sexual harassment, the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment obligates employers to take necessary measures to prevent sexual harassment. A guidance issued by Ministry of Health, Labour and Welfare provides the concrete measures to be taken by the employer, such as creation of a clear policy regarding sexual harassment, making said policy known, and providing related education, establishing a clear channel for responding to consultations and complaints, and prompt and appropriate response after the fact in cases where sexual harassment has occurred.



### Compulsory Training Obligations

There are no rules regarding compulsory training obligations.

### Offsetting Earnings

The LSA prohibits employers from offsetting earnings against an employee's debts where money or credit has been advanced as a condition of his/her future employment for any reason.

In principle, an employer cannot offset earnings against an employee's debts in all other situations (full-payment principle). However, if there is a written agreement with a union organized by a majority of the employees at the workplace or with a person representing a majority of the employees at the workplace where no such union exist which allows such offsetting, the employer may offset earnings against such debts. In the absence of such an agreement, if the employer obtains the employee's consent to the offset, such offset does not violate the full-payment principle as long as such consent is based on the employee's free will.

### Payments For Maternity And Disability Leave

The rule of "no work, no pay" is applied.

### Compulsory Insurance

Labour insurance (unemployment insurance and workers' accident compensation insurance) and social insurance (health insurance and government pension insurance) are compulsory.

### Absence For Military Or Public Service Duties

An employer may not refuse a request by an employee, if he/she requests time off to exercise voting rights and other civil rights or to perform public duties during working hours.

### Works Councils or Trade Unions

Under the LUA, trade unions have the right to bargain collectively with companies at which their members work, regardless of the number of members. An employer may not refuse to bargain collectively without justifiable reasons; otherwise, it may constitute an unfair labour practice.

### Employees' Right To Strike

Employees have the right to strike or take other labour dispute action under the Constitution and LUA. Employers have no right to claim for damages caused by the strike or other labour dispute actions against trade unions or members of trade unions insofar as such actions are justifiable. Employers may continue their business during the strike or other labour dispute actions by using the workers who do not belong to the trade union.

### Employees On Strike

An employer cannot fire employees who are on a justifiable strike. The employer is not required to pay employees when they are on strike as a result of the application of the rule of "no work, no pay".

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for damages inflicted on a third party by its employees in the course of their employment. When the employer compensates a third party for such damages, it may exercise a right to obtain reimbursement from the employee who caused such damages. However, the courts tend to limit the employer's right to obtain reimbursement to a reasonable amount from the standpoint of a fair share of the damages by applying the principle of good faith.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

Among other things, any case of dismissal lacking objectively reasonable grounds or which is not considered to be appropriate according to general societal norms will be treated as an abuse of rights and be invalid under the LCA ("doctrine of abusive dismissal"). The Japanese courts are pro-labour and, when applying this doctrine, they often try to consider all facts and circumstances advantageously to the dismissed employee. In general, dismissal due to an employee's lack of qualification with respect to his or her prescribed duties would be allowed only where the causes of such lack of qualification are so extreme that the employee's performance has not improved or been corrected after repeated education, training or warning for a considerably long period of time.

### Instant Dismissal

Employers can instantly dismiss employees by paying an amount equivalent to the average salary of the employee for more than 30 days without prior notice.

### Employee's Resignation

Whether employment is for an indefinite or fixed term, an employee may immediately resign when there is some unavoidable reason, subject to the possibility of liability for damages if such unavoidable reason can be attributed to the employee.



### Termination On Notice

In order to dismiss an employee, the employer must provide at least 30 days' prior notice. An employee, who is employed for an indefinite term, may resign at any time for any reason by giving at least two weeks advance notice.

### Termination By Reason Of The Employee's Age

An employment agreement will be terminated upon the employee attaining the mandatory retirement age stipulated in the "Rules of Employment".

### Automatic Termination In Cases Of Force Majeure

In the event that the continuance of the employer's business has been made impossible by a natural disaster or other unavoidable causes, provided that the relevant authorities authorize the employer to dismiss without payment in lieu of prior notice, the employer can do so.

### Termination By Parties' Agreement

An employer and an employee can terminate the agreement by mutual consent. An employee's consent must be given freely without undue influence or under duress.

### Directors Or Other Senior Officers

Directors are not protected by labour laws, but are subject to the Companies Act.

### Special Rules For Categories Of Employee

Employees who are taking leave for medical treatment for injuries or illnesses suffered in the course of their duties as employees, or within 30 days thereafter and who are taking the leave before and after childbirth, or within 30 days thereafter are protected from dismissal.

### Specific Rules For Companies in Financial Difficulties

Even when a company is in financial difficulties and dismisses employees for the purpose of personnel reduction ("adjustment dismissal"), 30 days' notice, or pay in lieu of such notice is still required. Moreover, the courts usually consider four elements when considering whether the adjustment dismissal is valid, i.e., 1) Necessity of personnel reductions; 2) Whether other methods have been implemented, including a voluntary retirement program (offering a reasonable package as compensation would be considered as one of the criteria whether every alternative other than dismissal had been considered);
3) Fair selection by reasonable criteria; and 4) Due procedures, including sincere discussion with the affected employees and the union, if any.
The Japanese courts are not likely to uphold an adjustment dismissal unless it was as a last resort in a situation where the company experienced significant financial difficulties.

### Restricting Future Activities

Confidentiality obligation under the Unfair Competition Prevention Act (which is set out above) is effective with respect to retired employees. Other confidential obligations may be agreed upon, e.g., in an employment agreement, as effective post termination. However, post-termination non-competition covenants can be enforceable under very limited circumstances and conditions.

### Severance Payments

Many Japanese companies have a retirement allowance (lump-sum payment) scheme under the "Rules of Employment". Since the level of retirement allowanceor pension is often computed by multiplying the employee's base salary immediately prior to retirement by the rate reflecting the number of years of continuous service, it is generally characterized and protected as "a deferred payment of salary." In addition to such scheduled retirement allowances, when employers encourage their employees to resign for business reasons, packages including additional payments are often offered, in practice.

### Special Tax Provisions And Severance Payments

Under the Income Tax Act, the deduction from income and the rate of tax on retirement allowances (lump-sum payment) are more advantageous to employees than for salary and bonus payments.

### Allowances Payable To Employees After Termination

Allowances payable to employees after termination depend on the "Rules of Employment" or company pension plans of the employer.

### Time Limits For Claims Following Termination

The LSA stipulates that claims for retirement allowances should be made within 5 years and all other claims, such as salary, within 2 years after entitlement.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Two concepts that characterize the traditional Japanese labour and employment situation found typically in regular employees of major companies have been "lifelong employment" (Shushin-Koyo) and "seniority system" (Nenko-Joretsu). With respect to the habitual practice of lifelong employment, an employer's right to dismiss an employee has been severely restricted by the courts. With respect to the seniority system, under which it has been assumed that the base salary should continue to increase with advancing age, pay systems have been rigidly structured and most employers do not have the right to reduce the base salary of their employees.



However, in the past ten or more years, such trends have been rapidly changing. Some employers that are starting to abandon their lifelong employment policies no longer hesitate to implement a restructuring of human resources, including dismissals, as much as they did in the past. In the meantime, against the background of increased worker mobility, unfair competition and leakage of trade secrets by former employees have become major risks that many employers are facing.

Moreover, the implementation of performance-based pay is becoming more prevalent among a considerable number of employers. Greater potential conflicts between employers who want to pay for performance, not for working hours, and employees who feel forced to work longer hours without sufficient compensation are often realized as a claim for unpaid overtime pay in the wake of reluctant resignation or an inspection by the labour authorities.

On the other hand, atypical workers, such as part-timers, dispatched workers and fixed-term employees, who work for considerably lower wages and have no relation to lifelong employment have increased up to nearly 40% of the total workers, and are predominately young, female and elderly workers. Employment instability and a gap in treatment as compared with regular workers have emerged as social issues. These days, the laws protecting such atypical workers have been very frequently amended so that employers have to timely update their employment systems for atypical workers, including revisions of their "Rules of Employment." (For example, effective as of April 1, 2013, the amended law prohibits unreasonable employment conditions in fixed-term labour contracts as compared to those in indefinite-term labour contracts and grants fixed-term employees the right to convert their contracts into ones without a fixed term after repeated renewals beyond a total of five years (as counted from contracts commencing on or after April 1, 2013).)

These drastic and structural changes for all types of workers have been a source of increased stress in the workplace with prolonged recession and intensified global -scale competition. Therefore, mental health disorders and bullying (known as "power harassment" in Japan) are shared as common issues facing all employers.

For these reasons, individual labour disputes in Japan are increasing in number and complexity.

Finally, employers should be aware of a recent trend whereby an employee at even a non-union company will join a regional union to protest being subjected to encouragement to resign, dismissal or other personnel measures after the fact in order to have that union make a request for collective bargaining and put pressure on the employer. Any union, whether it unionizes a majority of the employees at the relevant workplace or not, has the right to collectively bargain with the employer, and rejection of such collective bargaining without a justifiable reason would constitute an unfair labour practice.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Labour Dispute Law has been in force since 01.01.2003. Any party to an individual dispute regarding rights can apply to the court if the dispute has not been settled by negotiation between the employee and the employer or if any of the parties is not satisfied with the decision of the Labour Dispute Commission. Any party to a collective dispute regarding rights can apply to the court within one month if the collective dispute has not been settled in the Conciliation Commission. Any party to a collective dispute regarding rights can apply to the court if a Conciliation Commission is not established or settlement of the collective dispute is not commenced in a conciliation commission within one month from the submission date.

### The Main Sources Of Employment Law

- Labour Law, in force from 01.06.2002;
- Labour Protection Law, in force from 01.01.2002;
- Labour Dispute Law, in force from 01.01.2003;
- Support for Unemployed Persons and Persons Seeking Employment Law, in force from 01.07.2002;
- On Protection of Employees in case of Insolvency of Employer, in force from 01.01.2003;
- On Unemployment Insurance, in force from 01.01.2000;
- Strike Law, in force from 26.05.1998.

### National Law And Employees Working For Foreign Companies

An employee and an employer may agree on the law applicable. However, if they have not chosen it, the laws of Latvia shall apply or the laws of another state if an employee normally performs his work in this another state. If none of this applies, the law of the state in which is located the undertaking which hired the employee or another state if it appears from the circumstances that the employment contract or employment legal relationships is more closely linked to it shall apply.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The same rules as to employees working for foreign companies apply.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

An employment contract shall be entered into in writing and shall be prepared in duplicate, one copy to be kept by the employee, the other by the employer.

### Mandatory Requirements:

#### Trial Period

If an employment contract does not specify a probation period, it shall be regarded as entered into without a probation period. The period may not exceed 3 months. Moreover, a probation period shall not be determined for persons under 18.

#### Hours Of Work

Working hours shall be specified by working procedure regulations, shift schedules, or by an employment agreement.

Regular daily working time of an employee may not exceed eight hours, but for employees exposed to special risk and adolescents- seven hours.

Before holidays the length of the working day shall be reduced by one hour.

#### Earnings

The minimum wage shall not be less than the minimum monthly salary (LVL 200 ~ EUR 285), as well as minimum hourly wage rates determined by the Cabinet. Appropriate supplement is due to an employee who performs additional work or work in special circumstances, performs night work (not less than 50 per cent of the specified hourly or daily wage rate) or performs overtime work or on a holiday (not less than 100 per cent of the hourly or daily wage rate).

#### Holidays / Rest Periods

The length of a one day rest within a period of 24 hours shall not be less than 12 consecutive hours and for children – not less than 14 hours.

The length of a weekly rest period within a seven day period shall not be less than 42 consecutive hours. If it is necessary to ensure continuity of the work process, it is permitted to require an employee to work on a holiday by granting him or her rest on another day of the week or by paying appropriate compensation. Every employee has the right to a break in work if his or her daily working time exceeds six hours, it shall be granted not later than four hours after the start of work and it may not be less than 30 minutes.

Annual paid leave may not be less than four calendar weeks, not counting holidays.

An employee shall be granted study leave for the taking of a State examination or the preparation and defence of a diploma work, which study leave shall not be less than 20 days a year. The employer may retain the average earning for such period. However, such obligation is not compulsory and depends on the mutual agreement between employee and employer.



#### Illness/Disability

An employer may request an applicant to undergo a health examination, which would allow verification that the applicant is suitable for performance of the intended work.

#### Location Of Work/Mobility

Generally location of work is in the undertaking, however, an employee may be sent on official travel. A person under 18 years may be sent on official travel only if one of the parents has given a written consent.

#### Pension Plans

Participants of the pension plan shall participate in the pension plan through the intermediation of their employer if the employer has concluded a collective participating contract with an open or closed pension fund, moreover, a collective participating contract with a closed pension fund may be concluded only in such cases when the relevant employer is also one of the founders (stockholders) of the same closed pension fund. Legal relationships of the employer and employees arising in connection with the implementation of a pension plan and participation of employees therein shall be regulated by the employment contract or collective work agreement.

#### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

The Labor Law provides prenatal and maternity leave as well as parental leave afterwards.

Prenatal leave of 56 calendar days and maternity leave of 56 calendar days shall be summed and 112 calendar days granted irrespective of the number of days prenatal leave has been used prior to child-birth.

A woman who has initiated pregnancy-related medical care at a preventive medical institution by the 12th week of pregnancy and has continued for the whole period of pregnancy shall be granted a supplementary leave of 14 days, adding it to the prenatal leave and calculating 70 calendar days in total.

In case of complications in pregnancy, childbirth or postnatal period, as well as if two or more children are born, a woman shall be granted a supplementary leave of 14 days, adding it to the maternity leave and calculating 70 calendar days in total.

Accordingly, taking into consideration above mentioned conditions, total time of prenatal and maternity leave may not exceed 140 days.

A woman who makes use of pregnancy or maternity leave shall have ensured her previous work. If this is not possible, the employer shall ensure the woman similar or equivalent work with not less favourable conditions and employment provisions.

Concerning benefits of prenatal and maternity leave please see section Payments For Maternity And Disability Leave.

The father of a child is entitled to leave of 10 calendar days immediately after the birth of the child, but not later than within a two-month period from the birth of the child.

Parental leave shall be granted for a period not exceeding one and a half years up to the day the child reaches the age of eight years. Parental leave, at the request of an employee, shall be granted as a single period or in parts. The time spent by an employee on parental leave shall be included in the total length of service.

An employee who has a child under one and a half years of age shall be granted additional breaks for feeding the child.

For a family, which has adopted a child up to three years of age, one of the adopters shall be granted 10 calendar days of leave.

#### Compulsory Terms

An employment contract shall include:

Names and addresses of the parties; starting date and expected duration of employment; workplace; the trade, profession, speciality of the employee in conformity with the Classification of Occupations; the scales and intervals to pay; working time; the length of the annual paid leave; the term for giving notice of termination of the employment contract; the provisions of collective agreement.

#### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights.

### Types Of Agreement

An employment agreement may be for an unspecified or specified period as well as collective agreement is possible where parties agree on the provisions regulating the content of employment relationships, in particular the organization of work remuneration and labour protection, establishment and termination of employment legal relationships, raising of qualifications, work procedures, social security of employees and other issues.

### Secrecy/Confidentiality

An employee has a duty not to disclose any information brought to his or her knowledge, which is a commercial secret of the employer and to ensure that the information is not available to third parties.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

If an author has created a work when performing his or her duties in an employment relationship, the moral and economic rights to the work shall belong to the author, except when the work is computer program the economic rights belong to the employer. However, the economic rights may be transferred in both cases.

### Hiring Non-Nationals

Aliens (persons who are not Latvian citizens or non-citizens) may be employed only if they have received a work permit.

If a non-national's employment requires short term or occasional residence in the Republic of Latvia and does not exceed 90 days within half a year, the non-national is obliged to receive a visa or a temporary residence permit and a work permit. This provision refers also to non-nationals who do not need a visa for entering the Republic of Latvia.

If a non-national's employment requires regular residence in the Republic of Latvia and exceeds 90 days within half a year, the non-national is obliged to receive a temporary residence permit and a work permit.

An employer wishing to employ a non-national shall submit to the branch of the State Employment Agency an employer's work invitation. If an employer has intended to employ a non-national by entering into an employment contract, the work invitation may be approved if a vacant position or a specialist vacancy is registered at the branch of the Agency.

A work permit is not needed in the following cases:

- if the non-national enters in connection with road shows (concerts) as a performer (musician, singer, dancer, actor, dangler etc.), author (compositor, choreograph, film/stage director, stage designer etc.), administrative or technical worker who is responsible for ensuring performances (concerts) and if planned residence time does not exceed 14 days;



- if the non-national enters in accordance with an educational institution's or a scientific institute's or independent researcher's invitation in relation to scientific studies or in order to participate in implementing educational programs and if planned residence time does not exceed 14 days.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

### Outsourcing And/Or Sub-Contracting

If an undertaking or a part of it retains its independence after transfer of the undertaking, the status and functions of employee representatives affected by such transfer shall be retained with the same provisions that were applicable up to the moment of transfer of the undertaking. Such provisions shall not apply if the preconditions required for the re-election of employee representatives or for the reestablishment of representation of employees have been satisfied.

The transfer of an undertaking shall mean the transfer of an undertaking or its autonomous part to another person on the basis of an agreement, as well as a merger or division of commercial companies.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

An employee and the employer may amend an employment contract by mutual agreement.

An employer has the right not later than one month in advance, to give written notice of termination of an employment contract if the employee does not agree to continue such relationships in conformity with amendments to the employment contract.

In order to prevent any risk, which may negatively affect the safety and health of a pregnant woman, an employer, after receipt of a doctor's opinion, has a duty to ensure such working conditions and working time for the pregnant woman as would prevent her exposure to the risk referred to, although the amount of work remuneration may not be less than the previous average earnings of the woman.

### Change In Ownership Of The Business

Rights and duties of the transferor of an undertaking that arise from employment legal relationships applicable at the moment of transfer of the undertaking shall devolve to the acquirer of the undertaking.

After transfer of an undertaking the acquirer of the undertaking shall continue to comply with the provisions of the collective agreement entered into previously and applicable at the moment of the transfer of the undertaking up to the moment of termination of such collective agreement, or until the moment a new collective agreement enters into effect, or until the moment of application of the provisions of another collective agreement. Within a one-year period from the transfer of the undertaking, the provisions of the collective agreement shall not be amended to the detriment of employees.

### Social Security Contributions

Types of social insurance are as follows:

- State pension insurance (hereinafter – pension insurance);
- social insurance in case of unemployment (hereinafter – unemployment insurance);
- social insurance in respect of accidents at work and occupational diseases (hereinafter – occupational accident insurance);
- invalidity insurance;
- maternity and sickness insurance;
- parental insurance.

Employees shall be socially insurable in conformity with all types of social insurance.

The object of mandatory contributions of an employer and employee shall be all calculated employment income from which personal income tax must be deducted without deduction of the non-taxable minimum, tax concessions and eligible expenses for which the taxpayer has the right to reduce the taxable income.

If an employee has been insured for all types of social insurance, the mandatory contribution rate shall be 35,09 per cent from which an employer shall pay 24,09 per cent and an employee shall pay 11 per cent.



### Accidents At Work

An employer shall ensure the investigation of accidents at work and shall perform registration thereof.

Employers shall have the following obligations:

- to organise without delay rendering of first aid to the insured person who has suffered harm from an accident at work or an accident while commuting to or from work in a means of transport which is possessed by the employer, as well as ensure their conveyance to a medical institution;
- to ensure a medical examination of the state of health of the insured person at a medical institution, if the doctor has suspicions that an occupational disease has been contracted;
- to ensure the investigation of an accident at work or an occupational disease in accordance with the procedures prescribed by law, and, on the basis of the investigation materials, to take the necessary measures in order to eliminate the causes for accidents at work and the contracting of occupational diseases;
- to pay, out of their own funds, to an employee who has suffered an accident at work, sick pay for the first 10 calendar days amounting not less than 80 per cent of the employee's average monthly earnings; and
- to pay to an employee a lump sum benefit equivalent to one month's salary if an accident at work is the employer's fault and the employee has suffered a serious injury.

The employer shall reimburse, by way of subrogation, to the State Social Insurance Agency the costs related to the insurance compensation paid to employees and third parties, if the employer has not made the compulsory contributions in accordance with the procedures prescribed by law.

### Discipline And Grievance

An employer who normally employs more than 10 employees at an undertaking shall adopt working procedure regulations.

An employer may give a written reproof or issue a reprimand in writing to an employee for violation of specified working procedures of an employment contract. Prior to expressing a reproof or a reprimand, the employer shall familiarize the employee in writing with the essence of the violation he or she has committed and then request from him or her an explanation in writing regarding the violation committed.

If a new reproof or reprimand has not been issued to the employee within a one-year period from the date of issuing a reproof or reprimand to the employee, the employee shall be regarded as not having been disciplined.

### Harassment/Discrimination/Equal pay

The labours law establishes the general rule that everyone has an equal right to work; to fair, safe and healthy working conditions and to fair work remuneration.

An employer has a duty to take measures that are necessary in conformity with the circumstances in order to adapt the work environment to facilitate the possibility of disabled persons to establish employment legal relations, fulfil work duties, be promoted to higher positions or be sent for occupational training or the raising of qualifications, insofar as such measures do not place an unreasonable burden on the employer.

If an employer has not specified equal work remuneration for men and women for the same kind of work the employee within a one-month period from the day he or she has learned or should have learned of the violation has the right to request the remuneration that the employer normally pays for the same work.

It is prohibited to apply sanctions to an employee or to otherwise directly or indirectly cause adverse consequences for him or her because the employee, within the scope of employment legal relationships, exercises his or her rights in a permissible manner, as well as when if he or she informs competent institutions or officials regarding suspicions with respect to the committing of criminal offences or administrative violations in the workplace.

In the case of a dispute the employer has a duty to prove that the employee has not been punished.

If an employer in determining working conditions, occupational training or the raising of qualifications has violated the prohibition of differential treatment; the relevant employee has the right to request the termination of such differential treatment. The relevant employee has the right to bring an action in a court within a one-month period from the day he or she has learned or he or she should have learnt of the violation of the prohibition of differential treatment.

### Compulsory Training Obligations

The workplace of an employee, who has been sent for occupational training or to raise his or her qualifications thus interrupting work, shall be retained. The employer shall cover expenditures associated with occupational training or the raising of qualifications.

### Offsetting Earnings

An employer may make deductions from an employee's earnings in order to reclaim amounts overpaid due to an error of the employer, in relation to advance pay and in relation to recalculation of holiday pay on termination (subject to certain exceptions).

An employer has a right to make deductions to compensate for losses caused to it due to an illegal, culpable action of the employee. The making of such deduction requires written consent from the employee.

The total amount of all deductions cannot exceed 20 per cent except in particular cases where the maximum is 50 per cent. Moreover, it is prohibited to make deductions from severance pay and compensation for expenses of an employee.



### Payments For Maternity And Disability Leave

Persons who are socially insured are entitled to maternity, paternity, sickness and funeral allowances.

A maternity benefit shall be granted and disbursed for the entire period of prenatal and maternity leave if the woman is absent from work and thereby loses income to be gained from paid work.

A sick-leave certificate issued in accordance with the procedures prescribed by the Cabinet or an employer certification regarding the absence of an employee from work shall be the grounds for granting a maternity benefit. Such benefit shall be granted in a 80 per cent amount of the average wage of the benefit recipient that is subject to insurance contributions.

Starting from 1 January 2013, the benefit shall be paid in the following amount:

1. If the benefit granted per calendar day is equal or less than LVL 23.02 (Eur 32,75) - the benefit shall be paid in the amount granted;
2. If the benefit granted per calendar day exceeds LVL 23.02 (Eur 32,75) - the benefit shall be paid in the amount of LVL 23.02 (Eur 32,75) per calendar day plus 50 percent of the benefit amount granted that exceeds LVL 23.02 (Eur 32,75) per calendar day.

These payment terms shall also apply to persons for whom temporary disability due to pregnancy and childbirth has started before or on 31 December 2012 and is continuing without interruption after 1 January 2013.

Average wage is calculated taking into account earnings for the period of 12 months that ends two months prior to commencement of prenatal and maternity leave.

A sickness benefit shall be granted if a person is absent from work and thereby loses paid labour income. This benefit shall be granted in an 80 per cent amount of the average wage of the benefit recipient that is subject to insurance contributions.

However, following limitations is set to sickness benefit:

1. if granted sickness benefit for one calendar day does not exceed 11.51 LVL (16.38 EUR) - in the granted amount;
2. if granted sickness benefit for one calendar day exceed 11.51 LVL (16.38 EUR), in such case recipient receives 11.51 LVL (16.38 EUR) and 50 per cent from amount of granted sickness benefit that exceeds 11.51 LVL (16.38 EUR) for one calendar day.

The average contributions salary of an employee is calculated in accordance with the payments made during the last 12 months, ending one quarter (3 months) before the quarter, in which the temporary disability began.

### Compulsory Insurance

See social security contributions.

### Absence For Military Or Public Service Duties

There is no specific regulation regarding absence for military or public service duties.

### Works Councils or Trade Unions

Trade unions are independent from an employer, they represent their members in relationships with the employer and maintain their working, professional and social rights and interests to elected institutions' mediation.

On behalf of their members, trade unions can conclude a collective agreement with an employer for labour and other social and economic issues. In some cases, an employer can only settle these types of issues by submitting them for the trade union's approval.

Without prior consent of trade union termination at the employers' initiative of an employment agreement with member of a trade union is not allowed with exception of breach of labor discipline and working conditions.

### Employees' Right To Strike

The Strike law establishes the right to strike of employees of a branch of an undertaking in order to protect their economic or professional interests. The right to strike shall be exercised as a last resort if no agreement and reconciliation has been reached in the collective interest dispute.

Participation in a strike shall be voluntary and no employee may be forced to participate in a strike or be prohibited from participation in the strike.

### Employees On Strike

Employees shall take a decision regarding the declaration of a strike at a general meeting of employees of the relevant undertaking in which at least half of the number of the employees of this undertaking participate.

A trade union or employees upon taking a decision regarding the declaration of a strike, shall establish a strike committee to lead a strike and represent the interests of employees of the relevant trade union or relevant undertaking during the strike negotiations with the employer.



Not later than seven days prior to the commencement of a strike the strike committee shall submit to the employer, the State Labour Inspection and the Secretary of the National Tripartite Co-operation Council a declaration of a strike. During the strike the trade union or employees shall not be allowed to state to the employer demands which have not been indicated in the declaration.

The employees participating in a strike shall not receive remuneration forwork during the strike, and the employer shall not make social security payments for these employees, unless otherwise agreed by the parties to the collective interest dispute.

### Employers' Responsibility For Actions Of Their Employees

An employee shall be fully or partially released from civil liability for losses caused to an employer if the employer himself or herself is also to blame for the losses. This shall also apply when the employer has not warned the employee of the risk of causing such losses which the employee has not foreseen and he or she did not have to foresee, as well as when the employer has not taken appropriate care to prevent or reduce losses.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

The agreement might be terminated by notice of termination by employee or employer.

An employee has the right to give a notice in writing of termination of an employment contract one month in advance; however by agreement of an employee and the employer, an employment contract may be terminated also before expiry of the time period for a notice of termination. Without complying with the time period the agreement might be terminated by employee if he has good cause, i.e. each condition based on considerations of morality and fairness that does not allow the continuation of employment legal relationships shall be regarded as such cause.

An employer may terminate an agreement one month after he has given a written notice of termination and has received the employees' explanation in writing if the employee:

- has without justified cause significantly violated the employment contract or the specified working procedures;
- when performing work, has acted illegally and therefore has lost the trust of the employer;
- when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of employment legal relationships;

- when performing work, is under the influence of alcohol, narcotic or toxic substances;
- has grossly violated labor protection regulations and has jeopardized the safety and health of other persons.

Without requesting an explanation in writing the employer may terminate an agreement if:

- the employee lacks adequate occupational competence for performance of the contracted work;
- the employee is unable to perform the contracted work due to his or her state of health and such state is certified with a doctor's opinion;
- an employee who previously performed the relevant work has been reinstated at work;
- the number of employees is being reduced;
- the employer is being liquidated;
- the employee does not perform work due to temporary incapacity for more than six months, if the incapacity is uninterrupted, or for one year within three years, if the incapacity repeats with interruptions, excluding a prenatal and maternity leave in such period, as well as a period of incapacity, if the reason of incapacity is an accident at work or occupational disease.

Other ways of termination of the agreement with specific conditions are reduction in the number of employees, collective redundancy, agreement between employee and employer, requests by third parties and court judgment or death of an employer.

### Instant Dismissal

The employment agreement may be terminated instantly if the employee, when performing work, has acted illegally and therefore has lost the trust of the employer or is under the influence of alcohol, narcotic or toxic substances.

### Employee's Resignation

An employee has the right to give a notice in writing of termination of an employment contract one month in advance, unless a shorter time limit for the giving of a notice of termination is provided by the employment contract or the collective agreement.

### Termination On Notice

See section of procedures for terminating agreement.

### Termination By Reason Of The Employee's Age

Termination by reason of the employee's age would be discrimination.



### Automatic Termination In Cases Of Force Majeure

The death of an employer shall constitute a basis for the termination of employment legal relationships if the fulfilment of employee obligations is closely related only and exclusively to the employer personally.

### Termination By Parties' Agreement

Such termination is possible and the only requirement is that the agreement shall be in written form.

### Directors Or Other Senior Officers

With regards to Limited Liability Companies a member of the board of directors may be recalled by a decision of the shareholders. If the company has a council, the council may suspend any member of the board of directors from his or her position until the meeting of the shareholders but not for longer than two months.

It may be provided for by the articles of association, that a member of the board of directors may be recalled only if there is an important reason. Such reasons shall, in any case, be considered to be gross violations of authority, failure to perform or to appropriately perform his or her duties, an inability to manage the company, or causing harm to the interests of the company, as well as loss of confidence.

A member of the board of directors may leave the position of the member of the board of directors, by submitting a notification thereof to the company.

As regards to stock companies members of a board of directors may be recalled by the council only if there are important reasons.

### Special Rules For Categories Of Employee

There are no categories of employee to whom special rules apply, but certain categories benefit from more generous rules for protection from unfair dismissal.

### Specific Rules For Companies in Financial Difficulties

A law On Protection of Employees in case of Insolvency of Employer has been in force since 01.01.2003. it regulates general provisions for satisfaction of claims of employees in case of insolvency of the employer and procedures of formation and utilisation of the resources of the employee claims guarantee fund.

The claims of employees resulting from an employment legal relationship, shall be satisfied from the resources of the employee claims guarantee fund regarding work remuneration, reimbursement for annual paid leave, reimbursement for other types of paid leave, severance pay in connection with the termination of an employment legal relationship and reimbursement for injury in connection with an accident at work or an occupational disease.

### Restricting Future Activities

A written agreement between an employee and an employer regarding the restriction of the occupational activities of the employee after termination of employment legal relationships is possible. Such agreement is permitted only if:

1. its purpose is to protect the employer against such occupational activity of the employee as may cause competition for the commercial activity of the employer;
2. the term for restriction on competition does not exceed two years; and
3. it provides for a duty of the employer to pay the employee adequate monthly compensation for the observance of restriction on competition with respect to the time period of restriction on competition.

### Severance Payments

An employer has a duty to provide severance pay to an employee if the agreement is terminated by reasons when the employer does not have a duty to request the employee's explanation (see "procedures for terminating the agreement") or the employee has had a good cause.

### Special Tax Provisions And Severance Payments

Severance payments are subject to personal income tax in the amount of 25%.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

An employee may bring an action in court for the invalidation of a notice of termination by an employer within a one-month period from the date of receipt of the notice of termination. In other cases, when the right of an employee to continue employment legal relationships has been violated, he or she may bring an action in court for reinstatement within a one-month period from the date of dismissal.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None

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# Lithuania

Lithuania

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Labour Disputes Commission has exclusive jurisdiction for most claims, but in certain cases and when the parties fail to reach the agreement in Labour Disputes Commission, the case can be brought in the civil court (Circuit Court depending on defendants residence address). Both parties are entitled to appeal to the court against decisions of the Labour Disputes Commission.

### The Main Sources Of Employment Law

The sources of employment law are the Constitution of Lithuania, international agreements of Lithuania, the Labour Code, other legislation and regulatory provisions of collective agreements. Government resolutions and other regulations may regulate labour relations only in such cases as and to the extent determined by the Labour Code and other laws.

### National Law And Employees Working For Foreign Companies

Statutory rights under national law will usually apply to all individuals physically working in Lithuania. Foreign law will be applied to labour relations where this is established by the international agreements of Lithuania, Lithuanian laws or agreements between the parties to the employment contract. Therefore parties to the employment contract may also choose the law applicable both to the entire employment contract and to a part thereof.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Statutory rights under national law will usually apply when the employee is physically working within the Lithuanian jurisdiction. However parties to the employment contract may also choose the law applicable both to the entire employment contract and to a part thereof.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

An employment contract must be concluded in writing according to the model form. Two copies of the written employment contract must be drawn up and signed by the employer (or his authorised person) and by the employee. One signed copy must be handed to the employee, whereas the other copy must be kept by the employer. The employment contract must, on the same day, be registered in the employment contracts record book. Such a book is not mandatory if the employer is an individual employing three or less employees.

Before the commencement of work, the employer must issue an identity card (work certificate) to the employee. The model form of employment contract, the registration rules, the form of an employee's identity card, the procedure for its issuance, and its carrying and presentation to control institutions is all regulated by the Lithuanian Government.

An employer is responsible for the proper drawing up of an employment contract. When concluding an employment contract, the employer or his authorised person must ensure the person being employed is aware of theterms of his perspective employment, the collective agreement, work regulations, and any other acts regulating his work, which are in force at the workplace. Unless otherwise agreed by the parties, the employee must commence his work on the next day following the conclusion of the employment contract.

### Mandatory Requirements:

#### Trial Period

The parties may agree on a trial period. It may be used to assess the suitability of an employee for the agreed work, as well as, at the request of a person taking on a job to see if the job is for him. The trial period must be set in an employment contract. A trial period may not be longer than three months. Longer trial periods may be applied in certain cases specified by laws but the trial period cannot exceed six months.

A trial to assess the suitability of an employee for the agreed work may not be established when employing persons: 1) under 18 years of age; 2) to a post by competition or elections, as well as those who have passed qualification examinations for a post; 3) due to a transfer by agreement between employers, to work for another employer; 4) in other cases specified by labour laws. If an employer is not satisfied with the performance of an employee during the trial period, he may dismiss the employee from work before the expiry of the trial period by giving the employee 3 business days written notice, without paying him a severance pay.

#### Hours Of Work

Working time may not exceed 40 hours per week. A daily period of work must not exceed 8 working hours. Exceptions may be established by laws, Government resolutions and collective agreements. Maximum working time, including overtime, must not exceed 48 hours per 7 working days.

Employees working in specific sectors (e.g. health care, care (custody), child care institutions, specialised communications services and specialised accident containment services and security may be required to work up to 24 hours per day. The duration of working time of such employees must not exceed 48 hours per seven-day period, and the rest period between working days must not be shorter than 24 hours. The list of such jobs is approved by the Government. For employees employed in more than one undertaking or in one undertaking but under two or more employment contracts, the working day (including breaks to rest and to eat) may not be longer than 12 hours.



#### Earnings

There is a restriction prohibiting employees from earning below a minimum hourly wage, which in Lithuania currently is 1000LTL (290 EUR) per month and minimal hourly rate – 6,06 LTL (1.8 EUR). Both of the rates are shown before taxes.

The Governmental Decision ruling the above rates was adopted on 19th December, 2012.

#### Holidays / Rest Periods

The minimum annual holiday is normally a period of 28 calendar days. 35- days holiday are granted to certain groups of employees (under 18 years of age, single parents, disabled persons, etc.) Annual leave may not be shortened for part-time employees.

The holiday for part time employees is calculated proportionally to how much they work, however annual holiday may not be shortened for part-time employees and must last at least 28 calendar days.

#### Minimum/Maximum Age

The minimum age is 16 (which can be varied in certain cases), below which employees cannot work. There are no maximum age limits.

#### Illness/Disability

An employer may request an applicant to undergo a health examination. Disabled persons as well as ill persons in the meaning of Lithuanian labor laws enjoy wider protection in the employment relations.

#### Location Of Work/Mobility

The employee's normal place of work can be specified by the employer in the employment contract. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

#### Pension Plans

A person qualifies for state social insurance old-age pension if he is a permanent Lithuanian resident, attains the retirement age as specified by the law and has the minimum 15 year social pension insurance record. Additionally may have a private Pension Fund (particular pension scheme) and transfer 2,5% of his/her state social insurance payment to that fund.

#### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

A range of "family-friendly" rights are widely available to employees.

Women are entitled to maternity leave of 70 calendar days before child birth and 56 calendar days after child birth (in the event of complications or the birth of two or more children – 70 calendar days). This leave is added up and granted to the woman as a single period, regardless of the days used prior to the birth.

Employees who have adopted newly born babies, or who have been appointed as their guardians, are granted leave for the period from the date of adoption, or guardianship, before the baby is 70 days old. Parental leave before the child has reached the age of three is available to the mother/adoptive mother, father/adoptive father, grandmother, grandfather, guardian or any other relatives who is actually raising the child.

Employees who have adopted newly born babies, or who have been appointed as their guardians, are granted leave for the period from the date of adoption, or guardianship, before the baby is 70 days old. Lithuanian Labour Code does not provide adoption leave for parents adopting a baby who is older than 70 days. However the parties to the employment relationship may agree on more beneficial conditions than is prescribed by law.

#### Compulsory Terms

In every employment contract, the parties must agree on the essential terms of the contract: the employee's place of work (enterprise, establishment, organisation, structural subdivision, etc.), and job functions. In respect of certain types of employment contracts labour laws and collective agreements may also provide for other essential terms, which are agreed by the parties in concluding such an employment contract (agreement on the term of the contract, the nature of seasonal work, etc.).

In every employment contract, the parties must agree on the terms of remuneration for work (system of remuneration for work, amount of wages, payment procedure, etc.). Other terms of an employment contract may be established by agreement between the parties unless labour laws, other regulatory acts or the collective agreement prohibit doing so (trial, combination of professions, liability, etc.).

#### Non-Compulsory Terms

The employer and the employee are free to agree on any other terms in addition to the compulsory provisions. It is worth mentioning that parties to the employment agreement may agree on more favourable employment regime than established by Lithuanian laws. However it is highly advisable to include the agreed provisions in an employment contract.

### Types Of Agreement

Employment contracts may be non-term, fixed-term, temporary, seasonal, on additional work, secondary job, with home workers, on the supply of services and other. As a rule, an employment contract is concluded for an indefinite period of time (non-term).

### Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied into the employment relationship.

Upon written agreement during the employment relationship an employee is under duty to respect the confidentiality of the employer's commercial and business information.

After employment, confidential information as well as trade and profession secrets are protected by the implied duty of confidentiality.

In addition to the above duties, employers will often include in the employment contract or in a separate document an express term specifying the type of information that is a trade secret, and therefore protected, to prevent future disclosure.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights.

### Hiring Non-Nationals

There is a certain procedure which shall be applied when employing a non-national. One month prior to employment commencing, the Lithuanian registered enterprise must register vacancies at the local labor exchange and apply for the issue of a work permit. In cases where the established company in the republic of Lithuania is bankrupt the right to apply for the work permit is not possible. The procedure goes as follows: labor exchange passes a positive decision and its conclusion is submit¬ted to the Lithuanian Labor Exchange, which passes a final decision and issues a work permit to the non-national. The application, depending on qualification of the future non-national employee may take from one to two months. If the application is approved, the work permit for a non-national employee will be valid up to 2 years.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

### Outsourcing And/Or Sub-Contracting

It is prohibited to refuse to employ a person if there is a written agreement between employers concerning the transfer of an employee to another workplace. The employees must generally remain on exactly the same terms of employment as they enjoyed prior to the transfer.



Additionally to this, it is important to note that uninterrupted period of service covers the period of employment in one enterprise, establishment, organisation or several enterprises, establishments or organisations if the person is transferred from one place of employment to another by agreement between the employers or on other grounds without interrupting the length of service or provided that the break in employment is within the set time limits.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In the event of changes in production, its scope, technology or labour organisation, as well as in other cases of production necessity, an employer is entitled to change the conditions of an employment contract. If an employee does not agree to work under the changed working conditions, he may be dismissed by the Employer subject to the dismissal procedure set out in the employment contract.

The essential conditions of an employment contract such as the employee's place of work (enterprise, establishment, organisation, structural subdivision, etc.), or job functions, may be changed with the prior written consent of the employee. An employer may change remuneration for work without the written consent of an employee but only in the case when remuneration for a specific sector of employee is changed by laws, Government resolutions or under the collective agreement. In the event of changes in remuneration, wages cannot be reduced without the written consent of an employee.

### Change In Ownership Of The Business

Changes in the ownership of an enterprise, establishment or organisation, subordination, change of name, any merger or division forming a new enterprise, establishment or organisation, may not be a legitimate reason to terminate employment relations.

When there is a change in ownership of a business (except a change merely in the shareholding ownership), all employees are normally transferred to the new employer on the same terms and conditions.

### Social Security Contributions

Employers and employees are required to make social security contributions. During employment the employer will be liable for paying the following tax: (i) social insurance contributions counted from the gross salaries at the rate of 30.98 %; (ii) payment to the guarantee fund counted from the gross salaries of 0.2%. Employees are entitled to pay (i) 15% of personal income tax, (ii) obligatory insurance tax of 6% and (iii) 3% for the social insurance. Employers are required to contribute towards allowances payable to employees during their employment. These allowances include sick pay, maternity pay and paternity pay etc.

### Accidents At Work

Safety and health at work means that an employer must adopt preventive measures in order to ensure employees are safe at work. It is the responsibility of an employer to ensure safety and health at work. Taking into account the size of an enterprise and the risks to employees, the employer must establish or hire a certified occupational safety and health service or performs this function himself. The Ministry of Social Security and Labour the Ministry of Health, in compliance with the Constitution of the Republic of Lithuania, Labour Code, other laws, Government resolutions and other regulatory acts, implement the state policy in the sphere of employee health and safety. The State Labour Inspectorate ensures that employers comply with employee health and safety requirements. The functions, rights and responsibility of the State Labour Inspectorate is established by the Law on State Labour Inspectorate.

The employee who has lost his functional capacity as a result of an accident at work or occupational disease which resulted in the loss of income will be compensated for loss of income in accordance with the Law on Social Insurance against Accidents at Work and Occupational Diseases and other laws. If the injured employee is not covered by this social insurance, the income lost and medical aid and treatment costs as well as the expenses related to the victim's social, medical and professional rehabilitation will be compensated by the employer in accordance with the procedure established by the Civil Code.

### Discipline And Grievance

The discipline and grievance procedure applicable to employees is defined by work regulations. These regulations are approved by the employer subject to the approval of the employee representative.

### Harassment/Discrimination/Equal pay

Employees are protected from discrimination on grounds of sex, age, sexual orientation, marital status, race, religion or belief, disability and etc.

Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), on termination or even after the employment has ended (for example in writing the reference).

When applying the work classification system for determining the wage, the same criteria must be equally applied to both men and women, and the system must be developed in such a way so as to avoid discrimination on the grounds of sex.

The Office of Equal Opportunities Ombudsman, which is an independent state institution, is one of the key institutions within the equal opportunities and gender equality machinery. It takes overall responsibility for the supervision and implementation of the Law on Equal Opportunities for Women and Men (1998) and the Law of Equal Treatment (2005) in Lithuania. The Ombudsman investigates individual complaints on the grounds of gender, age, racial or ethnic origin, religion and beliefs, disability, sexual orientation, language, social status. The Ombudsman submits recommendations and proposals to Parliament, governmental institutions on the priorities of gender equality policy, which includes recommendations on amendments to relevant legislation.



### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/expectations.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts. However, the employer may only make a deduction from the employee's wages if it is required or permitted by a statutory or contractual provision or the employee has given his prior written consent to the deduction.

### Payments For Maternity And Disability Leave

The amount of maternity pay is calculated on the basis of the employee's income received within 12 calendar months prior to the month leave began. Where more than one child is born, the amount of maternity allowance shall be paid for additional 14 days.

The minimum monthly is one third of the employee's income for the current year. The maximum monthly amount of maternity pay shall be equal to a sum 3,2 times the employee's income received in the current year.

Employees who have temporarily lost their functional capacity will retain their position and duties if they are absent from work due to temporary loss of functional capacity for a maximum of 120 successive days or 140 days within the last 12 months. In certain circumstances provided for by law and other regulatory acts, the position and duties shall be retained for a longer period.

Sickness allowance is paid by the employer for the first 2 days and cannot be less than 80% but cannot be more than 100% of employees' wage. Sickness allowance from State Social Insurance Fund is paid from the third to the seventh day at 40% of the employee's wage. From the eighth day sickness pay is 80% of employee's wage.

### Compulsory Insurance

Please see social security contributions.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties. Working time does not include time taken for the performance of state, public or citizen's duties, military service or military training.

### Works Councils or Trade Unions

The rights and interests of employees may be represented and protected by the trade unions. Where an enterprise, agency or organisation has no functioning trade union and the staff have not transferred the function of employee representation and protection to the trade union, the employees shall be represented by a labour council which is elected by secret ballot at the general meeting of the staff. The same person cannot represent and protect the interests of both the employees and the employers.

When protecting the rights of the employees, trade unions are guided by laws regulating trade union activities, the Labour Code and their respective regulations. The status of labour councils and their formation are established by law. The labour council possesses all rights of the trade union where there is no functioning trade union in the company. The labour council may not perform functions recognised under laws as the prerogative of trade unions.

### Employees' Right To Strike

The employees and their representatives have the right to organise and manage strikes.

### Employees On Strike

Employees strike if a collective dispute is not settled or a decision adopted by the Conciliation Commission, Labour Arbitration or third party court, is acceptable to the employees, but is not being implemented by the employer.

The right to adopt a decision to declare a strike (including a warning strike) is vested in the trade union according to the procedure laid down in its regulations.

The employer must be given an at least seven days' written notice of the beginning of the intended strike or warning strike. When a strike is declared, only the demands which were not met during the conciliation procedure may be put forward. A warning strike lasting no longer than two hours may be held before the strike is declared. The decision to call a strike shall specify:

1. the employees demands with respect to why the strike has been called;
2. when the strike will begin; and
3. the body leading the strike.

The law sets out the situation where longer notification is required to be given to the employer and the circumstances where strikes are not permitted.

### Employers' Responsibility For Actions Of Their Employees

Liability is incurred when one party to a labour relationship causes damage to another party through non-performance of work duties or by performing them unsatisfactorily. Liability is incurred when all the following conditions are present:

1. damage has been caused;
2. damage has been caused through illegal activity;
3. there is a causal relationship between an illegal activity and damage;
4. the offender is guilty;
5. the offender and the victim were in a labour relationship during the violation of law;
6. the resulting damage relates to work activities.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair dismissal. An employer must be able to demonstrate a "potentially fair" reason for dismissal.

An employment contract will expire: 1) upon the termination thereof on the grounds established by the Labour Code and other laws (termination of the employment contract by mutual agreement, upon contract's expiry, upon the notice of employee, due to circumstances beyond the Employees control, on the initiative of an Employer without any fault on the part of an Employee; 2) upon the liquidation of an employer without legal successor; and 3) upon the death of an employee.

For every type of termination the procedural requirements differs.

### Instant Dismissal

An employment contract must be terminated without notice in the following circumstances: 1) upon an effective court decision, or when a court judgement impose a custodial sentence on the employee, which prevents him from continuing his work; 2) when an employee is deprived of special rights to perform certain work in accordance with the procedure prescribed by laws; 3) upon the demand of bodies or officials authorised by laws; 4) when an employee is unable to perform these duties or work in accordance with an opinion of the medical commission or the commission for the establishment of disability; 5) when a parent, statutory representative, doctor or school of an employee between the age of 14 and 16 years demands that the employment contract be terminated; 6) upon the liquidation of an employer.

An employment contract will expire upon the death of an employer if the contract was concluded for the supply of services to him personally, as well as when the employer has no legal successor.

An employer will be entitled to terminate an employment contract without giving an employee prior notice under the following circumstances: 1) when the employee performs his duties negligently or commits other breaches provided that disciplinary sanctions were imposed on him at least once during the last 12 months; 2) when the employee commits a gross breach of duties.

### Employee's Resignation

An employee is entitled to terminate a non-term employment contract, as well as a fixed-term employment contract, prior to its expiry by giving his employer written notice of at least 14 business days. The collective agreement may set a different period of notice, but it shall not exceed one month.

### Termination On Notice

An employer may terminate a non-term employment contract with an employee only for valid reasons and by giving him notice in accordance with the procedure established by law. The general notice period is 2 months, but for special groups of persons (disabled persons or persons raising children under 14 years of age etc.) the notice period is 4 months. The dismissal of an employee from work without any fault on the part of the employee concerned will be allowed if the employee cannot, with his consent, be transferred to another work.

Reasons for dismissal which are related to the qualification, professional skills or conduct of an employee, are recognised as valid. An employment contract may also be terminated on economic, technological grounds or due to the restructuring of the workplace, as well as for other similar valid reasons.

### Termination By Reason Of The Employee's Age

Termination by reason of the employee's age is discriminatory.

### Automatic Termination In Cases Of Force Majeure

The death of the employee shall be understood as the automatic termination of the employment relations.

### Termination By Parties' Agreement

One party to an employment contract may put forward in writing to the other party that the employment contract be terminated by agreement between the parties. If accepted the parties must agree to termination within seven days of the option being put forward. Having agreed to terminate the contract, the parties conclude a written agreement on the termination of the contract. This agreement indicates the date when the contract will be terminated as well as other conditions of the termination of the contract (compensation, granting of unused leave, etc.).If the other party fails, within the time period of 7 days, to inform the other party that it agrees to the termination, the offer to terminate the employment contract by agreement is considered rejected.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director or other senior officer's employment, but in the case of a statutory director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association).

### Special Rules For Categories Of Employee

There are no categories of employee to whom special rules apply, but certain categories (e.g. disabled employees, employees raising children) benefit from more generous rules of protection from unfair dismissal or enjoy longer notification periods – up to 4 months. For certain categories of employees the termination of employment contract is not allowed at all (for instance pregnant women, employees raising a child under 3 years of age if there is no fault of employee etc.).



### Specific Rules For Companies in Financial Difficulties

An employment contract may be terminated on economic, technological grounds or due to the restructuring of the workplace, as well as for other similar valid reasons. However the Employer must establish the fact that company is in financial difficulties. An employee will be entitled to terminate a non-term employment contract, as well as a fixed-term employment contract for a period exceeding six months, if the employee has no work over 30 successive days or if it amounts to over 60 days in the last twelve months. The employee can also terminate the contract if the employee is not paid his full monthly wage for over two successive months. The employment contract must be terminated from the date indicated in the employee's request. This date must be at least three days after the submission of the request.

### Restricting Future Activities

The Labour Code is silent on possible restrictions of future activities, however, if such restrictions apply they must be designed to protect a 'legitimate business interest' and they should be no wider than is necessary to protect those interests. Further they must be clear and reasonable in time and area.

### Severance Payments

Upon the termination of the employment contract the dismissed employee must be paid a severance pay in the amount of his average monthly wage taking into account the continuous length of service at that workplace provided the employee is not at fault. If the employee has worked under 12 months he is entitled to one month's average wage; 12 to 36 months he is entitled to two month's average wage; 36 to 60 months he is entitled to three month's average wage; 60 to 120 months he is entitled to four month's average wage; 120 to 240 months he is entitled to five month's average wage;) over 240 months he is entitled to six month's average wages. Upon the termination of an employment contract in other cases without any fault on the part of the employee concerned, he will be paid a severance pay in the amount of two month's average wage, unless otherwise provided by law or collective agreement.

If it is established that the working conditions were changed, the employee was suspended from work without a valid reason or in breach of law, the violated rights of the employee must be restored and he must recover the average work pay for the entire period of involuntary idle time or the difference in the work pay for the time period the employee was employed in a lower paid job.

### Special Tax Provisions And Severance Payments

Severance payments are subjected to personal income tax.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

An employee who disagrees with the changing of the working conditions, suspension from work on the employer's initiative or dismissal from work is entitled to apply to the court within one month from the day of receipt of the appropriate notice (document).

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None

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# Luxembourg

# Luxembourg

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

All lawsuits arising from an individual dispute relating to an employment agreement must be brought before a Labour Court which comprises a president (professional) and two judges (non-professional) called "assessors", one representing employers and the other one employees.

The proceedings are simple with no real formalism. Before the High Court, the proceedings are managed by professionals and are more formal.

### The Main Sources Of Employment Law

The labour rights are based on the Labour Code, European law, collective bargaining agreements, individual contracts, professional customs and local practice as well as on court decisions.

### National Law And Employees Working For Foreign Companies

Statutory rights apply to all individuals physically working in Luxembourg, regardless of their nationalities.

### National Law and Employees from National Companies Working in Another Jurisdiction

The principle is to apply Luxembourg law when the employee works in Luxembourg. However, Luxembourg law can be applied to any employee working abroad provided it does not contradict the local public policy. The Luxembourg law is still applicable when the employee is temporarily seconded to another country (specific status).

### Indexation of Salaries

In January 2013 the automatic indexation of salaries, which granted an increase in salaries at least once a year, came to an end. As compensation therefor, the legal minimum salary only was re-evaluated.

However, for 2013, the adjustment of salaries was postponed to 1st October 2013. In 2014, new adjustments where applicable, will take place 12 months after the previous adjustment at the earliest.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Any employer wishing to recruit an employee must enter into an employment contract either before or on the first day of employment.

Although labour law admits the validity of an oral contract, it is recommended to enter into a contract in writing. The employer will be liable if he/she does not do so and the law will be applicable in favour of the employee in all its dispositions.

The contract must be written in two hard copies. It contains the identity of the parties, the contract start day, the workplace, the function and the working hours.

### Mandatory Requirements:

#### Trial Period

The contract must contain the length of the trial period if any.

#### Hours Of Work

40 hours a week maximum in principle and by way of an exception, 48 hours a week with a maximum of 10 hours a day.

#### Earnings

There are two kinds of minimum wage restrictions depending on the employee's qualifications: one minimum for unqualified employees and one for qualified employees. There is a difference of about 20% between both.

#### Holidays / Rest Periods

The minimum period is 25 days per year. It is however usual to provide more. There are also specific periods, for example in the building sector where the whole month of August is taken off.

#### Minimum/Maximum Age

Minimum age: 15, maximum age: 65.

Retirement is at the age of 65, but it is possible to work beyond that limit with a specific status.

#### Illness/Disability

Protection against dismissal in case of illness.

The company can benefit from some advantages if they engage a disabled person. Large companies have to pay penalties in case they do not engage the required quota of disabled people imposed by law.

#### Location Of Work/Mobility

The usual work place must be specified in the contract as well as mobility clauses if relevant.

#### Pension Plans

Legal deduction withheld from gross salary (with tax advantage).

#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

For any parent the law provides for a special leave: paternity/maternity or adoption leave.

#### Compulsory Terms

Parties' identity, starting date, job description, any collective agreements applicable, duration of the notice period and in case of a fixed-term contract or a part-time job, further specific rules must be complied with.

#### Non-Compulsory Terms

If the provisions are more favourable to the employee than the law or the relevant collective bargaining agreement, parties can freely contract.

### Types Of Agreement

Fixed-term, open-ended contracts, part-time contracts, agreements provided by temporary employment agencies and internships.

### Secrecy/Confidentiality

Even if this point is not mentioned in a contract, all employment agreements, however, imply that the employee has an obligation towards the company to protect any confidential information.

Because of the bank secrecy, the principle is even stronger in the banking sector and can lead to criminal liability.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, as a matter of principle, the invention belongs to the employer. A specific scheme applies to inventions made by an employee and under specific conditions; the employee will be entitled to a part of the profits arising from the exploitation of the invention.

### Hiring Non-Nationals

Except for European citizens and since January 2004 for Swiss citizens a work permit is required for any other citizens.

### Hiring Specified Categories Of Individuals

For children, pregnant women and disabled people specific rules are to be followed.

### Outsourcing And/Or Sub-Contracting

Employers must apply the same rules regarding salary, night shift, safety rules and maternity rights to all seconded employees.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

In case the employer wants to amend the employment agreement, he/she must notify such an intention to the employee and by doing so, he/she will have to comply with the procedures legally prescribed for dismissals (except if the employee consents to the amendment).

In case of a major change made to the contract and should the employee refuse to accept it, the contract becomes void and legal proceedings can be initiated following the same rules as in case of dismissal.



### Change In Ownership Of The Business

The transfer of the labour contracts is automatic, but mergers are driven by specific rules. Employees must be informed in case of a transfer of activities. Employees have no opportunity to refuse to adopt such a change, unless there is a major change in their contract. In such a case, the rules described in the above paragraph are applicable.

### Social Security Contributions

Compulsory social security contributions are to be paid by both the employer and employee. Employers are required to contribute towards any allowance payable to the employees in case of illness through an insurance contract.

### Accidents At Work

Employers have to follow specific rules regarding safety at work depending on the size and the activity of the company to prevent accidents. Employers can be liable for not following such rules.

Any employee is protected by the insurance included in the compulsory social security contribution.

### Discipline And Grievance

Employers can implement their own disciplinary sanctions up to the toughest measure, i.e. dismissing the employee forthwith.

### Harassment/Discrimination/Equal pay

Sexual harassment: various rules sanction any kind of inappropriate behaviour coming from superiors, subordinates, co-workers or third parties to the company.

Moral harassment: protected until 2009 by European Directives. Victims are now directly protected by a legal text which defines moral harassment as unauthorized, repeated and deliberate actions or systematic behaviour with the aim or effect of either infringing the rights or the dignity of an individual, or damaging their working conditions or jeopardizing their professional career by creating an intimidating, hostile, degrading, humiliating or offensive environment, or causing damage to their physical or mental health.

Equal pay: a law exists providing for the equal treatment of men and women which covers equal pay for the same job and equal opportunities to access a job.

### Compulsory Training Obligations

Only for some jobs.

### Offsetting Earnings

Compensation is possible between earnings and employee's debt towards the employer, up to 10 % per month calculated on the salary.

### Payments For Maternity And Disability Leave

Maternity leave starts eight weeks before the planned delivery and ends eight weeks after the birth of the baby (twelve weeks in case of breastfeeding).

Employees (mother or father) can take a six-month parental leave paid by the State each month and which amounts to a little less than the minimum salary.

### Compulsory Insurance

Specific activities must be insured, but it is not a general obligation.

In addition to the gross salary, employers have to pay an amount to the social security for insurance against accidents.

### Absence For Military Or Public Service Duties

For public service only. There is no military service in Luxembourg.

### Works Councils or Trade Unions

The Trade Unions are partners to negotiate collective agreements. Staff representatives are protected against some procedures (e.g. dismissal) and they have time dedicated to this part of work during their working hours.

### Employees' Right To Strike

The right to strike exists and has been constitutionally protected since 2007, but without having been specifically regulated by law.

### Employees on Strike

As a rule, an employer may not fire employees who are on strike, unless a misdeed has been committed.

### Employers' Responsibility for Actions of their Employees

Employers are fully responsible by virtue of the Civil Code as long as the action leading to a legal responsibility occurs as part of employees' work/duties.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

Everything must be done in writing. Companies employing more than 150 employees must organize a preliminary meeting with the employee before the dismissal.

The dismissal must be sent by recorded delivery within a prescribed time limit. Employers have to observe a notice period which increases according to the seniority of the dismissed employee. The employee can require the reasons for his/her dismissal from the employer within a fixed period of one month. The employer must answer such a requirement within one month.



This letter has to be sent by recorded delivery and must describe in a detailed way the particular circumstances having led to the dismissal. It is the major procedural act which will establish the legality of the dismissal in the debates that may be held in front of the Court.

The procedure for economic redundancy follows the same rules.

### Instant Dismissal

In case of gross misconduct, the dismissal order can be sent to the employee by recorded delivery mentioning the reason for such an instant dismissal within a prescribed time limit of one month after the management has been informed of the gross misconduct that was the determining cause of the dismissal. This registered mail must describe the particular and exact circumstances having led to the dismissal. It is the major procedural act which will found the regularity of the dismissal should discussions be held in front of the Court.

### Employee's Resignation

The employee must send a letter by recorded delivery to his/her employer mentioning the legal notice period. In such a case, the notice period corresponds to half the notice period to be observed by the employer in case of dismissal.

### Termination On Notice

- Under 5 years in the company: 2 months
- Between 5 and under 10 years: 4 months
- After 10 years: 6 months

After 10 years of continuous duty the employee is entitled to a legal indemnity which in principle is paid at the end of the contract and is free of taxation. Small companies can avoid such a payment by increasing the term of the notice period. This specificity must be written in the letter of dismissal.

### Termination By Reason Of The Employee's Age

In case of retirement (between 60 and 65 years).

### Automatic Termination In Cases Of Force Majeure

The termination of the agreement is automatic in case of the employer's death, or bankruptcy.

### Termination By Parties' Agreement

The parties can put an end to the agreement by mutual consent whenever they want to.

To avoid a lawsuit they can make a compromise. Such a transaction agreement has to follow specific rules. Each party must concede something to the other otherwise the settlement can be cancelled by the Court and the employee can recover his/her rights in the course of a trial.

### Directors Or Other Senior Officers

No separate rules for directors when they are employees. A director is no longer considered as an employee in case there is no subordination link. In this case, Labour Law is no longer applicable, and any trial that may take place would be conducted by commercial rules in front of the commercial Court.

### Special Rules For Categories Of Employee

For the following types of employees:

- Work council members and trade union representatives;
- Pregnant women;
- Sick employees;
- Employees with a fixed-term contract.

### Specific Rules For Companies in Financial Difficulties

There are specific procedures to reduce the payroll through social plan.

### Restricting Future Activities

It is possible to include in the employment agreement a non-competition provision upon termination, but such a provision has to be limited in terms of territory, duration and purpose, and is reserved for well-paid employees, as legally provided, and only when the employee wants to start his/her own business. It is recommended to provide for a financial sanction in the contract or the settlement, otherwise it will be nearly impossible to evaluate the damage suffered by the former employer.

### Severance Payments

Severance payments are calculated according to the seniority and the age of the employee, the reason for dismissal, and the terms of the employment agreement.

### Special Tax Provisions And Severance Payments

There are no social charges and specific tax rules can apply with the approval of the Administration e.g. in case of a transaction entered by and between employer and employee.

### Allowances Payable To Employees After Termination

In case of dismissal with immediate effect, the employer or the employee may be required to reimburse the State when employment benefits were paid subject to the decision of the Labour Court and depending on the validity or invalidity of the dismissal.

In case of dismissal with notice period solely the employer can be required to reimburse in case the dismissal is judged invalid by the Labour Court.

LIMIT: these rules are only applicable to individuals living in the Grand-Duchy of Luxembourg, as the employment benefits are paid by the country of residence and follow the rules of the said country.



### Time Limits For Claims Following Termination

The employee can sue the employer within a prescribed time limit of three months after receipt of the dismissal letter. In case the employee has sent a letter to his/her former employer claiming against his/her dismissal, he/she could then legally claim against the dismissal within one year.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Luxembourgish labour law has been compiled in a Labour Code since the law of July 31st, 2006.

Since January 1st, 2009 there have been no more differences between the health insurance system for workers and employees. Both categories are regulated by the former health insurance system reserved for employees.

The seven former health insurance funds were merged into a single fund called “d’Gesondheetskees”.

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# Malaysia

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The High Court and subordinate courts have general jurisdiction over employment disputes in Malaysia. The Industrial Court is a specialist court established under the Industrial Relations Act 1967 [Act 177] ("the IRA") to adjudicate trade disputes and matters pertaining to rights of trade unions and the correlative rights of employers. It also adjudicates claims by private sector employees of dismissal without just cause or excuse and is empowered to award the remedy of reinstatement.

The Director General of Labour and his subordinates (popularly referred to as the "Labour Court") provide a convenient alternative forum for inquiring into certain employment decisions made by an employer and to award monetary payments due under employment legislation and contracts of employment. The High Court exercises a supervisory jurisdiction over the Industrial Court and also an appellate jurisdiction over the Labour Court. It adjudicates claims for relief by public sector employees based on unlawful dismissal claims. It is important to note that the jurisdiction of the various forums is essentially determined by the reliefs sought by the employee.

### The Main Sources Of Employment Law

The legal relationship between employer and employee is based on common law as modified by legislation. Principal legislation governing the employer-employee relationship are the Employment Act 1955 [Act 265] ("the EA") and the corresponding Sabah and Sarawak Labour Ordinances, the IRA, the Trade Unions Act 1959 [Act 262] ("the TUA"), the Employees' Social Security Act 1969 [Act 4] ("the ESSA"), the Employees Provident Fund Act 1991 [Act 452] and subsidiary legislation made thereunder.

Other sources of employment law in Malaysia range from awards of the Industrial Court and judgments of the High Court and appellate courts, collective agreements that become binding terms and conditions of employment, and individual contracts. The Code of Conduct for Industrial Harmony 1975 and the Agreed Practices annexed thereto is a tripartite document which the Industrial Court is statutorily empowered to take into consideration.

The EA and corresponding Sabah and Sarawak legislation which establish minimum standards in terms and conditions of employment apply only to two categories of persons. The first category is identified by reference to wages earned; i.e. any person irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed:

a) Malaysian Ringgit (RM)2,000 a month for employees under the EA; and

b) RM2,500 per month under the Sabah and Sarawak Labour Ordinances.

The second category is based on occupation irrespective of the amount of his monthly wages; namely, any employee who is engaged in manual labour and supervisors of such employees, engaged in the operation or maintenance of any vehicle used for the transport of passengers or goods, or for reward or for commercial purposes, engaged in any capacity in any locally registered vessel but is not a certified officer or engaged as a domestic servant.

Public sector employees may be exempted from some of the principal legislation above, but they are also governed by the Federal Constitution, specific primary legislation and subsidiary regulations generally referred to as "General Orders".

### National Law And Employees Working For Foreign Companies

National law governs the employment relationship if the employee is engaged within Malaysia by a foreign employer who has a local presence in Malaysia.

### National Law And Employees Of National Companies Working In Another Jurisdiction

In general national law, unless expressly provided otherwise, do not have extra-territorial application. However, the dismissal of an employee of a national company who is working in another jurisdiction has been held to be a dispute within the jurisdiction of the Malaysian Industrial Court.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no statutory requirements that require a specific form of agreement to be complied with. However, under the EA (Section 10), a contract of service for a specified period of time exceeding one month shall be in writing. Under the Sabah and Sarawak Labour Ordinances, a contract of service for a specified period of time exceeding one month or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds one month shall also be in writing and signed by both parties (Section 18 of the Sabah Labour Ordinance (Cap 67) and Section 19 of the Sarawak Labour Ordinance (Cap 76), respectively). While there is no statutory obligation with regard to other agreements, it is advisable for employers to expressly provide for the terms and conditions of the employment agreement.



### Mandatory Requirements:

#### Trial Period

There is no mandatory requirement to provide trial periods to new employees. However, it is common practice among employers to put an employee on probation ranging from six to nine months, with an option to extend at the employer's discretion.

#### Hours Of Work

For employees covered by the EA and the Sabah and Sarawak Labour Ordinances, strict provisions are stipulated for among others, maximum daily working hours, work in excess of normal hours of work, rest periods and so on (Section 60A of the EA, Section 104 of the Sabah Labour Ordinance and Section 105 of the Sarawak Labour Ordinance). Thus, subject to certain exceptions, employees are not allowed to work for more than five consecutive hours without a period of leisure of not less than 30 minutes duration; more than 8 hours a day; in excess of a spread over period of 10 hours in one day; or more than 48 hours in one week.

#### Earnings

The Minimum Wages Order 2012 ("the Order") has to be read together with the National Wages Consultative Council Act 2011 [Act 732], in particular Section 23(1). In line with the objective of implementation of the Order, a full time employee shall be paid an average minimum wages of not less than RM900 (Peninsular Malaysia) or RM800 (Sabah, Sarawak and Federal Territory of Labuan) a month. A full time employee paid on a daily basis and who is present at work on normal working days as determined and who completes the agreed normal hours of work as per the contract of service without regard to the total hours worked in a day shall be paid a daily minimum wage based on the following formula:

$$\text{Daily Wages Rate} = \frac{\text{Rate of Monthly Minimum Wages} \times 12 \text{ months}}{52 \text{ weeks} \times \text{number of working days in a week}}$$

The Order applies to 'contracts of service' which includes collective agreements made under section 14 of the IRA. Wages has the same meaning assigned to it under the EA (Section 2), Sabah & Sarawak Labour Ordinances (Section 2). To facilitate the implementation of the Order, the secretariat of the National Wages Council issued guidelines to assist parties, the employers and employees on the smooth implementation of the Order.

#### Holidays / Rest Periods

For workers covered by the EA and the corresponding Sabah and Sarawak Labour Ordinances, employees are entitled to public holidays and annual leave. However, with regard to annual leave, the entitlement to the number of days depends on the employee's years of service.

#### Minimum/Maximum Age

Under the Children and Young Persons (Employment) Act 1966 [Act 350], a child who is below the age of 15 and a young person between the ages of 15-18 may only be engaged in certain categories of work, such as in a family business (Section 2). There is no maximum age for a person to be employed.

#### Illness/Disability

The number of days of paid sick leave an employee is entitled to is stipulated under the EA and the corresponding Sabah and Sarawak Ordinances; and this is expressed as a certain number of days for "each calendar year" ranging from 14 for an employee with less than two years of service to 22 for those with more than five years of service. Where hospitalisation is necessary, an employee is entitled to 60 days.

Employees covered by the Social Security Organization ("SOCSO") are entitled to employment injury benefits and an invalidity pension. Under the Employment Injury Insurance Scheme, employees are protected from, among others, accidents occurring while in the course of work, travelling, emergency and also occupational diseases. Benefits provided include — but are not limited to — medical, temporary disability and permanent disability.

Furthermore, an insured person incapable of engaging in any substantially gainful activity by reason of a specific permanent disability condition is entitled to the invalidity pension if he has completed a full or a reduced qualifying period. Section 17 of the ESSA provides a detailed explanation on entitlement to invalidity pension.

### Location Of Work/Mobility

There is no legal requirement to state the location of work of the employee. Case laws indicate that location of work and/or mobility of the employee can be problematic when such provision is not expressly provided for in the contract of employment. Under the EA and the corresponding Sabah and Sarawak Ordinances, there is a prohibition of underground work for female employees. Children and young persons under the age of 18 are also prohibited from working underground (see the Children and Young Persons (Employment) Act 1966 [Act 350] and Sabah and Sarawak Ordinances).

### Pension Plans

Pension plans are statutorily provided and made available only to public servants. Employees who are not employed by the government are members of a state contributory fund called the Employees Provident Fund ("the EPF") governed by the Employees Provident Fund Act 1991 [Act 452]. Employers are, however, at liberty to initiate their own pension funds.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

Under the EA and the corresponding Sabah and Sarawak Ordinances, female employees shall be entitled to maternity leave for a period not less than 60 consecutive days in respect of each child and to receive maternity allowance.

There are no provisions for paternity or adoption. However, some employers do provide paternity entitlement in their contract of employment or employee handbooks.

### Compulsory Terms

There are no compulsory terms that must be included in the agreement. However, the EA and the corresponding Sabah and Sarawak Ordinances provide that any term or condition in a contract of service which is less favourable than that prescribed by statute shall be void and of no effect and the more favourable statutory provisions shall be substituted in its place.

### Non-Compulsory Terms

Employers are at liberty to set terms and conditions that are more favourable than those set out in the EA or the corresponding Sabah and Sarawak Ordinances.

### Types Of Agreement

Statutory definitions of employee, employer and contract of service determine whether a person is an employee for the purpose of specific employment legislation. In this regard, subject to the statutory definitions, tribunals and courts apply common law principles distinguishing a contract of service from a contract for services. The label given to the agreement is not conclusive and the court will determine the true nature of the legal relationship. Once it is determined that a person is an employee, whether casual, probationary, permanent or on a fixed term, the provisions of the relevant legislation shall apply.

### Secrecy/Confidentiality

Under the common law, there is read into every employment contract the implied duty of good faith and fidelity. One of the components of this duty pertains to confidentiality obligations, which cease upon the cessation of employment. There exists, however, a post-employment residual duty of confidentiality pertaining to the former employer's trade secrets and confidential information akin to trade secrets which the court will protect.

The Personal Data Protection Act 2010 [Act 709] ("PDPA") which came into force on 15 November 2013 regulates the processing of personal data in commercial transactions and applies to any person who processes, has control over or authorizes the processing of any personal data in respect of commercial transactions.



The PDPA makes it illegal for corporate entities or individuals to sell personal information or allow the use of personal data by third parties without consent. According to the PDPA, a commercial transaction includes any matters pertaining to the "supply and exchange of goods or services". In this regard, a contract of employment would be considered to be a form of commercial transaction, and organisations would have to comply with requirements under the PDPA when processing their employees' personal data.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In Malaysia, the Copyright Act 1987 [Act 332] governs works created by an employee in the course of employment that will accrue to the employer (Section 26). Furthermore, the Patents Act 1983 [Act 291] provides that unless expressly agreed in the employment contract, the rights to a patent for an invention made in the performance of such contract of employment shall be deemed to accrue to the employer (Section 20).

### Hiring Non-Nationals

Hiring of non-nationals is allowed in Malaysia. Non-nationals are required to possess employment passes/permits which are issued by the immigration authority.

### Hiring Specified Categories Of Individuals

There are no specific statutory rules on hiring specified categories of individuals.

### Outsourcing And/Or Sub-Contracting

There are no specific statutory rules on outsourcing and/or sub-contracting. However, principles established in the Industrial Court set out that outsourcing and/or subcontracting pursuant to the exercise of an employer's managerial prerogative must only be undertaken in the interest of the business. Under the EA and the corresponding Sabah and Sarawak Ordinances, employers are obliged to pay termination and lay-off benefits where as a result of outsourcing, employees who are made redundant have their employment terminated. Evidence of unfair labour practices may lead the Industrial Court to hold a termination of employment arising from outsourcing and/or sub-contracting to be a dismissal without just cause or excuse.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers are not allowed to change the terms of the contract of employment unilaterally. Should there be a need to change or modify the terms, the employee's consent is required. Subject to the minimum standards in the terms and conditions of employment set out in the EA and the corresponding Sabah and Sarawak Ordinances, employers and employees may agree to vary the terms and conditions of the employment contract.

### Change In Ownership Of The Business

Under the EA, change in ownership of the business will entitle the employee whose service is terminated as a result of such change to termination and lay-off benefits pursuant to Regulation 8 of the Employment (Termination and Lay-off Benefits) Regulations 1980. However, the affected employee is ineligible for such benefits if he declines to accept the offer by the person taking over the business to continue employing him on no less favourable terms than those of his original employer.

### Social Security Contributions

It is a requirement in Malaysia for both the employer and employee to contribute to the EPF and SOCSO. SOCSO's coverage only extends to employees who are Malaysian citizens and permanent residents. Employees who earn less than RM3,000 must contribute to SOCSO (Third Schedule of the ESSA). Employees who earn more than RM3,000 who did not register or pay contributions have the option to be covered under the ESSA.

### Accidents At Work

It is the duty of the employer to ensure the safety of all its employees. Besides an employer's common law duty, extensive statutory provisions are to be found in the Occupational Safety and Health Act 1994 [Act 514] and the Factories and Machinery Act 1967 [Act 139]. These laws also impose reporting or notification obligations with regard to accidents, occupational poisoning, occupational disease and so on.

### Discipline And Grievance

It is the managerial prerogative of employers to set out disciplinary rules, procedures and sanctions. This is subject, however, to review by the Industrial Court where the dismissal is contested on the grounds that the dismissal was effected without just cause or excuse.

An employer may also provide for grievance procedures in its contract of employment or in its employee handbook. In a unionised environment, it is common for the grievance procedure to be contained in a Collective Agreement.

### Harassment/Discrimination/Equal pay

The EA imposes an obligation on the employer to inquire into any sexual harassment complaints in the prescribed manner unless the stipulated grounds of refusal are satisfied. Any persons dissatisfied with the refusal may refer the matter to the Director General. If, upon conducting an inquiry, the employer is satisfied that sexual harassment is proven, disciplinary action may be taken against the wrongdoer, including dismissal or downgrading. Alternatively, where the inquiry is undertaken by the Director General and the Director General is satisfied that sexual harassment is proven against an employer who is a sole proprietor, the complainant may terminate employment without having to comply with termination notice-related requirements.



The Capital Markets and Services Act 2007 [Act 671] ("the CMSA") protects a whistleblower from retaliatory and discriminatory action affecting his employment and livelihood. Persons covered under the relevant provisions are the chief executive, any officer responsible for preparing or approving financial statements or financial information, an internal auditor or a secretary of a listed corporation. Similar provisions are found in the Companies Act 1965 [Act 125] ("the CA"), which extends the scope of protection to all employees of a corporation.

The Whistleblower Protection Act 2010 [Act 711] is an act designed to provide protection to a whistleblower who discloses an improper conduct to an enforcement agency. For example, if a whistleblower discloses corrupt practices of his own employer or a friend at his workplace, he is entitled to be protected under this Act. The whistleblower or any person related to or associated with the whistleblower may claim remedies from the court where there is detrimental action taken in reprisal for a disclosure of improper conduct.

Remedies that may be claimed by the informant:

1. Damages or compensation;
2. Injunction (injunctive); or
3. Other relief as the court thinks fit.

### Compulsory Training Obligations

In general, there are no compulsory training obligations imposed on employees. However, certain industries, such as manufacturing, do impose such obligations to ensure that employees are equipped with the necessary knowledge and skills. Under the Factories and Machinery Act 1967, no employee can be employed to operate a machine unless he is sufficiently instructed of the dangers likely to arise in connection with the machine and the precautions to be observed (Section 26).

The Construction Industry Development Board ("the Board"), which was established by a 1994 Act [Act 520], has the power to make recommendations to the federal and state Governments on matters affecting or connected to the construction industry.

The Board has introduced the CIDB Green Card programme, which is compulsory for all personnel working at the construction site. Participants have to attend a one-day Safety Induction Course for Construction Workers, at the end of which they will be given the CIDB Green Card.

### Offsetting Earnings

Under the EA and the corresponding Sabah and Sarawak Ordinances, only lawful deductions subject to the statutory conditions may be made.

### Payments For Maternity And Disability Leave

Under the EA and the corresponding Sabah and Sarawak Ordinances, female employees will be granted paid maternity leave of 60 consecutive calendar days inclusive of Sundays and public holidays. No specific provisions in these laws are made for disability leave but where hospitalisation due to disability is necessary the employee is entitled to 60 days paid leave.

For employees covered by the Employees Social Security Act 1969, an insured person who sustains temporary disablement rendering him incapable of doing his work is entitled to daily temporary disablement benefits assessed on his average daily wage; and in this situation he will not be entitled to paid sick leave, including hospitalisation for the period of his temporary disablement.

### Compulsory Insurance

The Workmen's Compensation Act 1952 [Act 273] ("the WCA") mandates compulsory insurance for employment injury and death and occupational diseases. Where the employee or worker dies in the event of a fatal accident or upon contracting an occupational disease or in the course and arising out of performing his duty or work, the compensation payments will be made to the worker's dependants.

The WCA is administered by the Department of Labour and applies throughout Malaysia. However, Malaysian workers are no longer covered under the WCA but by the ESSA. Thus only non-national workers are covered by this Act. The compensation is capped at RM18,000 for the death of the employee and RM23,000 for permanent total disability. This Act applies to non-national workers whose earnings are not more than RM500 per month and all manual workers irrespective of the wage.

The ESSA establishes a compulsory contributory insurance scheme for employees which covers employment injuries and death as well and incapacity which is not work-related for employees earning below RM3,000.

### Absence For Military Or Public Service Duties

In Malaysia, the legislation that governs the absence of an employee owing to public service duties is the National Service Training Act 2003 [Act 628], which stipulates that employers are to grant leave to employees called up for national service.

### Works Councils or Trade Unions

The TUA and subsidiary legislation made thereunder contain provisions that govern work councils and trade unions. Trade unions in Malaysia must be registered and recognised in order to operate lawfully (Section 8 of the TUA). Failure to register a trade union or where the registration is refused, withdrawn or cancelled by the Director General or is rendered null and void by a decision of any court will render the trade union an unlawful association and it shall cease to enjoy any of the rights, immunities or privileges (Section 19 of the TUA). However, trade unions must obtain recognition from the company in order for collective bargaining to take place. Where recognition is refused, the matter may be referred to the Minister of Human Resources for his decision on whether recognition ought to be granted (Section 9 of the IRA).

### Employees' Right To Strike

The right to strike is one of the forms of industrial action available to workers and their trade unions. This right is provided under the IRA (Section 43) and TUA (Section 25A). However, the right to strike is not without limitation. Provisions in the legislation mentioned above lay down the procedures for a legal strike.



### Employees On Strike

Employees who commence, continue or otherwise act in furtherance of an illegal strike commit an offence (Section 46 of the IRA). Such action may also constitute serious misconduct in respect of which an employer can take disciplinary action.

The IRA also makes it a criminal offence for anyone who instigates or incites participation in an illegal strike (Section 47).

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees in the course of their employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

An employer may lawfully terminate the employment contract in accordance with the terms of the contract. The employer is obliged to give notice of termination of employment or make payment in lieu of notice. Under the IRA, such lawful termination is, however, subject to challenge by the employee on the grounds that the employer did not have just cause or excuse to dismiss him.

Such just cause or excuse may be found in misconduct, poor performance, redundancy or incapacity which must be established in accordance with the principles found in the jurisprudence of the Industrial Court. A procedural failure to comply with the rules of natural justice is not, while making the procedure unfair, tantamount to unjust dismissal and the employer may still proceed to prove that the dismissal was for a just cause.

Under the EA, an employer may impose a disciplinary sanction, including termination of employment, on the employee because they have failed to fulfil the express or implied conditions of service. This sanction can only be imposed after holding a due inquiry.

### Instant Dismissal

Under the common law, an employer may instantly dismiss an employee on the grounds of gross misconduct. Under the EA and the corresponding Sabah and Sarawak Ordinances, an employer may summarily terminate an employee's service on the grounds of wilful breach by the employee of a condition of the contract of service.

### Employee's Resignation

The employee is allowed to terminate the contract of employment by giving the requisite period of notice or make a payment in lieu of notice. However, his resignation must not be a forced resignation.

### Termination On Notice

Either party can terminate the contract of employment by giving notice. The length of notice is usually provided for in the contract of employment. For employees covered by the EA and the corresponding Sabah and Sarawak Ordinances in the absence of specific lengths of notice, the EA stipulates the length which is dependent upon the period of service completed.

For non-EA employees, the notice period is determined in accordance with common law. The exercise of this contractual right to terminate is, however, subject to challenge by an employee who claims that such dismissal is without just cause or excuse.

### Termination By Reason Of The Employee's Age

The Minimum Retirement Age Act 2012 [Act 753] for the private sector stipulates that the minimum retirement age of an employee is 60. However, this Act does not prevent an employee from retiring upon attaining the age of optional retirement, according to the contract of service or collective agreement. The contract of employment is terminated by effluxion of time once the employee reaches the retirement age.

### Automatic Termination In Cases Of Force Majeure

In cases of force majeure, the contract of employment is deemed to have been "frustrated" thereby justifying the automatic termination of the contract of employment.

### Termination By Parties' Agreement

Parties are free to mutually terminate the contract. It is advisable that there is some degree of formality in such arrangements and a mutual separation agreement is usually executed.

### Directors Or Other Senior Officers

There are no special rules that govern the firing of directors or other senior officers. Working directors who are also members of the board of directors wear two hats; they are both directors and employees and in the latter capacity, they enjoy rights generally available to employees and may seek their remedies in the Industrial Court for unjust termination.

### Special Rules For Categories Of Employee

There are no separate rules that govern the termination of certain categories of employees. However, under the EA, it is an offence if the employer dismisses a female employee during maternity leave or if she remains absent from work after the expiration of maternity leave as a result of illness certified by a registered medical practitioner to arise out of her pregnancy until her absence exceeds a period of 90 days after maternity leave.



### Specific Rules For Companies in Financial Difficulties

For employees covered under the EA and the corresponding Sabah and Sarawak Ordinances, there are specific rules that govern companies which are in financial difficulties. In cases where companies are found to be in financial difficulties or in the process of being wound up, employees will be protected in respect of any wages due when the company is subject to receivership.

Where there is a sale of place of employment, the wages of the employees affected shall be given priority over payment to the secured creditors or debenture holders. Furthermore, protection of wages and salary of employees can be seen when the same are to be paid second after the costs and expenses of the winding-up of the company (Section 292(1) of the CA).

### Restricting Future Activities

Common law rules against restraint of trade are codified in the Contracts Act 1950 [Act 136].

### Severance Payments

Employees who are covered by the EA and the corresponding Sabah and Sarawak Ordinances are entitled to be paid termination and lay-off benefits.

### Special Tax Provisions And Severance Payments

Compensation for loss of employment is exempted from tax in respect of payments that do not exceed RM10,000 multiplied by each number of completed years of service (paragraph 15 of Schedule 6 to the Income Tax Act 1967 [Act 53]).

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

There is a time limit for claims following termination. Under the IRA, an employee who seeks reinstatement on the grounds that he was dismissed without just cause or excuse must lodge his representation within 60 days of the dismissal.

Under the EA and the corresponding Sabah and Sarawak Ordinances, an employee who is terminated under Section 14 of the IRA must make his complaint to the Director General of Labour within 60 days from the date on which the decision under Section 14 is communicated to him either orally or in writing by his employer, or the Director General shall not exercise such powers to inquire into and confirm or set aside any decision made by the employer.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no other specific matters which are important or unique to this jurisdiction.

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# Malta

# Malta

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Industrial Tribunal has exclusive jurisdiction for cases of unfair dismissal and issues concerning protection against employment related discrimination. Appeals heard in the Court of Appeal concern points of law only.

### The Main Sources Of Employment Law

Malta is a civil law jurisdiction. All employment arrangements are governed by general principles of contract law, but there are various legislative requirements which over-ride those general principles in some instances. In addition to individual contracts, collective bargaining agreements also form part of the contractual relationship. The primary source of legislation in this regard is the Employment and Industrial Relations Act 2002 (hereinafter, the "Act"). The Employment and Training Services Act 1990, the Equal Opportunities (Persons with Disability) Act 2000 and the Equality of Men and Women Act 2003 must also be considered. A significant amount of regulations have been introduced by secondary legislation, including National Standard Orders and Wages Council Wage Regulation Orders. European legislation and ECJ court decisions are also relevant.

Key ancillary legislation includes: The Conditions of Employment Act 1952, Cap 135 of the Laws of Malta, may also be considered to be relevant in this regard. It regulates the protection of wages and the manner in which these are to be paid as well as a number of ancillary issues related to working conditions albeit not to the contract of employment or employee/employer relationships per se. These include the setting up of a National Labour Board to tender advice on minimum working conditions to the Minister from time to time as well as Wage Councils and Wage Regulation Orders to cater for situations where adequate regulatory machinery in relation to the working conditions appertaining to a particular sector are missing. This area of Maltese Law also deals with scenarios where the setting up of industrial councils is permitted.

It is also pertinent to mention in passing that the Employers Liability (Compulsory Insurance) Act 1974, Cap 241 of the Laws of Malta creates the legal obligation for employers to take out insurance against bodily injury or disease for their employees. Any employer not doing so shall be liable for the committing of an offence under this act and to a fine (multa) not exceeding four hundred and sixty five Euro and eighty-seven cents (€465.87). Again, this is not directly related to the employment contract and is not in force yet however it must be noted with regards to employer compliance. According to Article 1 of the Act, it shall come into force on a date appointed by the Minister responsible for employment, by means of a notice in the Government Gazette.



### National Law And Employees Working For Foreign Companies

The statutory rights under national law will apply to all individuals physically working in Malta, regardless of their nationality and regardless of the law governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory obligations imposed by law on employers residing in Malta would apply even if certain employees are working in another jurisdiction. The contractual relationship is also determined in accordance with the law of the contract.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

A contract of employment may be in any form, i.e. it may be express or implied and, if express, it may be oral or in writing.

Where no written contract of employment has been signed, the employer is bound to give to the employee a letter of engagement. The employee must receive the letter of engagement no later than 8 working days after the commencement of employment. The letter of engagement must include the information listed in the Information to Employees Regulations 2002 (see "compulsory terms" below).

### Mandatory Requirements:

#### Trial Period

The first 6 months of any employment are probationary unless both parties agree to a shorter probation period. During this period the employer may terminate the employment without giving any reason.

In the case of employees holding technical, executive, administrative or managerial posts and whose wages are at least double the minimum wage established in that year, the probation period is one year (unless otherwise specified in the contract of service or in the collective agreement).

#### Hours Of Work

Subject to certain exceptions, and unless an employee opts out, he/she may only work 48 hours per week (averaged out over a 17 week period). The opt-out must comply with certain statutory requirements.

#### Overtime

Legal Notice 46 of 2012 states that employees shall work overtime as required by the employer as long as the 'average weekly working time' (i.e. including overtime) does not exceed forty-eight hours. The 'average weekly working time' is calculated over a period of four weeks or on the basis of a shift cycle. However, if an employee wishes to work in excess of the set limit, such employee can do so provided that he waives this limit in writing. Such waiver may be withdrawn at any time by the employee.

Companies not falling under any Wage Regulation Order (WRO) shall pay overtime at the rate time and a half. This rate shall apply for any time worked in a week in excess of forty hours.

### Earnings

There is a restriction prohibiting employees from earning below a minimum wage (which is reviewed annually).The minimum wages are prescribed by a national standard order or a sectoral regulation order.

Employees are to be paid in legal tender and no other form of payment is permitted unless expressly stated in the Employment and Industrial Relations Act. However additionally it is illegal for any other provision of law to prohibit the making of a contract between employer and employee for other additional benefits to be provided besides wages including the provision of food as well as a place for the employee to reside. The above-mentioned act also creates a legal privilege over all the assets of the employer, for a maximum of three months wages together with any compensation for termination or payment for leave due, notwithstanding the existence of any other law. Therefore this privilege should be considered together with those found in the Civil Code (Chapter 16 of the Laws of Malta).

### Holidays / Rest Periods

All workers are entitled to paid annual leave of at least four weeks and four working days (or the equivalent in hours) calculated on the basis of a forty-hour working week and an eight hour working day (pro rata for part-time employees). Of this, a minimum period equivalent to four weeks must be taken as holiday and cannot be replaced by a payment in lieu. The Organisation of Working Time Regulations 2003 also provide for various compulsory daily and weekly rest periods and breaks.

### Minimum/Maximum Age

Normally, the minimum age is that at which compulsory full-time schooling ends. Employment of persons below the age of 18 is regulated by the Young Persons (Employment) Regulations 2004. Different rules (e.g. on working time) apply to children or young workers.

There are no maximum age limits. However, the employer can terminate the employment of an employee who reaches the retirement age.

### Illness/Disability

There are no mandatory requirements relating to illness and disability apart from the employer's duty to make social security contributions. (See also 'Harassment/ Disability/ Equal Pay' below).

With regard to sickness absence, a full-time employee is entitled to statutory sick leave of the equivalent in hours of two weeks every year (unless such employees entitlements are covered by a Wages Council Wage Regulation Order) while part-time workers shall have a pro-rata entitlement to sick leave. The first 3 days of any claim for sick leave shall be paid in full by the employer. When an employee is in employment for less than 12 months, the employee shall only be entitled to sick leave as is in proportion to the period of employment.

### Location Of Work/Mobility

The employee's fixed place of work, or the places in which the employee will be expected to work, must be specified by the employer in writing. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

### Pension Plans

The employer is under no obligation to contribute towards a pension scheme.

The Pensions Directive (Directive 2003/41/EC) has been fully transposed into Maltese law through the Special Funds (Regulation) Act (SFA) which is the principal legislation regulating Occupational Pensions as well as Retirement Funds which can be used as Pension-Pooling Vehicles.

### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

The Protection of Maternity (Employment) Regulations provides pregnant employees with employment safeguards. Pregnant employees are entitled to maternity leave of 18 consecutive weeks (split before and after the birth) where the first 14 weeks are with full wages. The employer is not bound to supplement the Social Security benefit due for the last four weeks of maternity leave with any further payment. Fathers are entitled to one day Paternity leave with pay. Both male and female employees have, in addition, a right (granted on a non-transferable basis) to unpaid parental leave on the grounds of birth, adoption or legal custody of a child to enable them to take care of that child for a period of 4 months until the child is 8 years old.



### Compulsory Terms

Other terms that must be provided by the employer within 8 working days from the commencement of employment, as stated above, these include:

- full identity of the parties, sex of the employee and the place of work;
- date of commencement of employment;
- period of probation;
- normal and overtime rates of pay and the frequency of wage payments;
- (in the case of a fixed term contract), the expected or agreed duration of the contract;
- title, grade, nature or category of the job in question;
- collective agreement (if any).

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights.

## Types Of Agreement

All employment relationships (whether concluded verbally or in writing) are contractual in nature. Contracts of employment exist in several different forms: fixed term, indefinite, full-time, full-time with reduced hours or part-time. The compulsory terms apply regardless of the type of contract contemplated.

There are discrimination laws which prevent employees from being treated less favourably than other employees because of working part-time or working on a fixed term contract.

## Secrecy/Confidentiality

There are certain specific employees who are bound by their duty of secrecy by virtue of their profession, including doctors, advocates, legal procurators, social workers, psychologists, accountants, auditors, employees and officers of financial and credit institutions and employees of the State. Such duty is accompanied by criminal sanctions.

The duty of secrecy and confidentiality of the employer's commercial and business information is also implied in the employment relationship. The employee is bound to keep confidential information that he/she is expressly told due to the nature of his/her profession.

It is common for employment contracts to contain a clause concerning the duty of confidentiality both during and after termination of the contract, including the type of information that is a trade secret.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights. In the case of computer programs and databases, the economic rights conferred by copyright belong to the author's employer. In respect of other works eligible for copyright, the copyright shall always vest in the author. The right to a patent for an invention shall belong to the employer. The employee shall have a right to equitable remuneration.

### Hiring Non-Nationals

Different requirements apply depending on the nationality/status of the individual concerned. As a general rule, EU nationals (subject to certain exceptions) have an automatic entitlement to work in Malta. The employment of non-EU nationals requires the obtaining of an employment licence from the Employment and Training Corporation. An employer will be liable to criminal sanctions under the Immigration Act 1970 if he takes in his employment, or gives work to, any person who is not in possession of the required work permit.

### Hiring Specified Categories Of Individuals

Specific rules apply as to who can be employed to carry out certain hazardous activities and on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with civil law contractual principles, an employer may not change any terms of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest after becoming aware of the change).

Any change of terms to which the employee does not consent will amount to a breach of contract. If the change is a significant one which goes to the root of the contract, the employee is entitled to resign and treat the contract as terminated. In so doing, the employee may also claim that he has been constructively dismissed and seek damages accordingly.

### Change In Ownership Of The Business

The Transfer of Business (Protection of Employment) Regulations 2002 regulate the transfer of a business or undertaking, whether in whole or in part, by a person from an employer. In situations where the Act applies, employees carrying out the work in question automatically transfer with the work and thereby become employees of the new entity carrying out the work. The employees must generally remain on exactly the same terms of employment as they enjoyed prior to the transfer (with the exception of old age, invalidity or survivors' benefits under supplementary company pension schemes outside the Social Security Act).

There are obligations imposed on both the old and the new employers to consult with the affected employees though elected representatives, or a recognised Trade Union, prior to the transfer taking place (and financial penalties for failure to do so).



Employees are allowed to refuse to transfer to the new employer. However, if they do they will be deemed to have resigned and will not be entitled to any compensation (unless the refusal relates to a failure to maintain the same terms and conditions after the transfer).

### Social Security Contributions

Both employers and employees are required to make social security contributions.

### Accidents At Work

Under the Occupational Health and Safety Authority Act 2000 it shall be the duty of an employer to ensure the health and safety at all times of all persons who may be affected by the work being carried out for such employer. Employers have a duty to have regard to the safety of their employees and also for the safety of third parties on account of the acts of their employees. As mentioned above, employers are also obliged by law to take out insurance for their employees in the case of bodily injury or disease that is sustained in the course of their employment.

### Discipline And Grievance

This issue is not dealt with by any specific legislation. However, the Industrial Tribunal has consistently held that, before terminating the employment of an employee, the employer should give more than one warning to the employee in order to give the employee an opportunity to mend his ways. If, having received a warning, the employee does not improve, then the employer would be justified in dismissing the employee.

### Harassment/Discrimination/Equal pay

Employees are protected from discrimination on the grounds of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers' association, as well as discrimination in relation to whether they are employed on part-time or fixed fixed-term basis.

Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), on termination or even after the employment has ended (for example in writing the reference).

The Equal Treatment in Employment Regulations 2004 makes special provisions for discrimination on grounds of religion or religious belief, disability, age, sexual orientation and racial or ethnic origin. Discrimination may be direct (for example refusing to employ a man or woman), or indirect (for example by imposing a condition which will place certain persons at a disadvantage).

A person claiming to have been subjected to discriminatory treatment, whether direct or indirect, in relation to his employment may, within four months of the alleged breach, refer the matter to the Industrial Tribunal for redress. The Industrial Tribunal may take such measures as it deems appropriate including the cancellation of any contract of service or of any clause in a contract or in a collective agreement which is discriminatory and shall order the payment of compensation for loss and damage sustained by the party suffering the discrimination.

Harassment and sexual harassment are separate types of claim, but are linked with discrimination. Harassment involves unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It is unlawful if it is related to any of the discriminatory grounds listed above.

An employer must take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.

Victimisation is also a form of discrimination that involves treating a person less favourably because they have complained (or intend to complain) about discrimination, or because they have given evidence in relation to another person's complaint. An employee must not be disciplined or dismissed, or suffer reprisals from colleagues, for complaining about discrimination or harassment at work.

Victimisation occurs when the employer takes retaliatory action against a person for having made a complaint to the lawful authorities or for having initiated or participated in proceedings for redress on grounds of alleged breach of the provisions of the Act, or for having disclosed information to a designated public regulating body regarding alleged illegal or corrupt activities being committed by his employer.

The concept of equal pay is recognised by legislation. It provides that a woman is entitled to enjoy working terms that are as favourable as those of a man in the same employment, provided that the woman and the man are employed to carry out work of equal value.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally.

### Offsetting Earnings

Except where expressly permitted by law, or where ordered by a competent court, or authorised in an agreement entered into between an employer and a trade union, an employer shall not make any deductions nor enter into any contract with an employee authorising any deductions to be made from the wages due to the employee.

### Payments For Maternity And Disability Leave

Employees will benefit from certain payments subject to satisfying the relevant necessary requirements.

A pregnant employee is entitled to maternity leave with full wages for an uninterrupted period of 14 weeks if she notifies her employer at least 4 weeks before the maternity leave begins. (She is furthermore entitled to an extra period of four weeks of maternity leave, during which she will only be statutorily entitled to receive social benefits.) Where a female employee does not resume work on the expiration of maternity leave or after having returned to work, abandons the service of her employer without good and sufficient cause within 6 months from the date of such return, she shall be liable to pay the employer a sum equivalent to the wages she received during the maternity leave.



With regard to sickness absence, an employee is entitled to statutory sick leave of the equivalent in hours of two weeks every year. The first 3 days of any claim for sick leave shall be paid in full by the employer. When an employee is in employment for less than 12 months, the employee shall only be entitled to sick leave as is in proportion to the period of employment.

Employees who are injured in the course of their employment enjoy a maximum of one year leave on full wages, less the amount of any injury benefit to which they may be entitled under the Social Security Act.

### Compulsory Insurance

There are no compulsory insurance obligations.

### Absence For Military Or Public Service Duties

Employees are entitled to leave to carry out military or jury service for as long as necessary.

### Works Councils or Trade Unions

An employer may voluntarily agree to recognise a Trade Union for collective bargaining purposes. A Trade Union can demand recognition if the majority of the workforce in a specific class belong to it. The Industrial Tribunal will award recognition to the trade union where there is a dispute between the employer and a union or a dispute between two or more unions.

An employee who is a member of a Trade Union has certain rights in relation to his employer. For example, dismissal for membership of or for taking part in the activities of a Trade Union in the capacity of an employees' representative is automatically unfair for the purposes of unfair dismissal. Discriminatory treatment against an employee for membership of or for taking part in the activities of a Trade Union gives the employee the right to complain to the Industrial Tribunal.

Under the Collective Redundancies (Protection of Employment) Regulations 2002 an employer has a duty to consult with appropriate representatives of any employees who may be affected where the employer is proposing collective redundancies. These regulations apply where the employer proposed to terminate the following number of employees over a 30 day period:

a) 10 or more employees in establishments normally employing between 20 and 99 employees;

b) 10% or more of the number of employees in establishments employing between 100 and 299 employees; and

c) 30 employees or more in establishments employing 300 employees or more.

### Employees' Right To Strike

While the right of association is entrenched in the constitution, there is no general right for employees to strike. However, certain immunities will be granted in respect of acts done by a person in contemplation or furtherance of a trade dispute and in pursuance of a directive issued by a trade union, whether he belongs to it or not.

### Employees On Strike

Acts by employees in contemplation of a trade dispute and in pursuance of a directive issued by a trade union, as stated above, shall not be actionable in damages as such acts do not constitute a breach of the employment contract . When an employee is on strike the employer cannot terminate the contract of employment or discriminate against the employee, unless the employee's actions are in breach of a collective agreement/ settlement, decision or agreement that has been subject to the voluntary settlements procedure, or of a decision of the Industrial Tribunal.

### Employers' Responsibility For Actions Of Their Employees

Under civil law, an employer will be liable for damage caused to third parties by the incompetent acts of its employees in circumstances whether the employer knew the employee was incompetent, or simply failed to consider whether there was reasonable grounds for believing that the employee was competent.

In Contracts of Work situations, the contractor is responsible for the acts of all persons employed by him.

An employer may also be responsible for the acts of its employees where it does not comply with certain occupational health and safety obligations, such as by failing to provide workers with sufficient information, instruction, training and supervision.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract or collective agreement. Contracts may and collective agreements usually do provide for a certain procedure which must be followed before termination to avoid the termination amounting to an unfair dismissal. An employer must be able to demonstrate a good and sufficient cause for dismissal. The law does not define the term 'good and sufficient cause' but gives a list of causes which do not justify termination which include: the employee was a member of a trade union; the employee no longer enjoys the employer's confidence; the employee gets married; an employee is pregnant or is absent from work during maternity leave; and whistle blowing.

Whether the reason(s) for the dismissal is / are fair depends on the Industrial Tribunal's view as to the reasonableness of the employers' actions.

The Industrial Tribunal has consistently held that before terminating the employment of an employee, the employer should give more than one warning to the employee. A warning should be given in order to provide the employee with the opportunity to improve. If the employee fails to improve, having been given a warning, the employer would then be justified in dismissing the employee.



### Instant Dismissal

The employer can terminate an agreement by instant dismissal if there is good and sufficient cause. However, if the contract or the collective agreement provide for a specific procedure to be followed before dismissing an employee, that procedure must be respected in all cases.

### Employee's Resignation

An indefinite contract of employment can always be terminated by the employee's resignation. The notice period required to be given is specified in the Act in accordance with the length of service.

### Termination On Notice

For indefinite contracts of employment there are statutory minimum periods of notice which will override conflicting contractual notice period. The minimum period of notice, depending on the period of continuous employment, ranges from one week up to a maximum of 12 weeks.

### Termination By Reason Of The Employee's Age

The employer can terminate the employment of an employee when the employee reaches 65 years old. This will apply for persons born after 1961. For persons born on or before the 31 December 1951, the retirement age shall be 61 years; for persons born between 1952 and 1955, the retirement age is 62 years; for persons born between 1956 and 1958, the retirement age is 63 years; for persons born between 1959 and 1961, the retirement age is 64 years. For women born on or before the 31 December 1951, the retirement age is 60 years, but an employer may not terminate the employment of such a female employee before she reaches the age of 61 years.

### Automatic Termination In Cases Of Force Majeure

In accordance with civil law contractual principles the contract will be deemed terminated where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace are examples.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire.

Where the parties agree to terminate the employment, they are not required to obtain the courts' or regulatory body's approval before the termination is effective.

The Employment and Industrial Relations Act also caters for the scenario where an employee has been kept on after the termination of a particular fixed term contract. In such a case the employee shall be considered to be employed indefinitely provided that he is not provided with a new fixed term contract within twelve working days following the expiry of the previous contract.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director or other senior officer's employment. In the case of a director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's memorandum and articles of association).

### Special Rules For Categories Of Employee

Special rules apply for the protection of disabled employees (such as the duty of the employer to make reasonable accommodation for the disability of such a person, unless the employer can prove that the required accommodation would unduly prejudice the operation of the trade or business). Certain categories (e.g. pregnant women and persons injuring themselves or contracting specified occupational diseases in the course of employment) benefit from more generous rules for protection from unfair dismissal.

### Specific Rules For Companies in Financial Difficulties

If a company goes into liquidation, rules for collective redundancies apply.

Claims by employees for a maximum of 3 months wages, compensation for leave to which the employee is entitled, compensation due to the employee in consideration of the termination of employment, and for any notice constitute privileged claims over the assets of the employer. Such privileged claims are subject to a maximum amount equivalent to 6 months of national minimum wage.

A further factor to consider is when the assets (including employees) of a company in administration are packaged up and are sold to another company the Transfer of Business (Protection of Employment) Regulations 2002, as described above, will apply.

The Civil Code has also created a guarantee fund, by means of which wages that remain unpaid due to the insolvency of the employer are made good. This fund has a distinct legal personality and also has the right to be subrogated into the rights of the employee once these unpaid wages have been catered for.

### Restricting Future Activities

Generally clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable, but the courts will uphold restrictions if they are related to the nature of the employment and limited to a reasonable amount of time.

It is important to point out here that any condition in a contract of service which empowers the employer to terminate the employment of a female employee subject to her getting married or becoming pregnant shall be considered to be null and void.

### Severance Payments

In the case of fixed term contracts, if the employer terminates the contract before the expiry date, the employer shall pay to the employee one-half of the full wages due in respect of the remainder of the time specifically agreed upon.



In the case of indefinite contracts of employment, where an employer has given notice of redundancy, the employee may at any time during the currency of the period of notice opt to be paid a sum equal to half the wages in respect of the unexpired period of notice instead of working the notice period.

Normal contractual principles apply to severance payments included in the contract.

There are no statutory payments for redundancy and unfair dismissal. However, in awarding compensation for unfair dismissal the Industrial Tribunal is required by law to take into consideration the real damages and losses incurred by the worker, as well as other circumstances, including the worker's age and skills.

### Special Tax Provisions And Severance Payments

In certain circumstances lump sum payments given by employers to employees upon termination of employment, including early retirement, are exempt from tax.

### Allowances Payable To Employees After Termination

There is no requirement for employers to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Claims for unfair dismissal, discrimination and gender equality, victimisation and harassment have to be brought before the Industrial Tribunal within 4 months of dismissal.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Legal Notice 44 of 2012 was introduced in an effort to remove abuse by employers which engage individuals on a self-employment basis in order to avoid employment obligations. The law sets the following criteria to determine whether a person is truly a self-employed person or whether such person should enjoy all the rights and protection appertaining to an employee. If the engagement conditions of any individual satisfy any five of the following criteria the said individual is to be considered as an employee:

The individual:

a) depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;

b) depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;

c) performs the work using equipment, tools or materials provided by the person for whom the service is provided;

d) is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;

e) cannot sub-contract his work to other individuals to substitute himself when carrying out work;

f) is integrated in the structure of the production process, the work organisation or the company's or other organization's hierarchy;

g) the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided, and

h) carries out similar tasks to existing employees, or, in the case when work is outsourced, he performs tasks similar to those formerly undertaken by employees.

Breaches of the Act in relation to discrimination and harassment shall result in the commission of an offence and may entail specific liability to a fine (multa) not exceeding two thousand and three hundred and twenty nine Euros and thirty seven cents or imprisonment for a term not exceeding six months or both.

Liability to a fine of not less than two hundred and thirty two Euros and ninety four cents (€232.94) and not exceeding two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37) is imposed upon employers who breach the Act in relation to recognised conditions of employment prescribed by National Standard Orders, or by Sectoral Regulation Orders or collective agreements or who generally fail to comply with any other provisions of the Act or any regulations made there under.

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# Mexico

# Mexico

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The main forums are the Labor Boards for Conciliation and Arbitration (in Spanish, the "*Juntas de Conciliación y Arbitraje*"), either the Federal or the State branches, depending on the industry to which the employer pertains.

### The Main Sources Of Employment Law

The main sources of employment law in Mexico are the Mexican General Constitution and the Federal Labor Law ("Law"), which are supported by judicial precedents and jurisprudence, doctrine and the customary practices.

### National Law And Employees Working For Foreign Companies

The Federal Labor Law applies to all people who work within Mexican territory, regardless of the employer's origin or the nationality of the employees.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The Federal Labor Law sets forth certain requirements for the terms and conditions to provide personal services in another jurisdiction, such as work visa, social security conditions, lodging and others.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Agreements must be executed in writing, and shall include, at least, the following information:

- Name, nationality, age, gender, marital status, domicile and tax identification number of the employee and the employer;
- Term of the contract, whether for an indefinite term, a fixed term, for a specific task, for a season or for initial training;



- A detailed description of the services to be provided by the employee;
- Places where the services must be rendered;
- Duration of the workday;
- Salary amount and form of payment;
- Day and place for salary payment;
- A statement that the employee will receive training; and
- Terms and conditions such as statutory holidays, vacation days, vacation premium, Christmas bonus, and others as may be agreed between the parties.

### Mandatory Requirements:

#### Trial Period

Due to the amendments made to the Federal Labor Law at the end of 2012, a trial period of no more than 30 days (180 for high-level executives) was introduced into Law. At the end of said trial period, the employer may terminate the employment relation without any liability if the employer deems the employee does not meet the requirements for the job.

#### Hours Of Work

- Daytime work shift – A maximum of 8 hours
- Night-time work shift – A maximum of 7 hours
- Mixed shift – A maximum of 7.5 hours (as long as the night-time shift portion does not exceed 3 hours).

#### Earnings

In addition to salary and statutory benefits, employees are entitled to Profit Sharing, pursuant to the percentage and rules determined by the National Commission for Workers' Profit Sharing, which has been determined as 10% of the company's taxable income for several years.

#### Holidays / Rest Periods

For each six days of work, employees are entitled to one day of rest, at least, preferably Sundays. If an employee works on Sundays, he/she will be entitled to 25% of his/her daily salary for Sunday Premium.

Article 74 of the Law provides for the following mandatory holidays: January 1, the first Monday of February in commemoration of February 5, the third Monday of March in commemoration of March 21, May 1, September 16, the third Monday of November in commemoration of November 20, and December 25).

December 1 every 6 years when it corresponds to presidential inauguration, is also considered a mandatory holiday. Additionally, certain elections days may be declared holidays in accordance with federal and local electoral laws.

#### Minimum/Maximum Age

It is prohibited to employ minors under 14 years of age. Minors between 14 and 16 years of age can work provided written authorization has been provided by their parents. Minors over 16 years are allowed to work.

#### Illness/Disability

This is regulated by Social Security Law, and distinguishes two kinds of illnesses: work-related and non-work related illnesses. In both cases the Mexican Institute for Social Security ("IMSS" for its acronym in Spanish) provides hospital and/or medical assistance.

#### Location Of Work/Mobility

All costs for change of location, such as border crossing costs, transportation and moving, repatriation to the place of origin, meals for the employee and family shall be borne by the employer.

#### Pension Plans

Employers have, among others, an obligation to register their employees with the IMSS, the Mexican agency in charge of social security for private employees. Both parties pay their share of social security contributions, and part of these contributions adds to the employees' social security insurances, among which is the Retirement Fund. In this specific case, this fund is known as Sistema de Ahorro para el Retiro ("SAR" for its acronym in Spanish), and employers contribute 2% of the employees' salaries to said fund on a bi-monthly basis. For an employee to opt for retirement, he/she has to meet certain specific requirements, such as age and number of years at work.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

During pregnancy, an employee shall not perform activities that may put her or the baby's health in risk. They are entitled to maternity leave with pay of up to six weeks before and six weeks after giving birth. However, due to the amendments recently passed, the employee may transfer up to 4 weeks from before to after giving birth, subject to the opinion of a certified doctor from the IMSS. In cases of adoption, the maternity leave is for up to six weeks after the child's placement.

Male employees are entitled to a paternity leave of 5 days after their child's birth or placement, in cases of adoption.

During lactation, the employee shall be entitled to two additional daily rest periods of half hour each.

### Compulsory Terms

The following statutory benefits must be included:

- Christmas bonus. – Employees are entitled to receive, at least, the equivalent of 15 days of base salary, and must be paid before December 20th of every year, or the proportional part if the employee did not work for an entire year.
- Vacation days. – Employees are granted a minimum of 6 days of vacation for the first year of services; 8 days for two years of work; 10 days for 3 years and 12 days for 4 years. From the fifth year on, vacation days increase by two every five years.
- Vacation premium. – Employees are entitled, at least, to 25% of their base salary corresponding for vacation days.
- Social Security. – Employees have to be registered by the employer with the IMSS, for said agency to provide all the medical, hospital and health care necessary for the employees and their families. Contributions made to the IMSS are borne by the employer, employees and, in some cases, the Federal Government. These contributions include the corresponding for the housing fund and the retirement savings system.
- The Saving Fund System (Sistema de Ahorro para el Retiro) is a mandatory savings program in which companies are required to contribute 2% of their employees' salary on a bi-monthly basis.

### Non-Compulsory Terms

The Federal Labor Law sets forth the minimum statutory benefits employers have to grant their employees. Any benefits additional to the statutory ones are allowed, but they become an acquired right, and thus employers are not allowed to remove or reduce them without the consent of the employee and for which certain payments and formalities must be met.

## Types Of Agreement

The general rule for employment relations is for an indefinite term. However, there are exception contracts such as for a fixed term or for a specific task that the parties may execute as long as the nature of the work allows it and as long as the employer's requirement is also temporary. If the activities performed by an employee who executed an exception contract remain after the maturity of the contract, then the employment relationship shall be deemed as indefinite.

Also, due to amendments made to the Federal Labor Law in November, 2012, two additional types of contracts were added:

- For a season - When the workload increases during certain season (i.e. during Christmas).
- For training - An employer is able to execute an employment contract for training when it wishes to train an individual to occupy certain position within the company. If the employer deems the candidate does not meet the requirements for the job when the training period concludes, the contract may be terminated without liability on the employer at the end of the contract's maturity.



## Secrecy/Confidentiality

Article 134, Section XIII of the Federal Labor Law sets forth the employees' obligation to keep confidential all technical, commercial, manufacturing and industrial (trade) secrets to which they have access as a result of their work, as well as any reserved administrative matter, disclosure of which may harm the employer.

The same confidentiality obligation exists in Industrial Property Law, with regard to industrial secrets to which the employees have access as a result of the activities they perform.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

When an employee carries out research activities or is engaged in perfecting the processes used by the company, such invention and the right to exploit it are property of the employer. The employee is entitled to a complementary compensation if, upon judgment of the Labor Boards, his/her salary is not proportional to the relevance of such invention. Otherwise, it is treated as if such invention/development is compensated in the employee's salary. Notwithstanding the foregoing, moral rights cannot be waived under Mexican law and, in consequence, the authorship of the invention must be recognized by the employer.

## Hiring Non-Nationals

The Federal Labor Law requires an employer to hire at least 90% of Mexican nationals. For technicians and professionals, the employees must be Mexican, unless there are no Mexican employees for a specific specialization. In this case the employer may hire foreign employees, without exceeding 10% of the specialized employees.

For a foreign national to work in Mexico, he/she has to obtain his/her work visa with the Immigration authorities, which can be renewed after the expiration of the visa's term.

## Hiring Specified Categories Of Individuals

There are no rules with regard to specified categories of individuals. The only difference the Federal Labor Law identifies is for trusted employees, those who carry out activities of direction and supervision.

## Outsourcing And/Or Sub-Contracting

The amendments made to the Federal Labor Law at the end of 2012 included stricter regulation when hiring personnel through outsourcing agencies. Under these changes, companies may resort to hiring personnel through outsourcing companies under certain requirements:

a) Companies are prohibited for hiring 100% of their personnel through outsourcing;

b) Hiring through outsourcing entities shall be justified by the specialization of the activities to be performed by the outsourced personnel; and

In the event that the foregoing requirements are not fulfilled, the final beneficiary of the services rendered by outsourced personnel (the operative entity), will be deemed the direct employer and responsible for compliance with employment and social security obligations towards the employees assigned to it, hence it may be forced to pay profit sharing to the assigned employees as well as to assume social security responsibility towards them among other payments and benefits.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Making changes to the employment contracts unilaterally is prohibited by the Federal Labor Law. Any amendment has to be made with the consent of both contracting parties, in writing. Otherwise, any change made unilaterally may be deemed as sufficient ground to terminate the employment relation without any liability on the employee and with the obligation for the employer to pay severance.

### Change In Ownership Of The Business

There are no specific rules when there is a change in control of the company. In consequence, if a change of control occurs due to a transfer of assets of the employer, a specific analysis shall need to be made to determine necessary actions to be implemented.

### Social Security Contributions

The amount of social security contributions is determined by the following rules that vary according to the branch in which the social security system is divided in Mexico: (i) Occupational hazards, (ii) Illness and maternity, (iii) Disability and life, (iv) Day nursery and social benefits, and (v) Retirement, early retirement and old age, as well as to the level of salary the employees receive for their work.

For the housing fund program (INFONAVIT) the employer must pay 5% of the employee's consolidated salary as housing fund contributions administered by the aforesaid government agency.

For the Savings Fund for Retirement System (SAR), employers have to pay 2% of the employees' salary.

### Accidents At Work

A working accident (or occupational accident) happens when an employee suffers an organic injury, malfunction or even death caused because of the activities performed at work. An occupational illness is considered a pathological state derived from the activities performed during work.



Employees who suffer a work-related accident or illness shall be entitled to:

- Medical and surgical assistance;
- Rehabilitation;
- Hospitalization, when required;
- Medication and curative materials;
- Necessary prosthetic and orthopaedic devices; and
- An indemnity.

In the event of a work related accident or illness, employers must provide employees medical attention, rehabilitation, hospital services, medicines, etc. In order to meet these obligations, employers register the employees with the IMSS, which assumes such obligations provided the employer pays the corresponding contributions timely. Under Mexican Social Security Law, employees receive payment of a subsidy from the IMSS equal to 100% of their salary during the time of disability for up to 52 weeks. If the employee recovers prior to 52 weeks and returns to work, or if permanent disability is determined, the payment ceases.

### Discipline And Grievance

Article 47 of the Federal Labor Law sets forth the causes for termination of the employment relation without any liability on the employer. In the case of employees in a position of trust (those who perform direction, supervision activities), the loss of trust is sufficient ground for termination as well.

Also, any additional disciplinary measure the employer wishes to determine for employment has to be included in the company's Internal Work Regulations, which need to be produced by both the employer and employees, and be registered with the Labor Board to be enforceable.

### Harassment/Discrimination/Equal pay

Harassment was recently included in the Federal Labor Law as a result of the amendments made to it at the end of 2012, and is now considered as a ground for termination.

Also, employers may not differentiate between employees on the basis of race, skin colour, gender, age, religion views, political opinion or social condition.

With regards to salary, an equal salary must be paid for those who perform the same job and in the same position.

### Compulsory Training Obligations

Employers have an obligation to train their employees, and the latter have to receive the training that may allow them to increase their standards of life, skills and productivity. Training programs have to be determined jointly by employer and employees through the Joint Committee for Training, and shall be taught either by the company's own personnel or by specialized instructors certified by the Ministry of Labor and Social Welfare.

### Offsetting Earnings

Any debt contracted by the employee with the employer has certain restrictions: the amount claimable is limited to one month salary and the deductions to be made by the employer cannot be greater than 30% of the employee's salary exceeding the minimum salary. Also, debts contracted by employees with employers shall not accrue interest.

### Payments For Maternity And Disability Leave

In the event of pregnancy, the IMSS provides the mother with obstetric care, assistance in kind during six months of lactation and a bassinet for the new-born child. In addition, the employee shall be entitled to leave with full pay (subsidy paid by the IMSS) of 42 days before and 42 days after giving birth, being able to transfer up to 28 days from before to after.

Employees who suffer a work accident are entitled to a subsidy paid from the 4th day of disability and for up to 52 weeks. Said subsidy shall be equal to sixty per cent of the employee's last salary.

### Compulsory Insurance

All insurances are covered by the IMSS as long as the employer makes the corresponding payments of social security contributions. If the employer fails to do so, then shall be liable to cover all the medical, hospital and health care in favour of the employee, in addition to other personal liability in which the employer will incur for breaching social security obligations.

### Absence For Military Or Public Service Duties

The employer has an obligation to grant employees leave to comply with public service duties, such as electoral services/elections, during census and jury duties. They have also an obligation to provide employees leave for them to attend or perform a commission as part of the Union, as long as the employees gave notice of such situation in advance.

### Works Councils or Trade Unions

Membership of a workers' organization is not mandatory, but there are cases in which if employees want to work for a certain company whose employees are already unionized, they must join the existing union if this is required by the collective bargaining agreement.

In general terms, a trade union has the duty to represent its members in any matter which concerns them.

It is possible to force an employer to recognize a union. If the employer has workers who are members of a union, it is obliged, when requested, to enter into a collective bargaining agreement.

Collective agreements are common in Mexico and are legally enforceable. The main purpose of a collective agreement is to establish the working conditions under which services shall be rendered in one or more companies or establishments.



### Employees' Right To Strike

Trade unions acting on behalf of their members (workers) have the legal ability to initiate any proceedings to defend the employees' interests. The most important right for trade unions is the right to strike. A strike is the temporary suspension of all work carried out at a certain business. The strike must follow one of the objectives listed as follows:

- To obtain a balance between production factors, harmonizing the employees' and the employer's rights;
- To obtain from the employer the execution of a collective bargaining agreement or demand revision thereof;
- To obtain the execution of a 'law-agreement' and demand the revision thereof;
- To demand the fulfilment of the existing collective bargaining agreement or the 'law-agreement';
- To request the fulfilment of legal provisions in connection with profit sharing;
- To support a strike having one of the objectives previously listed; and
- To request the revision of wages under the terms and conditions established in Federal Labor Law.

### Employees On Strike

When on strike, the employment relationship is deemed as suspended, but not terminated. Therefore, they cannot be terminated by any reason whatsoever by the employer throughout the duration of the strike.

### Employers' Responsibility For Actions Of Their Employees

Employers have full responsibility for all the acts carried out by their personnel, except in those cases where the conduct of the employees fall into the category of causes for termination without liability on employers. When not on duty, employees are fully responsible for their own actions.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

An employer may terminate the employment relationship without liability if the employee's actions constitute just cause for rescission, as set forth in the Federal Labor Law. If the employer rescinds the employment relationship citing just cause, the employee is only entitled to receive outstanding accrued benefits. However, at the moment of dismissal the employer must provide the employee with a written notice stating the reasons for termination. Nevertheless, as a result of the major amendments made to the Federal Labor Law, there is the possibility of filing the written notice with the Labor Board. In the event of a dispute regarding an employee's dismissal, the burden generally rests with the employer to prove just cause as well as to prove the delivery of the termination notice.

If the employer fails to serve such notice or if the employer fails to prove the causes for termination, it is deemed unjust as a matter of law and the employer must reinstate the employee or tender severance pay. In the latter case, the severance pay will consist of:

a) Three months' salary, which must be calculated based on a daily integrated salary;

b) 20 days' salary for each year of service, which also must be calculated based on a daily integrated salary;

c) Seniority bonus equal to twelve days' salary per year of service plus a proportional part thereof if the employee worked for a period of less than one year. For calculation purposes the amount of salary to be used is capped to twice the general minimum wage in force at the place of rendering of services; and

d) Accrued benefits owed to the employee, such as Christmas bonus, earned and proportional vacations, vacation bonus, wages, etcetera.

Notwithstanding the foregoing, as a common practice in Mexico, in order to avoid the onus that will be on the employer to prove termination for just cause as well as delivery of the termination notice or; in those cases in which the employer does not have enough pieces of evidence to demonstrate cause for dismissal, employers could enter into a negotiation with the employee in order to pay him a percentage of his severance package.

Also, employment terminations could be documented as follows:

1. Employee may address to the company unilateral communication advising his voluntary separation (resignation letter). A receipt with the breakdown of the benefits that are being covered should also be collected upon delivery of the agreed amount.

2. A termination agreement may be executed between both parties; however, this document requires to be ratified personally by the parties with the Local Conciliation and Arbitration Board with jurisdiction over the place where the employee renders his/her services for the authority's approval.

**Instant Dismissal**

Please refer the Procedures for Terminating the Agreement section above.

**Employee's Resignation**

The Federal Labor Law sets forth the possibility for employees to terminate their employment unilaterally by resigning. However, under this scenario, they are only entitled to the earned salaries as of the last day of work, plus the benefits accrued during their employment.

**Termination On Notice**

Please refer to the Procedures for Terminating the Agreement section above.



**Termination By Reason Of The Employee's Age**

It is not possible to terminate an employment contract derived from the employees reaching certain age. Nevertheless, when an employee opts to retire, pursuant to the Social Security Law and, if applicable, the Pension Plan granted by the employer, the employment relation is deem terminated.

**Automatic Termination In Cases Of Force Majeure**

Force majeure (not attributable to the employer) could be a cause for temporary suspension of the employment relations.

**Termination By Parties' Agreement**

Please refer to the Procedures for Terminating the Agreement.

**Directors Or Other Senior Officers**

The same rules apply for all employees regardless of their position and whether they are directors or senior officers of the company.

**Special Rules For Categories Of Employee**

Special rules apply for specific employees, such as those who work in railroads, flight crews and others. However, such cases have to be analysed in a case-by-case basis in order to identify the specific requirements for each one of them.

**Specific Rules For Companies in Financial Difficulties**

Bankruptcy is a cause for collective termination of the employment relations, if the authority or the creditors determine the definitive closure of the company or the definitive reduction of the work. In this case, a notice shall be given to the Labor Board, for said authority to approve or disapprove the collective termination.

**Restricting Future Activities**

Restrictive covenants such as non-compete agreements/provisions are not regulated by the Federal Labor Law. However, pursuant to the Mexican Constitution, nobody can keep an individual from engaging a job as long as it is legal.

**Severance Payments**

Severance payments are comprised of:

a) Three months' salary, which must be calculated based on a daily integrated salary;

b) 20 days' salary for each year of services, which also must be calculated based on a daily integrated salary;

c) Seniority bonus equal to twelve days' salary per each year of service plus proportional part thereof if the employee worked for periods under one year. For calculation purposes the amount of salary to be used is capped to two times the general minimum wage in force at the place of rendering of services; and

d) Accrued benefits owed to the employee, such as Christmas bonus, earned and proportional vacations, vacation bonus, wages, etcetera.

### Special Tax Provisions And Severance Payments

Tax provisions applicable for severance payments are the same as any other payment made, in terms of income tax and social security contributions.

### Allowances Payable To Employees After Termination

Employers have no obligation to pay any allowance to employees after terminating their employment relation, except for the benefits accrued during the time they worked, or if the employees worked for more than one year, the proportional part of the last year of work.

### Time Limits For Claims Following Termination

Statute of limitation for employees to file a claim against a wrongful layoff is two months after the effective date of termination.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

On November 30, 2012 the Congress passed the amendments to the Federal Labor Law under which several changes were made to said legal statute. These are the most substantial changes made to this legislation since it was passed in 1970, and it comes more than a year after a fundamental amendment was made to the Mexican Constitution with regards to protection by the Government of human rights.

There are two basic objectives for these amendments: 1) to make sure every labor authority guarantees the observance and protection of human rights for employees, and 2) to update the employment relations in Mexico in accordance with the ever-changing labor market and the need to promote employment for recent college graduates without any work experience.

From a business perspective, the most relevant changes were made with regards to employment contracts, hiring through outsourcing, the possibility to pay salary for time unit, and reassurance on the employers' obligation to train their employees in order to increase the productivity at work.

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# Netherlands

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Almost all employment law matters have to be brought before a Cantonal Judge of one of the 10 district courts in the Netherlands. Disputes between a statutory director and a company have to be brought before the Civil Section of these district courts. The Works Council must go to the Enterprise Section of the Amsterdam Court of Appeal when it has a dispute with a company. Other different legal authorities who settle employment law matters are the National Ombudsman, the UWV and the Equal Treatment Commission.

### The Main Sources Of Employment Law

The main sources of employment law are European legislation, the Dutch Civil Code, collective bargaining agreements, the individual employment agreement, company rules and court decisions.

### National Law And Employees Working For Foreign Companies

In general Dutch law will apply to all employees physically working in the Netherlands. Parties can choose the law that governs their employment agreement. This means that both foreign employees working in the Netherlands and Dutch employees working abroad are, in principle, free to choose the laws of another jurisdiction to govern the agreement. A choice of foreign law cannot however set aside any mandatory provisions of Dutch employment law. It is good to realise that Dutch employment law has many mandatory provisions.

### National Law And Employees Of National Companies Working In Another Jurisdiction

When a Dutch employee is working in another jurisdiction it depends on the law of the jurisdiction he is working in whether it is possible to choose Dutch law to govern the agreement.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for an employment agreement to be in writing. There are however certain provisions that have to be in writing (see 'compulsory terms'). Furthermore the employer is required to provide the employee a written statement of particulars of certain terms of the agreement, not later than one month after the beginning of the employee's employment (see 'compulsory terms').

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide trial periods. But when parties agree upon a trial period it has to be in writing and there are mandatory requirements about the maximum duration of the trial period.

#### Hours Of Work

There are several mandatory requirements. Per shift a maximum of 12 hours applies, per week a maximum of 60 hours applies. An employee may not work every week this maximum number of hours. An average of 48 hours per week applies during a period of 16 weeks. A common full-time working week in the Netherlands is, depending on the industry, between the 36 and 40 hours.

#### Earnings

There are minimum wage restrictions which are dependant on the age of the employee. The minimum wage is reviewed annually. As of January 2014 the gross minimum wage for employees of 23 years and over is EUR 1,485.60 per month. There are also often collective bargaining agreements with minimum wage scales.

#### Holidays / Rest Periods

The minimum annual holiday for an employee needs to be the equivalent of at least four times the employee's usual working week. In addition there are also various free national holidays.

#### Minimum/Maximum Age

In principle the minimum age is 16, below which employees cannot agree upon an employment agreement without permission from the employee's statutory representative. Different rules (e.g. on working time) apply to children or young workers. There are no maximum age limits.

#### Illness/Disability

There are many mandatory requirements regarding illness and disability, e.g. about the right to continue payment of salary and the reciprocal obligations of the employer and the employee to reintegrate the employee in the employment process. An employer must continue to pay 70% of employees' salary up to a statutory cap during the first 104 weeks of illness. Most employers must, however, pay more than the statutory amount under individual employment agreements or collective bargaining agreements. It is common that employers continue to pay employees 100% of their actual salary during the first year and 70% of their actual salary during the second year. The reciprocal obligations to reintegrate the employee last until the employment agreement is terminated.

#### Location Of Work/Mobility

There are no mandatory requirements regarding the location of work. The location of work is part of the written statement the employer has to provide (see 'legal requirements as to the form of agreement'). When employees work at home the Working Conditions Act is applicable. The rules for the workplace at home however are less strict than the rules for the workplace at work.

#### Pension Plans

In general the employer is not obliged to provide the employee with a pension plan. This employer's freedom is however restricted in certain ways because the law can make it mandatory for the employer to provide one e.g. in case of an industry-level pension fund or when other employees of the employer do have a pension plan. When employees have a pension plan, there are a lot of requirements to provide employees with information about their pension.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

A range of "family-friendly" rights exist, including pregnancy leave and pay, maternity leave and pay, paternity leave and pay and adoption leave and pay. Employees who can satisfy the appropriate qualifying conditions for the right in question can enjoy, or can apply for, their statutory rights in this regard.

### Compulsory Terms

The provisions that have to be in writing if these provisions are desired, are e.g. a trial period, qualifying days in case of illness, a penalty clause, a non competition clause and the possibility to terminate the employment agreement for a definite period of time prematurely.

The terms that must be provided to the employee no later than one month after the beginning of the employee's employment includes the following: the names and residences of the parties, place(s) of work, job title/job description, the date when employment begins, the duration of the agreement, whether the employee will join a pension scheme, holiday entitlement, length of notice, the scales and intervals of pay, the hours of work per day or week, any collective bargaining agreements which apply. When the employee will work abroad these terms must be provided before the employee leaves.

### Non-Compulsory Terms

The employer and the employee are free to agree upon any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights or the relevant collective bargaining agreement.

### Types Of Agreement

Employment agreements exist in several different forms, e.g. indefinite period of time, definite period of time, full-time, part-time, on-call, transfer. The compulsory terms apply regardless of the type of contract contemplated. There are discrimination laws which prevent employees from being treated less favourably than other employees because of their working part-time or their working on an agreement for a definite period of time.

### Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied into the employment relationship because part of every employment agreement is that an employee has to behave as a "good employee". In addition to the implied duties, employers will often include in the employment agreement an express term regarding secrecy and confidentiality.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In general the employer owns the patent right for any invention that its employees make in the course of their employment. Employees are entitled to fair remuneration if their salary is not adequate compensation for the invention. If employees make an invention outside the scope of their employment agreements, the employer has no patent rights. A provision can, however, be agreed upon in the employment agreement specifying that the employer is entitled to patent rights for inventions that are in any way connected with the employee's work. Unless otherwise agreed, the employer is considered to be the author of literary, scientific or artistic works that the employees create in the course of their employment. Therefore the employer owns the relevant copyrights to these works.



### Hiring Non-Nationals

Employers are obliged to ensure that all employees are entitled to work in the Netherlands. Different requirements apply depending on the nationality/status of the individual concerned. Foreign employees need a work permit unless this employee has a residence permit in which is stated that the employee is allowed to work in the Netherlands. Citizens of the European Union or European Economic Area do not need a work permit. An employer will be liable to an administrative penalty if he employs someone who is not entitled to work in the Netherlands. This penalty is EUR 12,000 per person if the employer is a first time offender.

### Hiring Specified Categories Of Individuals

There are restrictions on the types of work that vulnerable groups (e.g. children and pregnant women) can be required to undertake.

### Outsourcing And/Or Sub-Contracting

When there is a transfer of undertaking the specific rules of the Dutch Civil Code apply. These rules are based on an European Directive. When there is a transfer of undertaking, employees who are working for the employer automatically transfer with the work and therefore becomes employees of the transferee. The employees must generally remain on exactly the same terms of employment as they enjoyed prior to the transfer (with the exception of pension arrangements, where there are special rules). Even changes which have been "agreed" by the employee will be voidable if they are changes which are "connected" to the transfer. Any dismissal held to be "connected with the transfer" is not allowed unless it can be proved that it is for economic, technical or organisational reasons entailing a change in the workforce.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employer and employee may agree to change the contract during the term of the employment agreement. When an employee does not agree with a change, it is in some cases possible to change the contract unilateral, e.g. when the employer has a weighty interest or for reasons of reasonableness and fairness.

### Change In Ownership Of The Business

When there is a change in ownership of a business, all employees automatically transfer to the new employer on the same terms and conditions. These rules apply also where only a specific part of a business changes ownership. When an employee unambiguously refuses to transfer to the new employer, the employment agreement ends automatically at the moment of the change of ownership. These rules apply when there is a change in ownership of the business arising from a contract, merger or division. These rules do not apply when there is a transaction of shares which does not result in a change of the employer.

### Social Security Contributions

There are compulsory social security contributions for both employer and employee.

### Accidents At Work

According to the Dutch Civil Code the employer is obliged to take such measures as may be reasonably be deemed necessary to prevent the employee from suffering damage in the course of his work. An employer shall be liable to an employee for any damage which the employee suffers in the course of his work, unless he shows that he took the necessary measures or that the damage was to a large extent the result of intent or deliberate recklessness on the part of the employee.

### Discipline And Grievance

Often there are rules about discipline and grievance in the applicable collective bargaining agreement and the company rules. The Dutch Civil Code does not contain specific rules about this. Both employer and employee have to act as a "good employer" and "good employee".

### Harassment/Discrimination/Equal pay

Employees are protected from discrimination on grounds of sex, age, sexual orientation, race, nationality, marital status, religion or belief, disability, part-time status and fixed-term status. The discrimination may be direct or indirect. Direct discrimination is mostly forbidden. Indirect discrimination is forbidden when there is no objective ground for justification for the discrimination. The sanction to infringe the prohibition of discrimination is nullity. To act in violation of the equal treatment legislation can be a wrongful act. In addition an employee cannot be dismissed because he invokes these provisions. Such a "victimisation dismissal" is voidable. There are no specific rules about harassment. It is part of the employer's duty to act as a "good employer".

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but some trades/professions impose their own standards/expectations.

### Offsetting Earnings

Except at the end of the employment agreement an employer may set-off his debt in respect of the remuneration only against specific claims of the employee such as the damages owed by the employee to the employer or the amount of any excess remuneration paid. No set-off may be applied against such part of the remuneration as cannot be seized by garnishment in the possession of the employer.

### Payments For Maternity And Disability Leave

The main rule is that an employee who has not performed the contracted work because he/she was prevented from doing so by sickness, pregnancy or confinement is entitled to at least 70% of his/her salary up to a statutory cap during the first 104 weeks. Most employers must, however, pay more than the statutory amount under individual employment agreements or collective bargaining agreements.



It is common that employers continue to pay employees 100% of their actual salary during the first year and 70% of their actual salary during the second year. When the employment agreement ends during this period the obligation of the employer to pay the salary ends at the same moment. Periods in which the employee has been prevented from performing his/her work by sickness, pregnancy or confinement shall be aggregated if they have followed one another at intervals of less than four weeks.

### Compulsory Insurance

Because employers have to act as a "good employer" they must take care for a proper insurance for the employees whose work may lead to a traffic accident (both accidents with motorized vehicles and non-motorized accidents).

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

An employer with 50 employees or more must establish a Works Council. The Works Council must have been given the opportunity to advise the company's management on any proposed decision involving important issues such as takeovers or seeking/granting substantial credit facilities. A company's management must also obtain its Works Council's prior consent on any proposed decision concerning certain important employment related issues such as rules relating to recruitment and dismissal. The Works Council should represent all the employees of the employer and consult with the employer. When there are less than 50 employees the employer can voluntarily decide to establish a Works Council. Members of the Works Council cannot be fired because they are a member.

### Employees' Right To Strike

There is no specific regulation under Dutch law which recognises the right to strike. The right to strike is therefore mainly governed by case law and the European Social Charter. The European Social Charter recognises the right to collective bargaining. When a collective action is covered by the European Social Charter this action is in principle legal. When substantial procedural rules have been neglected or when it is judged that the Trade Unions are acting in an unreasonable manner then the action is wrongful.

### Employees On Strike

For the employees who want to strike, the main rule is "no work, no payment" until the moment they are available for work again. When it is an organised strike they mostly get a payment from the Trade Union. For the employees who are willing to work, but can not do so because of the strike his/her right to payment depends on the nature of the strike. In general, the employer does not have to pay these employees in the case of an organised strike, but must pay these employees in the case of an unorganised strike. In general the employer can not fire an employee in the case of a legal strike. When the strike is wrongful this might result in a termination of the employment agreement.

### Employers' Responsibility For Actions Of Their Employees

When the employee causes damages while acting in the course of his/her employment, the main rule is that the employer is responsible for this unless the damages caused are a result of an intentional act or conscious recklessness of the employee.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

In general there are five ways for terminating the employment agreement: by operation of law, instant dismissal, by one of the parties giving notice, by mutual consent or by court decision.

### Instant Dismissal

The employer can terminate the employment agreement by instant dismissal in the event of an "urgent cause". This is the most severe way to terminate the employment agreement and can only be used if the employee is guilty of gross misconduct. The misconduct must be an urgent cause both in an objective and subjective way. When there is an urgent cause an employer must handle it without delay. As soon as it has become clear that there is an urgent cause, the employer has to dismiss the employee and tell him/her immediately what the reason is of the dismissal. All circumstances, also the personal circumstances of the employee, have to be considered when an instant dismissal is given.

### Employee's Resignation

The employment agreement can generally always be terminated by the employee's resignation. The statutory period of notice is one month, but the employment agreement or applicable collective bargaining agreement can stipulate a different period of notice.

### Termination On Notice

Before the employer can terminate the employment agreement by giving notice he has to obtain permission first from the UWV. The UWV will only grant permission if the termination is "reasonable". When this permission is given the employer can terminate the employment agreement by giving notice. The statutory period of notice is dependent on the period of continuous employment. If the period of continuous employment is less than five years, the period of notice is one month, if the period of continuous employment is between five and ten years the period of notice is two months, if the period of continuous employment is between ten and fifteen years, the period of notice is three months, if the period of continuous employment is over fifteen years the period of notice is four months. The employment agreement or applicable collective bargaining agreement can stipulate different periods of notice.



### Termination By Reason Of The Employee's Age

The employment agreement can be terminated due to the employee's age but only once the employee reaches the applicable retirement age. As of January 2014 the retirement age is 65 years and 2 months. When the employer does not use this moment to terminate the employment agreement the age of the employee can not be the reason of the termination at a later moment. When parties would like to continue their working relationship after the retirement age it is advised to terminate the employment agreement when the employee reaches the retirement age in a correct way and to consequently agree upon a new employment agreement for a definite period of time so the risks for the employer (e.g. to pay the employee's salary in case of illness) are calculable.

### Automatic Termination In Cases Of Force Majeure

In general there is no automatic termination of the employment agreement in cases of force majeure.

### Termination By Parties' Agreement

The parties are entirely free to agree upon termination on any grounds they desire. The termination of the employment agreement may however have major consequences for the employee. Not only does he/she loses his/her job and therefore income, there are also possible risks to the possibility to successfully apply for an unemployment benefit. Therefore there are several rules that protect the employee which apply when parties want to terminate the employment agreement by mutual consent. There must be a clear and unambiguous statement of the employee, the employer needs to investigate whether the employee understands that his/her consent to the termination is asked and the employer has to inform the employee correctly about the consequences of the termination agreement. When one of these criteria is not met, the employee can not be held to the termination agreement.

### Directors Or Other Senior Officers

When a managing director is appointed in accordance with the articles of association of the company, permission of the UWV is not required when the employer wants to terminate the employment agreement by giving notice. Furthermore there are no special rules which relate to the termination of a director's or other senior officer's employment. Main rule is that the end of the directorship automatically brings an end to the employment agreement.

### Special Rules For Categories Of Employee

There are no categories of employees to whom special rules apply, but for certain categories it is not possible to give notice of termination. These categories are e.g. works council members, pregnant women, sick and disabled employees during the first two years and employees during compulsory military service.

### Specific Rules For Companies in Financial Difficulties

When a company goes bankrupt the employees and the trustee can give notice of termination with respect to the statutory period of notice unless the employment agreement or applicable collective bargaining agreement stipulates a different period of notice The period of notice in the case of a bankruptcy is a maximum of six weeks. In case of bankruptcy the trustee can give notice of termination without prior permission from the UWV. From the moment of bankruptcy any claims by the employees against the company are estate debt. Bankruptcy may not be used to easily to terminate employment agreements and/ or to avoid severance payments. In case of bankruptcy and when the company forms part of the bankrupt estate the rules with regard to a transfer of undertaking as described above do not apply.

### Restricting Future Activities

It often happens that parties agree upon a non competition clause. Such a clause is only valid if it is agreed upon in writing with an adult who has reached the age of majority. The court may set aside all or part of such a clause on the ground that the employee is unfairly prejudiced by such clause having regard to the interest of the employer intended to be protected. The employer may not derive any right from a non competition clause if he is liable for damages on account of the way in which the employment agreement ended. If a non competition clause restrains an employee to a significant extent from working other than in the service of the employer, the court may always direct that the employer must pay damages to the employee for the duration of the restraint.

### Severance Payments

When an employment agreement is terminated by court decision due to changed circumstances, it may award the employee a severance payment. Severance payments are based on the age of the employee, the seniority and the specific circumstances of the case. There are no statutory rules for calculating severance payments but the court tends to use the "cantonal judge formula" which is A x B x C. Factor A is the number of weighted years of service. Factor B is the remuneration. Account shall be taken of the gross monthly salary and, at least, the fixed contractual components such as vacation bonus, a permanent 13th month, habitual overtime compensation and a permanent shift allowance. Factor C is the correction factor. The main rule is that when the reason of the termination is the fault of the employer C shall be more than 1, when the reason of the termination is the fault of the employee C shall be less than 1, when no party carries blame C shall equal 1. This formula also plays a big role when parties are trying to agree upon a termination by mutual consent.

### Special Tax Provisions And Severance Payments

As of January 2014 the Dutch government abolished the periodic payment entitlement exemption ('stamrechtvrijstelling'). An employee does not have the possibility anymore to structure payments in instalments in order to postpone tax payments.



### Allowances Payable To Employees After Termination

In general employers are not required to contribute to any allowances to employees after termination. In certain cases, e.g. when that is agreed upon or pursuant to a collective bargaining agreement, an employer has to pay contributions in addition to the unemployment allowance of the employee.

### Time Limits For Claims Following Termination

The time limits for claims following termination depend on the nature of the termination and the type of the claim, the limits can be two months, six months, five years or twenty years.

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# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Dutch law is considered to be "social law" which means highly protective for the employee, as the employee is considered to be the weaker party.

We stand on the eve of a radical change of the Dutch employment law. On 29 November 2013 the Minister of Social Affairs and Employment introduced the legislative proposal 'Werk en Zekerheid'. The Second Chamber of the Dutch Parliament approved the legislative proposal on 18 February 2014. A decision of the First Chamber is expected in the beginning of March 2014. If this proposal becomes law there will be various changes.

The most significant from an employment law perspective are the proposed changes with regard to:

- flexible work, for example that consecutive employment agreements for a definite period of time will be automatically deemed indefinite after two years (current law is three years); that an employer in the future should inform his employees at least a month before the end of the fixed term whether he wants to continue the employment agreement; that a trial period in an employment agreement for a definite period of six months or shorter is not allowed anymore and a non-competition clause is only rarely allowed in an employment agreement for a definite period of time (intended date of coming into force: 1 July 2014, and the intended date of coming into force of the new rule with regard to the consecutive employment agreements for a definite period of time: 1 July 2015);

- **the law of dismissal,** for example that an employer will no longer have free choice over which dismissal ground to pursue as this will depend on the reason(s) for the dismissal; that after parties agree a termination agreement, the employee has the right to reconsider this within two weeks without reason; that every employee who has been employed for two years or more will be entitled to a transitional allowance (up to a maximum of EUR 75,000 or one year's salary if higher) and under certain circumstances an additional allowance when the termination is the result of an imputable act of the employer (intended date of coming into force: 1 July 2015);
- **unemployment benefits,** for example that from 1 January 2016 the eligibility for unemployment benefits will decrease gradually from a maximum of 36 months to 24 months and that after six months someone has to accept almost every available job (current law is one year) (intended date of coming into force: 1 July 2015).

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# New Zealand

# New Zealand

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Employment Relations Authority and the Employment Court both have exclusive jurisdiction to determine employment relationship problems. There are limited rights of appeal to the Court of Appeal (on matters of law only) and the Supreme Court.

### The Main Sources Of Employment Law

Employment law obligations arise pursuant to legislation (particularly Employment Relations Act 2000, Holidays Act 2003, Parental Leave and Employment Protection Act 1987 and the Health and Safety in Employment Act 1992), contractual terms, case law or as a result of common law duties that apply to employment relationships.

### National Law And Employees Working For Foreign Companies

Generally, the applicable jurisdiction is that recorded in the relevant employment agreement. If the agreement is silent, the proper law of the contract is inferred from the circumstances, or, failing that, the system of law with which the transaction has the closest and most real connection. Thus, in some circumstances New Zealand law governs employment relationships where the employee works in New Zealand even if the employer is foreign.

### National Law and Employees from National Companies Working in Another Jurisdiction

An employment agreement may record the applicable jurisdiction.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Employment agreements must be written. An employment agreement between the employee and the employer is known as an individual employment agreement ("IEA"). An agreement between an employer and union is known as a collective employment agreement ("CEA"), which must cover two or more union members.

### Mandatory Requirements:

#### Trial Period

A trial period is not mandatory. If a trial period is included in the employment agreement, employers may dismiss a new employee during or at the end of a trial period. Such a trial period can be up to 90 days. The trial period must be agreed in writing in the employment agreement before the employment relationship begins. If the above conditions are met the employee will have no entitlement to bring a personal grievance against the employer for unjustified dismissal (they may however raise a personal grievance on other grounds during the trial period).

#### Hours Of Work

There is no statutory maximum on the number of hours that may be worked per week. Employees have a statutory right to request a variation to their contractual working hours if they have to care for another person.

#### Earnings

The government sets minimum wage rates annually (from 1 April 2014 the adult minimum wage will be $NZ14.25 per hour, and the new entrants (16-17 years old) and training minimum wage will be $NZ11.40 per hour). Employment agreements must record the wage/salary payable.

#### Holidays / Rest Periods

Employees are entitled to a minimum annual paid holiday of 4 weeks per year provided that the employee has completed 12 months continuous employment. 11 public holidays are observed in New Zealand each year.

Employees are entitled to statutory rest periods of 10 minutes and meal breaks of 30 minutes, depending on their work periods.

#### Minimum/Maximum Age

Age discrimination is prohibited. There is no minimum or maximum working age. However, young people aged less than 16 years cannot work after 10pm, before 6am or during school hours.

#### Illness/Disability

After 6 months continuous employment an employee is entitled to 5 days sick leave per annum. Discrimination on the grounds of disability is prohibited. There is no separate disability leave entitlement.

The Human Rights Act 1993 permits different treatment based on disability only where it is not reasonable to expect the employer to provide special services or facilities necessary to enable the employee to perform the duties of the position satisfactorily, or it is not reasonable due to risk of harm to that employee or others. These exceptions do not apply if the employer could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.

#### Location Of Work/Mobility

The place of work must be recorded in the employment agreement. Mobility clauses are permitted, subject to compliance with anti-discrimination provisions.

#### Pension Plans

There is an optional right for employees to join the KiwiSaver scheme. If an employee joins the KiwiSaver scheme the employer has to make contributions.

#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

Minimum statutory entitlements to maternity leave, partners leave, and parental leave apply. Employers have a statutory obligation to provide appropriate facilities and breaks to an employee who wishes to breastfeed. After 12 months employment, paid (by the government) maternity leave is up to 14 weeks; partner's leave is up to 14 days and unpaid leave is up to 52 weeks.

Compulsory Terms

An IEA must record the names of the parties, the employee's position and description of the work, work location, hours of work, wages/ salary payable, employee protection clause, a plain language problem resolution clause (in case of restructuring) and advice on Holidays Act 2003 entitlements.

A CEA must be signed by the union and employer, must contain a coverage clause, and clauses dealing with contracting out, problem resolution, variation and expiry. A coverage clause specifies the work that the agreement covers, whether by reference to the work or type of work, or employee or type of employee, or named employees.

Non-Compulsory Terms

Parties cannot contract out of minimum statutory rights but are free to agree on enhanced entitlements or other contractual terms.

### Types Of Agreement

The use of fixed term agreements is regulated. An employer must have a genuine reason for using a fixed term and the employment agreement must record when or how the employment will end and the reasons for it ending in that way. Failure to do so entitles the employee to elect permanent employment. Limiting or excluding statutory rights or establishing suitability for permanent employment is not a genuine reason. Other types of agreement include permanent, casual or part-time employment.

### Secrecy/Confidentiality

In the absence of an express term, a duty of confidentiality will be implied during employment to protect confidential information of the employer. Post employment, an implied term of confidentiality will only protect highly confidential information such as trade secrets.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Only true and first inventors or their assignees can apply for a patent so employers will need to get assignment from the employee in order to establish ownership of the invention.

Subject to any agreement to the contrary, where an employee makes, in the course of his or her employment, a literary, dramatic, musical or artistic work, the employer will be the owner of the work.

If the employee is the first owner of the copyright of the work, the employee may have moral rights to be identified as the author of the work and for the work not to be subjected to derogatory treatment.

### Hiring Non-Nationals

It is an offence for an employer to employ a person who is not legally entitled to work in New Zealand. Non-nationals intending to work in New Zealand need a visa entitling them to work for, at least initially, a specific period.



### Hiring Specified Categories Of Individuals

There are no specific rules about hiring specified categories of employees.

### Outsourcing And/Or Sub-Contracting

Duties to employees under the Employment Relations Act extend to "any person of any age employed by an employer to do any work for hire or reward under a contract of service". However, an employer's obligations occasionally extend further than this. Under health and safety legislation an employer owes duties to subcontractors in addition to employees.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Contractual terms cannot be unilaterally varied. Changes can only be made by agreement. All CEAs must contain a variation clause.

### Change In Ownership Of The Business

A two tier system of employee protection deals with continuity of employment if a business is restructured. A restructuring includes the sale, transfer, contracting out and, (in the case of vulnerable employees only) contracting in, or termination of a contract if the work continues to be carried out.

"Vulnerable employees", namely those working in the food catering and cleaning industries or in caretaking or laundry services, have statutory protection. These employees may elect to transfer to the new employer on the same terms and conditions of employment, with continuous service being recognised. Vulnerable employees may bargain with the employer about alternatives to transferring or redundancy entitlements. The rights of all other employees are governed by the mandatory employee protection provision in their employment agreement relating to negotiations between the employer and the new employer about the transfer of affected employees to the new employer. A change in ownership of the business by asset sale results in a technical redundancy. A transfer of shares only does not usually create a redundancy situation.

Employers have a duty of good faith to consult with employees over the proposed change of ownership before it occurs.

### Social Security Contributions

Employees are automatically enrolled in Kiwisaver when starting in new employment but they may opt out of the scheme. Kiwisaver is a retirement savings initiative and employers are required to contribute to each employee's Kiwisaver account at 3% of their gross salary.

### Accidents At Work

Under the Health and Safety in Employment Act 1992 work related accidents must be reported to the Department of Labour to investigate. An employer may be prosecuted for failing to take all reasonably practical steps to prevent an employee from suffering harm at work. Under the Accident Compensation Act 2001, the Accident Compensation Corporation provides personal injury cover to all New Zealand employees irrespective of where fault lies and employees are barred from bringing legal proceedings against the employer in respect of the personal injury.

### Discipline And Grievance

Personal grievances must be raised by the employee within 90 days of the action complained about arising. Common law rules of natural justice apply to disciplinary action.

### Harassment/Discrimination/Equal pay

It is unlawful for an employer to offer different terms or conditions of employment or to discriminate by reason of a person's sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, sexual orientation, refusal to do work likely to cause serious harm or involvement in the activities of a union. Sexual and racial harassment is prohibited. The Equal Pay Act 1972 specifically forbids sex discrimination in remuneration.

### Compulsory Training Obligations

There are no compulsory training obligations generally, but some trades/professions have entry and continuing training standards.

### Offsetting Earnings

A deduction from an employee's wage/salary requires the employee's prior written consent.

### Payments For Maternity And Disability Leave

The government makes maternity and disability payments. During parental leave all other entitlements, excluding wages and salary payments, continue. Also refer to the Parental Rights in section 2.

### Compulsory Insurance

Employers pay an Accident Compensation Corporation levy for workplace injury cover. See also Accidents At Work in this section.

### Absence For Military Or Public Service Duties

Members of the territorial forces and reserve forces volunteers in civil employment are protected from dismissal during periods of service and training.

### Works Councils or Trade Unions

Trade union membership is voluntary. Unions must be registered.



### Employees' Right To Strike

Parties to a CEA may take lawful strike action in relation to bargaining for a new CEA or over health and safety issues.

### Employees on Strike

Employees participating in a lawful strike action cannot be dismissed.

### Employers' Responsibility for Actions of their Employees

Employers may be vicariously liable for an employee's actions.

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# 04. Firing The Employee

### Procedures For Terminating the Agreement

Contractual termination procedures apply to a termination by the employer. Dismissals must be substantively justified and carried out in a procedurally fair manner. The question of whether a dismissal is justifiable is determined on an objective basis by applying the test of whether the employer's actions were what a fair and reasonable employer could have done in all the circumstances.

The exception is that it is permissible for dismissal to occur without justification at any time within an agreed trial period of up to 90 days, provided the dismissal occurs within any agreed contractual terms surrounding the trial period.

Prior to dismissing an employee on the basis of unsatisfactory work performance, the deficiencies must be disclosed to the employee and a reasonably specific and measurable improvement demanded of him or her within a reasonable period of time. At the end of this time, dispassionate consideration must be given as to whether enough progress has been made to avert dismissal.

A decision to make an employee redundant must be both genuine and procedurally fair. A redundancy will be genuine if it is made for valid commercial reasons.

### Instant Dismissal

An employee may be dismissed without notice for serious misconduct, which is conduct that fundamentally undermines the employer's trust and confidence in the employee. It will usually be appropriate to suspend an employee in the first instance in order to conduct a fair investigation into the serious misconduct prior to making a decision to dismiss the employee.

### Employee's Resignation

The agreement can be terminated by the employee by giving the notice stipulated in the agreement.

### Termination On Notice

Employers must give employees the notice period specified in the agreement. If the agreement provides, and only if, employers may make a payment in lieu of notice to an employee.

### Termination By Reason Of The Employee's Age

Age discrimination, including compulsory retirement (except in some very limited occupations) is prohibited.

### Automatic Termination In Cases Of Force Majeure

Frustration of contract rules applies to major events such as death or destruction of the workplace.

### Termination By Parties' Agreement

The parties are free to terminate the employment by mutual agreement.

### Directors Or Other Senior Officers

Directors' or senior officers' employment may be terminated in the same way as other employees. Dismissal will not end the employee's status as a director of the employer company.

### Special Rules For Categories Of Employee

There are no special rules for categories of employee, except in relation to 'vulnerable employees' as set out in Outsourcing And/Or Subcontracting in section 2 above.

### Specific Rules For Companies in Financial Difficulties

Various statutory regimes may be applied to an insolvent business, under which employees may become preferential creditors for wages, salary, redundancy compensation and other employment entitlements.

### Restricting Future Activities

A restraint clause that seeks to protect a legitimate propriety interest may be upheld provided that the restraint is no more restrictive than is necessary (in terms of geographical location, time, and duration) to protect the legitimate interest.

### Severance Payments

Contractual provisions apply. There is no statutory right to severance pay or redundancy compensation.

### Special Tax Provisions And Severance Payments

There is a special tax concession for some amounts paid in settlement of personal grievances, but otherwise severance payments are taxable.



### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances paid to employees after termination.

### Time Limits For Claims Following Termination

Personal grievance claims must be raised with the employer within 90 days of the problem arising. A personal grievance action must be brought within 3 years of the personal grievance having been raised.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Parties to an employment relationship have a statutory obligation of good faith which underpins the majority of all employment processes. In particular, it means that employers have to consult employees, and provide them with sufficient information to give informed feedback, before making any decision that affects continued employment, including redundancy.

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# Nicaragua

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## 01. General Principles

**Forums For Adjudicating Employment Disputes**

- Labor Judges
- The National Labor Tribunal of Appeals
- The Labor Ministry

**The Main Sources Of Employment Law**

- Law No. 185 of the Labor Code of the Republic of Nicaragua, published in the Official Gazette No. 205 of October 30, 1996, and Amendments.
- Law No. 290, Law of Organization, Competence and Procedures of the Executive, published in the Official Gazette No.102 of June 3, 1998 and its rulings (Decree 7198).
- Decree 25-2006. Reforms and Additions to Decree 7198.
- Law No. 442, authentic interpretation of the Art. 236 of the Labor Code, published in the Official Gazette No. 206 of October 30, 2002.
- Law No. 474 Reform Act Title VI Book One of the Code: "From Labor and Adolescents" published in the Official Gazette No. 199 of October 21, 2003.
- Law No. 618, General Law of Hygiene and Labor Security, published in the Official Gazette No. 133, of July 13, 2007 and its Rulings.
- Law No.274 Basic Law for the Regulation and Control of Pesticides, Toxic Substances and similar dangerous; Published in Official Gazette No. 30 of February 13, 1998.
- Law No. 664, General Law the Labor Inspectorate, published in the Official Gazette No. 180, of September 19, 2008.
- Law No. 625 Minimum Wage Law, published in the Official Gazette No. 120 of June 26, 2007.
- Law No. 516 Employment Rights Act Acquired, Published in the Official Gazette No. 11 dated 17 January 2005.

- Law No. 666 Law on Amendments and Additions to Chapter I of Title VIII of the Labor Code of the Republic of Nicaragua.
- Law Act No. 671 Addendum to Title VIII, Book I of the Labor Code of the Republic of Nicaragua, Act No.185, Labor Code.
- Law No. 763, Law of Rights of Disable Persons, published in Official Gazette No. 142 and 143, of year 2011.
- Law No. 456, Law of Additions to Law 185, Law of labor risks and professional diseases, published Official Gazette No. 133, of June 8, 2004.
- Law No. 621, Law of Access to public information, and its Rulings, published Official Gazette No. 118, of May 16, 2007.
- Law No. 787, Law of Protection of Personal Data, published Official Gazette No. 61, of March 3, 2012.
- Decree 7001. Decree that Approves Agreement 189 of OIT related to the domestic labour.
- Law No. 815, Labour Procedural Code (CPLN), published Official Gazette No. 229, of November 29, 2012.

### National Law And Employees Working For Foreign Companies

The statutory rights under national law will apply to all individuals physically working in the Republic of Nicaragua, regardless of their nationality, and regardless of the law governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under National Law will usually apply only when the employee is physically working within the jurisdiction of the Employment Tribunal. However, contractual law may still apply in appropriate cases.



# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

### Mandatory Requirements:

#### Trial Period

In contracts for an indefinite period, the parties can agree a trial period not exceeding thirty days during which either party may terminate the employment relationship without any liability to the same.

#### Hours Of Work

Subject to certain exceptions and shifts, labor law imposes a cap of 48 working hours per week. For night shifts, there is a maximum of 42 hours per week, and a limit of 45 hours per week applies for mixed shifts.

#### Earnings

There is a national commission that every six months reviews the minimum salary of each sector.

#### Holidays / Rest Periods

Every worker is entitled to enjoy a fortnight's rest and continuous way of paid vacation for every six months of uninterrupted work in the service of one employer.

#### Minimum/Maximum Age

The minimum age is 14 years. There are no maximum age limits

#### Illness/Disability

The labor law and other complementary legislation in this matter, set mandatory requirements relating to illness and disability that includes the right of the employee to receive compensation according to the professional risk that caused the illness or disability, from the National Institute of Social Security and the right to receive 60% of its salary from the Nicaraguan Institute of Social Security as long as their suffering takes place. The Employer's obligation is to maintain its registration at INSS otherwise the employer will have to assume all the expenses and the salary.

#### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

#### Pension Plans

The employer pays a share of 17% of the wage to the Nicaraguan Institute of Social Security. The employee pays 6.25% of its wage to the Nicaraguan Institute of Social Security.

#### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

The Labor Law of Nicaragua includes maternity leave and pay stipulations. The legislation also establishes some duties of the employer related to the conditions of rooms in the work place to be designated to the lactation of the employees who have just given birth. The legislation doesn't set regulations about paternity leave and pay, adoption leave and pay, parental leave and pay, or others family rights.

#### Obligatory Terms in a contract

The Labor Code specifies the terms that must be provided in a written contract, which are: the date and place of signature; the identity and address of the parties; description of activities and place or places where the work will be developed; the daily and weekly working hours; if the employment relationship is for a definite or indefinite duration; the wage, shape, and place of payment periods, and if it should be per unit time, per unit of task, commission or fees for participation in the sales or profits and any other salary supplement.

#### Non-Compulsory Terms

The labor law says that the employer and the employee are free to add other terms in addition to the provisions specified in the written contract, provided that these stipulations could not be less favourable than the legal rights set in the labour law.

### Types Of Agreement

All employment relationships are eventually contractual in nature, whether or not the terms have ever been reduced to writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term (time), or contract without a term. The compulsory terms apply regardless of the type of contract contemplated.

### Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied in the employment relationship.

During the employment relationship an employee is under an implied duty to respect the confidentiality of the employer's commercial and business information. Therefore, information that an employee is expressly told is confidential, and obviously is confidential, is protected without covenant during employment.

After employment, only trade secrets are protected by the implied duty of confidentiality. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The labour law doesn't specify rules to determine ownership of Intellectual property rights that appear during the employment relationship. However, the intellectual property legislation in Nicaragua in its article 15, establishes that the economic right arising from a contractual relationship are property of the employer without prejudice of the moral rights of the employee. Article 16 establishes that where the invention is conceived by an employee who has not been hired to create an invention or a patent, the employee who made the invention, shall notify his employer in writing of such invention. If after a two month period the employer has not expressed its interest in such invention, the employee will keep its rights to the invention, otherwise the employer will be the owner of the invention but the employee is entitle to a monetary compensation from the employer. In either case, if the parties cannot reach an agreement regarding the monetary compensation for the invention, the judicial authority will do so.

In both cases, an Assignment of Rights from the employee to the employer will be necessary to prove the ownership and register such invention under the employer´s name at the IP Registry in Nicaragua.

### Hiring Non-Nationals

The labor law adopts the rule of equal treatment among foreign and national citizens, and equal wages for equal work. Nevertheless, the employer is required to recruit at least ninety percent of Nicaraguan workers. The Ministry of Labor in some justified cases could relax this restriction to certain employers for technical reasons and expand the number of non-nationals that can work for the employer.



### Hiring Specified Categories Of Individuals

There are not any restrictions on hiring specified categories of individuals.

### Outsourcing And/Or Sub-Contracting

There are specific rules relating to outsourcing, in sourcing and where there is a change of outsourced service provider.

Where an outsource relationship has been established, the outsource company is the employer and is responsible to provide the employees with all necessary payments and all benefits.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with common law contractual principles, an employer may not change any terms of the employee's contract without the employee's consent and if changed cannot be to reduce the benefits the employee currently has.

### Change In Ownership Of The Business

When there is a change in ownership of a business (except a change merely in the shareholding ownership), all employees are automatically transferred to the new employer on the same terms and conditions. These rules apply also where only a specific part of a business changes ownership.

There are obligations imposed on both the old and the new employers to consult with the affected employees though elected representatives, or a recognized Trade Union, prior to the transfer taking place (and financial penalties for failure to do so).

### Social Security Contributions

Employers and employees are required to make social security contributions. Employees must pay 6.25% of salary. Employers are also required to contribute towards allowances payable to employees during their employment (17%).

### Accidents At Work

Employers have a common law duty to have regard for the safety of their employees. Employers are also responsible under common law for accidents caused by the acts of their employees where the employees were acting in the course of their employment. It is compulsory for the employer to enrol all the Employees to the Nicaraguan Institute of Social Security so the employees are covered in such cases and to protect the employers from any potential claim by employees in this regard.

### Discipline And Grievance

The current mandatory statutory steps require the disciplinary or grievance to be detailed to the other party in writing. The employer must hold an investigatory meeting and confirm the findings of the investigation to the employee in writing. The employee must be offered the opportunity to appeal the findings.

### Harassment/Discrimination/Equal pay

Employees are protected from discrimination on grounds of sex, age, sexual orientation, marital status, and race.

### Compulsory Training Obligations

There are no compulsory training obligations for employees but training may be required for the position that the employee will be applying.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts but only with the employee's consent.

### Payments For Maternity And Disability Leave

Employees that are pregnant have the right of 12 weeks of rest, which have to be paid by the employer. Four weeks will be rest before the expected week of childbirth, and the other 8 weeks will be rest after the birth. In case of multiple births, the employee has the right of 10 weeks of rest. The medical assistance will be carried by the social institution that protects the maternity rights.

With regard to disability, if the employee is not enrolled in Social Security, the employer will be forced to pay an amount of money in concept of compensation, which will be determined by the authority according to the circumstances of the case and considering if the disability is partial or complete. If the employee is enrolled in Social Security, this institution has to pay the compensation as well as the pension for the disability.

### Compulsory Insurance

There is no obligation of compulsory insurance for workers (only to register the employee at the Institute of National Security).

### Absence For Military Or Public Service Duties

In Nicaragua there is no compulsory military service. Military service was suspended indefinitely by Decree-Law 2-90, signed by Mrs. Violeta Barrios de Chamorro, on April 25th, 1990. Later the military service was entirely repealed and abolished by the Amendments to the Constitution published in August 2003, which in Article 96, first paragraph states: "There will be no compulsory military service and it is prohibits all forms of forced recruitment to join the Army and National Police Nicaragua".



In Nicaragua there is not a specific Act that set the right of employee to time off work for certain public duties and services. The only provision regarding is article 17 subsection j of Labor Code, which sets that it is an obligation of employers to grant workers without deductions from wages and benefits the time required for them to go to the judicial authorities, when they have been legally elected as member of a jury.

### Works Councils or Trade Unions

The constitution of a Trade Union does not need previous authorization of the employer, but in order to obtain legal personality, the Trade Union must be registered in the Record Book of Trade Unions of the Ministry of Work. To do so, a Trade Union must first make a charter and statutory rules that have to obey the requirements of the Work Code. The minimum of members required for a Trade Union are 20.

An employee who is a member of a Trade Union has certain rights in relation to his employer. The most important of these rights is the fact that an employee member of the Board of Directors of the Trade Union (9 members) cannot be fired by the employer unless there is a just cause duly authorized by the Ministry of Work. This right includes the benefit of the leader not to be moved to another position without his authorization. A Trade Union member has the right to take time off with pay for Trade Union duties. In addition, Trade Union members can access all the benefits of a collective agreement.

### Employees' Right To Strike

The Work Code of Nicaragua recognizes the right for employees to strike. The strike, to be legal, has to be properly authorized by the Work Ministry. The legislation requires that the strike has the purpose to improve and protect the rights of the employee and the conditions of work and the benefits included in the collective agreement.

For a strike to be declared and recognized as legal, a strike tribunal (tribunal legal de huelga) must be appointed, which is comprised of a representative from the employer, a representative of the Ministry of Labor, and one representative of the employees.

This tribunal is required to commence a meeting of all the company´s employees, in which the tribunal presents to the workers the proposal from the employer. At the same meeting the tribunal will confirm if all employees still want to go to a strike. If more than half (half plus one) of the members of the employees agree to go to strike, the tribunal will declare the strike as legal if not, it will be declared as illegal.

According to the law a strike cannot last more than 30 calendar days. After that period the tribunal will be obligated to call to an arbitration procedure.

### Employees On Strike

The legal strike suspends the obligation of the employees to provide service

work in the businesses as long as the strike takes place. Employers can not dismiss employees or extinguish rights and obligations arising from the employment relationship. The Work Code also expresses that the employers cannot hire new employees during the strike. Strikes do not affect in any way the employees who are receiving wages or compensation for accidents, maternity, vacation or other similar causes.

If the strike is declared legal, the employee will be obligated to pay all the salaries to the workers in strike. If it is declared illegal, the Ministry of Labor will notify the employees that they have a 48 hours period to reintegrate themselves back to their normal activities and work.

### Employers' Responsibility For Actions Of Their Employees

According to the rules of the analogy and the contractual liability set in the Civil Code of Nicaragua, employers are responsible for the damages caused by their employees, if they were acting in the complete course of their employment.

## 04. Firing The Employee

### Procedures For Terminating the Agreement

These are the ways to terminate an Agreement:

Fair Cause: When the worker has committed a serious offence as established in the Labor Code or in the Internal Rulings of the Company. This cause has to be approved by the Ministry of Labor according to the procedure established.

Without Fair Cause: The employer may dismiss an employee at any time and pay by law the indemnification established in article 45 of the labor code.

When the employee is working under a contract with fixed time: The employee can be dismissed at any time alleging fair cause having the previous approval from the Ministry of Labor or when the contract is due.

In all cases the termination of an employment contract must comply with the terms of the contract. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair dismissal.

### Instant Dismissal

The employer could lay off the worker without any explanation or reason, as long as the employer pays the worker's compensation according to law.



### Employee's Resignation

The agreement can generally always be terminated by the employee's resignation. The worker must have worked at least 15 days in order to qualify for their final liquidation according to law.

### Termination On Notice

The parties can terminate the agreement on notice, pursuant to the terms and conditions stipulated in the employment contract or the law.

### Termination By Reason Of The Employee's Age

The employment can be terminated due to the employee's age but only once the employee reaches the applicable retirement age. The employee has the option to retire or continue working.

### Automatic Termination In Cases Of Force Majeure

The contract will be deemed "frustrated" where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace by earthquake, etc, are examples.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire, based on the free will of the parties to contract and good faith.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of directors or other senior officer; in case of termination each individual labor contract applies.

### Special Rules For Categories Of Employee

There are no categories of employees to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous rules for protection from unfair dismissal. Pregnant women enjoy greater protections and benefits according to Nicaraguan law.

### Specific Rules For Companies in Financial Difficulties

There are special rules which apply if a company is in financial difficulty. Companies must supply the final settlements for workers. In the event of liquidation, with the sale of the assets of the company, it will pay the final liquidations of the employees first.

### Restricting Future Activities

In Nicaragua there aren't any rules about the restricting of future activities.

### Severance Payments

The severance pay for workers should include vacation, seniority compensation. This compensation is paid by the employer. According to Nicaraguan law this compensation is as follows:

- One month salary for the first three years of work;
- 20 days of salary for the fourth, fifth and sixth year of work.

### Special Tax Provisions And Severance Payments

The final settlement includes salary for the days worked of the month and not paid, vacations not taken and not paid, proportional 13th month salary and indemnification for years worked. With exception of the proportional 13th month salary and the indemnification for years worked, the rest of the items must pay income tax and Social Security.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

If the worker has been fired without a fair cause, the worker has the right to apply for reinstatement within 30 days after termination, in order to be able to call company before the Labour Court.

If the court declares reinstatement, in cases of positions of trust, there will be no reinstatement but the payment of an indemnification from 2 to 6 months of salary.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The Labour Code of the Republic of Nicaragua is characterized by protecting social benefits and for labour laws that guarantee minimum wages, which can be improved by great employment relationships, employment contracts or collective agreements. The rights granted in this code are inalienable.

After the renewal of three contracts for a specified period, the employee becomes permanent.

The employee accrues 2.5 vacation days per month. National holidays are in addition to those days paid with full salary.

In Nicaragua, the national workers of embassies or international organizations are protected by Nicaraguan labour law.

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# Sultanate Of Oman

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Ministry of Manpower ("MOM") has exclusive jurisdiction for most employment claims. If a settlement is not reached at the MOM within two weeks from the date of a complaint having been lodged with the MOM, then the dispute may be referred to the Omani Courts. There are no fees for filing an employment dispute.

### The Main Sources Of Employment Law

There are three main sources of employment law in Oman which include the Oman Labour Law, Royal Decree No.35/2003 as amended (the "OLL"), ministerial decisions issued by the MOM and Royal Decree No. 28/2013 (the "Civil Transaction Law") all of which are applicable to the private sector employees. Additionally, expatriate employees coming into Oman would also be subject to the Expatriates Residence Law of Oman RD 16/95.

### National Law And Employees Working For Foreign Companies

In accordance with the OLL statutory rights will apply to all employees physically working in Oman regardless of their nationality.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The Social Insurance Law (Royal Decree 72/1991) provides that Omani nationals working in the GCC region may continue to make 6% monthly contributions to the Public Authority for Social Insurance in that country and the employer who hires the Omani national in that GCC country must also contribute 10% to the Public Authority for Social Insurance in that country. Upon termination of employment the Public Authority for Social Insurance in the country of which the Omani national was working will transfer that amount contributed by the employer and the Omani national to the Oman Public Authority for Social Insurance.

An Omani employee who is hired abroad may contribute to the Social Security System that was established by Royal Decree No.32/2000 as amended (the "Social Security Law"). Article 2 of the Social Security Law allows an Omani employee working abroad to choose to contribute a portion of his/her monthly salary to the Social Security System to cover for old age, death and disability.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

Article 21 of the OLL requires the employment contract to be in writing with at least one copy to be in Arabic.

## Mandatory Requirements:

### Trial Period

The OLL entitles an employer to impose a one-time probationary period of three months on the employee commencing from the date of the employee commencing his/her employment with the employer. If a probationary period is implemented it must also be provided for in the employment contract.

### Hours Of Work

Subject to certain exceptions, the maximum time an employee may work per day is 9 hours including lunch with a maximum of 45 hours per week.

### Earnings

The current minimum salary for an Omani employee is RO 325 per month inclusive of a minimum of RO 225 for a basic salary and RO 100 as allowances. The current minimum salary for an expatriate engaged for a non-professional position is RO 60 unless a higher amount is required by agreement between the employee's country of origin and Oman. There is no minimum salary for an expatriate employed at a professional level.

### Holidays / Rest Periods

An employee is entitled to 30 calendar days leave per year. Additionally, subject to certain exceptions an employee is also entitled to two days of rest after five continuous days of work. Royal Decree No. 27/2006 designates the minimum holidays to include:

1. Commencement of Hijra Year: 1st of Muharram
2. Birthday of the Holy Prophet: 12th of Rabi Al Awwa
3. Ascension of the Holy Prophet: 27 of Rajab
4. Renaissance Day: 27 July
5. National Day: 18th and 19 of November.

The above holidays are in addition to Eid Al-Fitr and Eid Al-Adha. The Minister of the MOM will declare the days off for both Eids.

### Minimum/Maximum Age

The minimum age for employment is 15 and maximum age is 60.

### Illness/Disability

The OLL permits an employer to terminate an employment contract if the employee is unable to perform his/her duties because of a disability. Additionally, the OLL requires an employer with fifty or more employees to hire a person with special needs who is able to undertake work for which the employer has a vacancy.

### Location Of Work/Mobility

Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

### Pension Plans

Omani private sector employees contribute to a national pension plan operated by the Public Authority for Social Insurance. The Omani employee contributes 6% of his/her basic salary per month and the employer contributes 10% of an employee's salary. There is no statutory pension plan provided for expatriate employees. However, expatriate employees are entitled to an end-of-service gratuity.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

A female employee is entitled to 50 days maternity leave that include pre and post delivery with full salary. There is no paternity leave or leave for adoption.



### Compulsory Terms

The terms that must be included in the employment contract include the name and address of the employer, name and date of birth of the employee, his/her qualifications, address, nationality and position to be occupied, the type of work he/she will be doing and the duration of the employment contract, the employee's basic salary, allowances and any other benefits provided for under the terms of employment, and the method and time of payment for the agreed wage.

The employment contract may also have notice periods of not less than thirty days and any other particulars to be specified by the law such as annual leave.

### Non-Compulsory Terms

The employer and employee are free to agree on any other terms in addition to the compulsory terms, provided that these terms are not less than those provided for in the OLL.

## Types Of Agreement

The OLL recognised both limited period contracts and unlimited period contracts. The maximum period for a limited period contract is five years.

## Secrecy/Confidentiality

An employee is required to maintain confidentiality with respect to any information made known to it during the course of his employment whilst employed with his employer and after termination.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Subject to certain restrictions the Civil Transaction Law permits an employer to enter into an agreement with an employee whereby an employee is prohibited from taking any intellectual property developed by him/her while working for the employer.

## Hiring Non-Nationals

The OLL permits an employer to hire expatriates after fulfilling all requirements of the OLL. The requirements include applying to the MOM for a labour permit to bring expatriate employees into Oman and certifying that the expatriate hired meets the qualifications of the position for which such employee is being employed.

## Hiring Specified Categories Of Individuals

All employers in Oman are required to hire Omani employees to the maximum extent possible. Additionally, the MOM designates an Omanisation percentage (the maximum amount of Omani employees that an employer is required to hire) that an employer is required to reach. An employer may be denied a labour permit to bring expatriate employees if the employer has not reached its Omanisation quota.

## Outsourcing And/Or Sub-Contracting

The OLL is silent on outsourcing.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

An employer may not change any terms of the employee's contract without the employee's consent.

### Change In Ownership Of The Business

When there is a change in ownership of a business all employees are automatically transferred to the new employer on the same terms and conditions. Employees are allowed to refuse to transfer to the new employer. However, if they do they will be deemed to have resigned and will not be entitled to any compensation (unless the refusal relates to a failure to maintain the same terms and conditions after the transfer).

### Social Security Contributions

Please see pension plans above.

### Accidents At Work

The OLL requires an employer to acquaint its workforce before they are employed with the hazards of their occupation, and the protective measures which must be adopted. Employers must also take all necessary precautions to protect employees during their work from injury to their health and potential dangers of operating machinery.

A decision by the MOM sets out the general precautions for occupational safety and health protection which must be complied with in all places of work. These precautions include safety, lighting and ventilation precautions, air circulation, drinking water, lavatories, the extraction of dust and smoke, places to sleep and preventative measures against risk of vocational diseases. It requires an employer to inform the potential employee about the hazards of the occupation and the precaution necessary to complete the work safely. Additionally, an employer must provide its employees with the necessary equipment to protect against health hazards and any dangers of the work.

Accordingly, the employer is required to provide protective clothing and equipment. The employer is not permitted to impose on its employees, or deduct from their wages, any amounts to meet the cost of implementing such precautions. The MOM may appoint inspectors to oversee the employer's implementation of safety standards. These inspectors may recommend that the MOM issue a warning to the employer for non-compliance and ultimately close of the establishment if precautions are not implemented. An employer must also provide suitable first aid and medical facilities to the work force at the place of work. Further, an employer must conduct medical tests on a periodical basis to employees exposed to vocational disease. There is no requirement for an employer to provide long term or workers compensations for accidents at work for expatriates. The Public Authority for Social Insurance provides for workers compensation and long term disability payments to Omani nationals.



### Discipline And Grievance

The OLL permits an employer to implement a grievance procedure. If an employer has a grievance procedure in place the OLL requires an employee to first complete the process of the employer's grievance procedure and if his/her claim is not address or he/she is not happy with the outcome of the claim the employee may then lodge a claim with the MOM.

### Harassment/Discrimination/Equal pay

Royal Decree 101/1996 (the "Basic Law of Oman") states that every citizen has the right to pursue the profession he chooses within the limits of the law. Such stipulation would include men and women. It is not permitted to impose any compulsory work on anybody except by virtue of a law and only for rendering a public service and in return for a fair remuneration. Further the OLL provides that women workers shall be subject to all provisions of law regulating the recruitment of workers without discrimination, in case of similar work.

### Compulsory Training Obligations

The OLL permits an employer to require an employee to train to improve his skills and experience professionally, however, an employee is not entitled to receive training from an employer.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts. However, the employer may only make a deduction from the employee's wages if it is required or permitted by a statutory or contractual provision; or the employee has given his prior written consent to the deduction.

### Payments For Maternity And Disability Leave

A female employee is entitled to 50 days maternity leave with full salary covering pre and post delivery. The female employee is entitled to maternity leave only three times with the same employer. An employee is entitled to sick leave of up to ten weeks in one year during the sick leave the employee is to be paid as follows:

- first and second week: full pay;
- third and fourth week: 75% of pay;
- fifth and sixth week: 50% of pay; and
- seventh to the end of tenth week: 25% of pay.

An employee is not entitled to sick leave, unless the employee's sick leave is proven by a medical certificate. The OLL is silent on disability leave. However, an employer is permitted to terminate an employee if an employee is unable to perform his/her duties because of a disability.

### Compulsory Insurance

Whilst the OLL does not specifically place an obligation on an employer to provide medical care insurance, it does, however, require the employer to provide medical facilities and incur the cost of the treatment for all its employees covering everything with the exception of dental, ophthalmic and maternity treatment. Article 33 does not distinguish between Omani and expatriate staff. The Article further provides that if an employee is treated in a Government or a private hospital the employer shall incur the cost of treatment, medicine and in patient care at the hospital in accordance with the regulations and financial rules applicable to such hospitals without prejudice to the provisions of the Social Insurance Law. It is to be noted that Government hospitals provide medical care and treatment for Omani nationals free of cost.

### Absence For Military Or Public Service Duties

The OLL prohibits the deduction of an employee's salary if that employee is absent due to being called to court to testify as a witness. The OLL is silent on absence for military or public service duty although at the current time there are no military or public service duties.

### Works Councils or Trade Unions

The OLL recognises the right of employees of an organisation to form a labour union with the objective of protecting their legally prescribed rights and or representing them in all matters pertaining to their employment. Additionally, the OLL requires that once a labour union has been established and there is a right to strike to force a collective negotiation between the employer and the employees on strike. To reach a peaceful resolution a collective negotiation within a company having a labour union may be conducted between the employer and representatives of the labour union. Absent collective bargaining the labour law does not require the employer to negotiate with an employee through a representative of the labour union.

### Employees' Right To Strike

In order for a union to undertake a legal strike it must first inform the employer of the intent to strike, in writing three weeks prior to the strike. The notice to strike must contain the causes of the strike and the demands of the workers. A copy of the workers intention to strike must be provided to the MOM or any of its directorates in the governorates or regions.

### Employees On Strike

An employee has the right to a peaceful strike in order to improve the terms and conditions of work. However, prior to staging a strike, the employee must follow the rules stated above regarding a legal strike.

### Employers' Responsibility For Actions Of Their Employees

The Civil Transactions attributes civil liability on the employer based on the actions of its employees if (i) the issued work led the employee to inflict such damage and/or (ii) if the act which took place comes within the employee's job duties or because of them.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

The OLL requires the party terminating the employment contract to provide the other party with a minimum thirty days notice or payment in lieu for those paid monthly and fifteen days notice or payment in lieu for those paid otherwise unless a longer period is agreed upon in the employment contract.

### Instant Dismissal

The OLL permits an employer to terminate an employment contract without notice or end-of-service gratuity if an employee commits any of the following:

- assumes a false identity or forges documents to obtain employment;
- commits a mistake that causes the Employer to incur substantial financial losses;
- violates written health and safety regulations that are posted conspicuously in the workplace and the employer has previously warned the employee in writing;
- during any one year the employee is absent from work without a reasonable cause (i) for more than ten days and the employee has provided written notice to the employee after the fifth day of absence, or (ii) for more than seven consecutive days;
- the employee discloses confidential information regarding the employer;
- a final judgment is issued against the employee for;
  - an offence that involves breach of honour or trust, or
  - a felony committed in the workplace or during the course of work;
- the employee is intoxicated with drugs or alcohol during work hours; or
- the employee assaults (I) a manager, or (II) a co-worker at work
- commits a grave breach of his obligations to perform his work as agree upon his employment contract.

### Employee's Resignation

An employee is permitted to resign after proving an employer with a minimum thirty day notice or payment in lieu of the notice for those paid on a monthly basis and fifteen days or payment in lieu for those paid otherwise unless a longer period is agreed upon in the employment contract.

### Termination On Notice

The OLL requires the party terminating the employment contract to provide a minimum thirty days notice period or payment in lieu for those paid on a monthly basis and fifteen days notice or payment in lieu for those paid otherwise unless a longer period is agreed upon in the employment contract.

### Termination By Reason Of The Employee's Age

The OLL permits an employer to terminate an employee who reaches the age of sixty.

### Automatic Termination In Cases Of Force Majeure

The OLL permits termination of the employment contract upon the death of an employee. With the exception of liquidation, bankruptcy or any other final authorized closure of a business in which the employees' services may come to an end, the employees would be entitled to claim compensation for loss of employment from the trustee-in-bankruptcy or liquidator of the concerned company. However, in all other instances, the employee's contract of employment shall continue to remain in force and the successor body shall remain jointly liable with the previous employer for the discharge of all obligations towards an employee as prescribed by law subject to rights of priority in respect of an employee's claim.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire. Where the parties agree to terminate the employment, they are not required to obtain the courts' or regulatory body's approval before the termination is effective.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director's or other senior officer's employment.

### Special Rules For Categories Of Employee

The OLL provides special rules for juvenile and women employees. Juvenile workers are limited to working six hours per day and may only work between the hours of 6 AM to 6 PM. Subject to certain exceptions women workers may not be required to work between the hours of 9 PM to 6 AM. An employer is prohibited from terminating a female employee who is absent due to an illness attributable to pregnancy or delivery.

### Specific Rules For Companies in Financial Difficulties

All employees are automatically dismissed when an employer is liquidated, bankrupt, or has an authorized final closure of a business. The dismissed employees would be entitled to claim compensation for loss of employment from the trustee-in-bankruptcy or liquidator of the concerned employer. However, in all other instances, the employee's contract of employment shall continue to remain in force and the successor body shall remain jointly liable with the previous employer for the discharge of all obligations towards an employee as prescribed by law subject to rights of priority in respect of an employee's claim.



### Restricting Future Activities

The Civil Transaction Law permits an employer and employee to enter into an agreement for the employee not to compete with the employer or engage in employment which competes with that of the employer after termination of the employment contract. However, for the agreement to be valid it must be limited in time, place and type of work that is prohibited.

### Severance Payments

Normal contractual principles apply to severance payments included in the contract.

In cases of redundancy and unfair dismissal the Courts of Oman may issue a judgment to reinstate the employee to his/her former position or compel the employer to compensate the employee with a salary of not less than three months based on the employee's last drawn salary. Additionally, the compensation may also include any end-of-service benefit and any other allowances applicable to the employee. In determining the quantum of compensation payable, the Courts of Oman may take into account the length of the employee's employment, the employee's age, the likelihood that the employee will find alternative employment in the foreseeable future, the employee's qualifications, and the any other pre-existing terms of employment.

### Special Tax Provisions And Severance Payments

Subject to the restrictions of the expatriate's country of origin tax rules, expatriates in Oman are not required to pay taxes. Nationals are also not required to pay taxes, however they do contribute 6% of their basic salary per month for a retirement benefit administered by the Public Authority for Social Insurance.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

An employee has fifteen days from the date of his/her termination to file a claim at the MOM.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

All employers in Oman are required to hire Omani employees to the maximum extent possible. The MOM designates an Omanisation percentage (the maximum amount of Omani employees that an employer is required to hire) that an employer is required to reach. An employer may be denied a labour permit to bring expatriate employees if the employer has not reached its Omanisation quota.

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# Pakistan

# Pakistan

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

In Pakistan, the protection of workers' rights, the settlement of industrial disputes, and the redress of workers' grievances are governed by various laws, regulations and policies of Pakistan. Generally, disputes are initially brought in front of the Works Council. If disputes are not resolved at that level, they are brought before the Labour Courts of Pakistan.

### The Main Sources Of Employment Law

Employment law in Pakistan is governed by legislation, regulations and common law. Pakistan is a common law jurisdiction with specific influences inherited from India at the time of the Indo-Pak subcontinent. The laws have evolved through a continuous process to meet the socio-economic conditions, state of industrial development, population and labour force explosion, growth of trade unions, level of literacy and the government's increased commitment to development and social welfare.

Under the Pakistan constitution, labour was regarded as a "concurrent subject", which means that it was the responsibility of both the federal and provincial governments. However, for the sake of uniformity, laws were enacted by the federal government, stipulating that provincial governments may make rules and regulations of their own according to the conditions prevailing relating to the particular province. After 18th Amendment in the Constitution of Pakistan, Labour Laws have fallen into the exclusive domain of the Provincial Assemblies, but the previous Federal Laws, which were permanent laws, would continue to remain in force until altered, amended or repealed by the competent authority, as per Article 270-AA of the constitution.

At present, the provinces have not yet replaced the federal statutes with newer enactments and the federal statutes are being applied for the time being. There are multiple statutes governing employment law in Pakistan, the two primary pieces of legislation are (collectively, "National Law"):

- The Industrial & Commercial Employment (Standing Order) Ordinance (VI of 1968) for regulating the relationship at to Provincial level (the "Provincial Law"); and
- The Industrial Relations Act 2012 (The Federal Law), that is applicable in Islamabad Capital Territory and in trans-provincial establishments and industries. The provinces have also evolved similar laws at their level.



### National Law And Employees Working For Foreign Companies

All individuals physically working in Pakistan, regardless of their nationality or the origin of their contract fall under the statutory provisions of National Law.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under National Law will usually apply only when the employee is physically working within the jurisdiction.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

The Federal Law was enacted in 1968 adopted by the provinces to address the required terms of the relationship between employer and employee and the contract of employment. The Provincial Law applies to all industrial and commercial establishments throughout Pakistan within the respected provinces.

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide trial periods when hiring new employees, but it is common in practice to do so.

#### Hours Of Work

Another piece of legislation called the Factories Act limits adults to a 48-hour working week on the basis of a 6 to 8 hour work day. The only exception is seasonal businesses, which operate no more than 180 days a year. In those businesses (e.g. timber-related work in mountainous areas), employees are limited to a ten-hour working day or a 60-hour working week. Many foreign companies observe a five-day week of 42-45 hours. Government offices have a five-day working week of 42 hours. There is no discrimination about working hours on the basis of gender.

There should be intervals for rest or meals of at least 1 hour during a working day and special reduced working hours are generally observed in certain manufacturing, commercial and service organizations.

#### Earnings

Although the rates can differ depending on the wage of the employee, the general minimum wage for unskilled workers in Pakistan is PRs 10,000 per month according to the West Pakistan Minimum Wage for Unskilled Workers Ordinance.

#### Holidays / Rest Periods

There is a compulsory weekly rest time. Employees are entitled to 14 days of paid leave plus 10 days of casual leave during each calendar year.

#### Minimum/Maximum Age

Article 11(3) of Pakistan's constitution expressly prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous employment.

There is no legal retirement age in the private sector and workers retire according to company policy, which usually ranges from 55 to 60 years of age and from 15 to 24 years of service.

#### Illness/Disability

A worker is deemed to have completed a period of 12 months continuous service in a factory notwithstanding any interruption in service brought about by sickness or any other reason. Employees are entitled to 16 days sick or medical leave on half pay in any one year of employment.

#### Location Of Work/Mobility

Every employer in an industrial or commercial establishment is required to issue a formal appointment letter. It is mandatory to stipulate the place of work in each labour contract. Employers cannot request the employees to move to a different location unless it is set out in the labour contract.

### Pension Plans

Most government jobs are covered by un-funded pensions - current employees will be paid pensions through tax revenues. Some private sector employees in provinces are paid pension under Employees Old Age Benefit Act 1976, a Federal enactment.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

While article 37 of the Constitution makes reference to maternity benefits for women in employment, there are two central enactments; one federal and the other provincial, providing maternity benefits to women employed in certain occupations. The Maternity Benefit Ordinance places restrictions on the dismissal of a woman during her maternity leave. There are no rights to paternity or adoption leave.

### Compulsory Terms

The terms of employment need to be provided to the employee within 3 months after the employment commences.

This includes the following details that form the substance of the contract: the names of the parties; the date when employment begins; the scales and intervals of pay; the hours of work; holiday entitlement; provisions relating to sickness or injury; provisions relating to pensions; place of work; length of notice or anticipated fixed term; job title/job description; any collective agreements which apply; certain information regarding grievance and disciplinary procedures. For employees posted abroad for more than 1 month, additional information is required (e.g., the currency in which remuneration is to be paid, any additional remuneration or benefits to be provided and the terms and conditions relating to the return to Pakistan).

### Non-Compulsory Terms

Any terms that interfere with the substance of the contract will be void. Otherwise the employer and employee enjoy the freedom to enter into terms at their own discretion.

## Types Of Agreement

All agreements are contractual in nature, whether or not the terms have ever been recorded in writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term, variable, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated.

## Secrecy/Confidentiality

It is the duty of the employee to respect the confidentiality of the employer's commercial and business information, without any specific covenant.

After employment finishes, only trade secrets are protected by the implied duty of confidentiality. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment.

In addition to the implied duties, employers will often include in the employment contract an express term specifying the type of information that is a trade secret, and therefore protected, to prevent future disclosure. They may also include restrictive covenants as a means of protecting future confidentiality.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

There is a specific statutory provision which applies to the determination of ownership of IP rights. This statute is effective in the absence of precise contractual terms.



## Hiring Non-Nationals

Pakistan places no restrictions on employing non-nationals and foreign companies may appoint non-national citizens as chief executives in Pakistan. Companies that want to employ non-nationals must first seek permission from the government's Board of Investment. This is normally just a formality and usually takes no more than 2 to 3 weeks.

## Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the type of work that vulnerable groups like children and pregnant women can be required to undertake.

## Outsourcing And/Or Sub-Contracting

This is governed by contractual terms between the parties.

# 03. Maintaining The Employment Relationship

## Changes To The Contract

The contractual nature of the employment relationship means that the employer is restricted from making any amendments to the terms of the contract without the consent of the employee; the change may either be express or implied.

## Change In Ownership Of The Business

Although employees generally have the discretion to choose if they want to work for the new owner, when there is a change in the ownership of the business the employees also commonly pass under the change.

## Social Security Contributions

Social security contributions are required in order to cover the healthcare requirements of full-time employees and their families and to provide financial assistance in the case of employee sickness and employment injuries. The employer's contribution is governed by the Provincial Law.

## Accidents At Work

The Workmen's Compensation Act applies broadly to labourers' compensation for injuries resulting from on-the-job accidents. Employers are liable if incapacity lasts beyond a minimum of 7 days.

### Discipline And Grievance

A worker may bring a grievance relating to any right provided under any law, award or settlement to the notice of the employer in writing, either directly or though the employee's representative at the work place. To be effective, the employee must deliver the notice within 1 month from the day on which the grievance arose.

If the employer fails to communicate a decision about the grievance within a specified period or if the worker is dissatisfied with the decision, the employee may take the matter to the labour court within a period of 2 months.

There are no provisions relating to discipline in the labour law.

### Harassment/Discrimination/Equal pay

Article 38 of the Constitution protects employees from discrimination on the grounds of race, creed, caste, gender, age, sexual orientation or, marital status. In this connection the Federal Government has enacted The Protection Against Harassment of Women at Work- place Act 2010.

Article 38 of the constitution provides for equal pay between men and women.

### Compulsory Training Obligations

There are no compulsory training obligations placed on either the employers or employees.

### Offsetting Earnings

It is common practice for employers to offset an employee's earnings against his/her debts. The deduction is made from the employee's wages if there is a statutory or contractual right to do so.

### Payments For Maternity And Disability Leave

The Maternity Benefit Ordinance stipulates that upon the completion of 4 months employment or other qualifying period, a female worker may have up to 6 weeks pre-natal and post-natal leave during which she is paid a salary drawn on the basis of her most-recent pay. The ordinance is applicable to all industrial and commercial establishments employing women, excluding the tribal areas.

In case of a disability, the employee is entitled to leave of absence on production of a medical certificate. However, the employee is not entitled to any payment other than the 16 days' sick pay referred to above.

### Compulsory Insurance

Employers are required to maintain insurance under approved supervisions against liability for bodily harm or disease contracted by the employees during the course of employment.

### Absence For Military Or Public Service Duties

If an employee is required to participate in compulsory military or public service, the employee is generally entitled to return to the same position following the completion of such service, but they are not paid while they are on such leave.



### Works Councils or Trade Unions

Under Article 3 of the Federal Law, workers as well as employers in any establishment or industry have the right to establish and to join associations of their own choice. Both workers' and employers' organizations have the right to establish and join federations and confederations and any such organization. Federations and confederations have the right to affiliate with international organizations.

### Employees' Right To Strike

If dispute settlement proceedings before a conciliator fails and no settlement is reached and the parties have not agreed to refer their dispute to an arbitrator, the workers retain the right under section 35 of the Industrial Relations Act 2012 (the Federal Law) to go on strike providing due notice to their employer. Employees must give the employer 7 days notice and the employer has the right declare a lock-out after such period.

### Employees On Strike

In the case of non-compliance by the workers of an order of the Labour Court, the Labour Court may pass orders of dismissal against the striking workers or cancel the registration of the trade union that committed such an act.

### Employers' Responsibility For Actions Of Their Employees

Employers are generally liable under the doctrine of vicarious liability for negligent misconduct of its employees performed during the course of employment.

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## 03. Maintaining The Employment Relationship

### Procedures For Terminating the Agreement

Pakistan labour laws establish procedures for terminating employees, although unions (especially in the public sector) can effectively resist lay-offs. Generally, the services of a full-time worker cannot be terminated for any reason other than misconduct unless one month's notice (or wages in lieu thereof) has been furnished by the employer. One month's wages are calculated on the basis of the average wage earned during the last three months of service. Other categories of workers are not entitled to notice or pay in lieu of notice.

### Instant Dismissal

The employer can instantly dismiss an employee for misconduct. Examples of misconduct include prolonged absence without permission, negligence at work, wilful insubordination or disobedience, theft, fraud or dishonesty in connection with the employer's business or property.

### Employee's Resignation

The employee has the right to resign, subject to the terms of the employment agreement.

### Termination On Notice

Either the employer or the employee may terminate employment upon one month's notice or (for an employer) granting one month of salary.

### Termination By Reason Of The Employee's Age

There is no legal retirement age in the private sector. Workers may be required to retire according to the company's policy, which usually ranges by age from 55 to 60 years and by years of service from 15 to 24.

### Automatic Termination In Cases Of Force Majeure

The contract will be deemed "frustrated" where intervening events make its continued performance impossible e.g. death of the employee or complete destruction of the workplace. However, such instances are rare.

### Termination By Parties' Agreement

Parties are free to mutually terminate an agreement to employment. They do not need the consent of the courts unless there are exceptional circumstances.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director's or other senior officer's employment. In the case of a statutory director (or other company officer) termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end.

### Special Rules For Categories Of Employee

A few laws treat women employees differently - maternity leave and prohibitions against working at night or underground. Otherwise, employment laws generally treat all employees equally.

### Specific Rules For Companies in Financial Difficulties

There are special rules which apply if a company is in financial difficulty. If a company goes into liquidation, all employees are automatically dismissed. Any claims by the employees against the company are as unsecured creditors. If a company goes into administration, the administrator has discretion to decide whether or not to "adopt" the employees' employment contracts. The administrator must decide whether or not to "adopt" the employee within a specified time period. If the employee works for longer than the specified time period, the administrator loses the right to terminate that employment contract.



### Restricting Future Activities

Clauses that attempt to restrict the future activities of an employee are generally contrary to public policy and therefore unenforceable. However, the courts will uphold restrictions if they are drafted sufficiently narrowly. Such restrictions must be designed to protect a 'legitimate business interest' of the employer and they should be no broader than is necessary to protect those interests. Further, they must be clear and reasonable in time and area. Typical clauses include those designed to restrict an employee from joining a competitor (or setting up in competition), from soliciting business from/dealing with certain customers or from enticing other employees to leave.

### Severance Payments

Under the Provincial Law, a worker whose employment has been terminated for any reason other than misconduct is entitled to severance pay or a "gratuity" equivalent to 30 days' wages for every completed year of service or any part thereof in excess of 6 months. A pension may be substituted for any gratuity.

### Special Tax Provisions And Severance Payments

All employment payments are subject to standard taxation.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Under the Provincial Law, the time limit for claims following termination is restricted to 3 years from the occurrence of the cause of action.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

- The National Law is not widely known or enforced.
- In addition to the National Law, the employee unions play a significant role in protecting the interests of the employees.

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# Panama

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Special Labour Jurisdiction is comprised of:

- The Conciliation and Decision Boards that have jurisdiction to hear labour lawsuits for unjustified dismissal, domestic workers lawsuits and lawsuits where benefits up to the sum of US$1,500.00 are claimed.
- Labour Courts that have jurisdiction to hear labour lawsuits that are not under the jurisdiction of the Conciliation and Decision Boards.
- Ministry of Labour and Labour Development has jurisdiction to hear lawsuits to determine the minimum legal wage or conventional, lawsuits regarding the interpretation or validity of the clauses of a Collective Bargaining Agreement, and lawsuits regarding the breach of the procedure established by law to execute dismissals due to economical reasons.

### The Main Sources Of Employment Law

The sources of Labour Law of the Republic of Panama are: the Constitution, the Law (Labour Code, Supplementary Laws and other rules of law with equal or inferior hierarchy), the International Treaties ratified by the Republic of Panama, the Collective Bargaining Agreement, the Internal Labour Regulations, as well as jurisprudence, custom and usage of the company.

### National Law And Employees Working For Foreign Companies

Every person, natural or juridical, companies, concerns and establishments that are in or that are established in the territory of the Republic of Panama, including the foreign companies that operate in Panama and their local employees are bound to the Panamanian labour legislation.

### National Law and Employees from National Companies Working in Another Jurisdiction

Panamanian labour legislation is primarily territorial. If the employee renders services for a Panamanian company established in other jurisdiction, the Panamanian labour laws shall not be applied.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The labour contract shall be in writing, excluding the few exceptions expressly provided by law. In the absence of a written Labour Contract, the facts or circumstances alleged by the employee that should be evidenced in said contract shall be presumed as true (except there is proof to the contrary).

## Mandatory Requirements:

### Trial Period

When the rendering of the service demands certain special competence or skill, the employer may include in the Labour Contract a trial period of up to three months, where any of the parties may terminate the labour relationship without any liability.

### Hours Of Work

The Labour Code divides the day into two long working periods: daytime period, that goes from 6:00 a.m. to 6:00 p.m. and night period, that goes from 6:00 p.m. to 6:00 a.m.

In turn, the Labour Code provides three kinds of working hours, namely: daytime work hours that are fulfilled entirely during the daytime period and its maximum duration is eight hours; mixed work hours which include working hours in both periods, but no more than three hours during the night period and its maximum duration is seven hours and thirty minutes and the night work hours which include more than three working hours in the night period and its maximum duration is seven hours.

### Earnings

The salary may be agreed for tasks or pieces (piecework wage) or by time unit (monthly, bimonthly, week, day and hour) and the employer is obliged to guarantee the employee a salary not inferior than the legal minimum wage.

Currently, the minimum wage per hour in Panama City ranges from US$2.38 to US$.3.00 per hour.

### Holidays / Rest Periods

In Panama, the following are national holidays and/or national days of observance: January 1st and 9th, Tuesday of Carnival, Holy Friday, May 1st, November 3rd, 5th, 10th and 28th and December 8th and 25th. For all the legal effects they are considered paid days of rest.

### Minimum/Maximum Age

Minors under 14 years cannot work in Panama.

### Illness/Disability

From the beginning of the labour relationship, the employee shall start to accrue a sick leave fund at the ratio of twelve hours for each twenty-six worked days or eighteen days per year.

### Location Of Work/Mobility

The workplace constitutes an essential element in every labour relationship and therefore is the reason why it must be expressly set forth in the Labour Contract. The geographic mobility is only valid if you have the employee's consent and it does not imply deterioration for him.

### Pension Plans

They constitute benefits that the employer may offer or voluntary implement in benefit of its employees. Nevertheless, they are not mandatory.

### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

There is no labour privilege for the male employees; on the other hand, the pregnant employees are protected against the direct action of dismissal of their employers during the pregnancy, during the maternity leave and until 1 year starting from the date in which the employee returns to work after childbirth. During all these periods, the employees can only be dismissed with justified cause and by means of a prior judicial authorization.



### Compulsory Terms

The Labour Contract must compulsorily contain the following information: name, nationality, age, sex, marital status and personal identification certificate number of the employee; name of the persons who live with and depend on the employee; specific determination of the work or services agreed; place where the service shall be rendered; Labour Contract duration; the salary, form, pay day and place; work schedule; place and date of execution and the signature of both parties.

### Non-Compulsory Terms

The employer and employee may subscribe all those agreements that neither infringe the rules of the Labour Code, nor affect or deteriorate the labour rights and conditions of the employee.

## Types Of Agreement

The Labour Contract may be entered into for a definite period, for a specific work or for indefinite period. Likewise, in the Labour Contract, the parties may establish different work hours, provided that the hour limits established in the Labour Code are not exceeded.

## Secrecy/Confidentiality

The employee is obliged to refrain from disclosing to third parties the technical, administrative and commercial secrets of the employer, unless prior authorization is given. If the employee does not comply with this obligation, he may be dismissed with justified cause, without the right to receive compensation.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

The Labour Code establishes three classes of inventions during the labour relationship, namely; company inventions that are the ones that dominate the procedure, the equipments, the technology, the facilities and other elements of the employer; such inventions shall be property of the employer.

The inventions of services are those executed by the employees specially hired for researching, studying and obtaining them; such inventions are property of the employer, but the inventor shall be entitled to have his name recognized as the author of the invention.

The free inventions are those where the force of ingeniousness of the employees dominates; such inventions shall belong to their makers.

## Hiring Non-Nationals

The Labour Code only allows the hiring of foreign employees in a proportion that could not exceed 10% of the company personnel and 15% if dealing with technical foreign employees or specialists.

## Hiring Specified Categories Of Individuals

There are some work restrictions for women and minors in unhealthy activities and in the case of minors in night time activities and places where alcoholic beverages are sold.

### Outsourcing And/Or Sub-Contracting

The Labour Code allows the operation of companies engaged in providing their own employees to render services to other companies for temporary periods that do not exceed two months. In these cases, whoever receives the services of these employees shall be jointly responsible with the employer company, for the salaries and other labour benefits of these employees.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

The parties may make modifications to the Labour Contract, provided that such changes neither affect nor deteriorate the labour rights and conditions of the employees.

### Change In Ownership Of The Business

By express provision of the Labour Code, the employer substitution shall not affect the existent labour relationships in prejudice of the employees. The substitute employer is obliged to respect the seniority and all the other labour conditions that the employees enjoyed while they worked for the employer that was substituted.

Likewise, the employer that was substituted shall be jointly responsible with the new employer for the labour obligations that arise before the substitution date and up to one year term counted from the written formal notification date of the substitution to each one of the employees of the employer that was substituted.

### Social Security Contributions

The employer must make monthly contributions to the social security system in a proportion equivalent to 12.25% of the total of the salaries paid to its employees within the month in question. On the other hand, the employees contribute in a proportion equivalent to 9.75% of their corresponding monthly salaries.

### Accidents At Work

The employers have the legal obligation of protecting all their employees against eventual labour accidents; for such purposes, the employer must affiliate their employees to the Program of Professional Risks of the Social Security Agency and make monthly contributions to this program in a proportion that fluctuates between 3 to 7% of the total of the salaries paid to its employees within the month in question, depending on the level of risk of the activity that the employer carries out. Likewise, the employer must implement all those professional risks prevention measures that are ordered by the competent authorities.



### Discipline And Grievance

The employer must impose disciplinary sanctions to its employees that go from reprimands and admonishments (verbally and in writing), up to labour suspension for three days without the right to salary enjoyment. Every employer with more that ten employees must have an internal labour regulations approved by the Ministry of Labour and Labour Development to impose disciplinary sanctions to their employees.

Sanctions of pecuniary nature are not permitted.

### Harassment/Discrimination/Equal pay

The Labour Code establishes as just cause for dismissal the commission of sexual harassment acts. On the other hand, a number of legal rules have been issued tending to avoid labour discrimination for reason of sex, age, religion and disability.

Likewise, the Labour Code establishes the principle of equal wage for work performed on identical conditions of seniority, efficiency, position and hours of work.

### Compulsory Training Obligations

There are no legal provisions governing this matter.

### Offsetting Earnings

It is permitted that the employer offsets the debts of the employees through monthly discounts to the wages of the latter, which may not exceed the 15% of the gross wage of the employees, and provided that they so had previously authorized and in writing.

### Payments For Maternity And Disability Leave

Every employee in state of pregnancy is entitled to enjoy a paid license during six weeks prior to childbirth, and the eight weeks thereafter. This leave, in principle, is paid by the Social Security Agency.

For disability leave once the employee has exhausted the disability leave fund, the responsibility to pay the absences due to disability of the employees is assumed by the Social Security Agency.

### Compulsory Insurance

The employer is obliged to affiliate its employees to the system of social security, within the six working days following the commencement of the labour relationship.

### Absence For Military Or Public Service Duties

Public service intervening, the employer is obliged to grant license without pay to its employees for the performance of a public service, for a term of not less than six months nor greater than two years.

### Works Councils or Trade Unions

A minimum of forty employees is required to form a union, at the same time that the Law allows the formation of company unions, whose members work, all, for the same employer, as well as the formation of industrial unions, whose members work in diverse companies, all engaged, in the same economic activity.

Labour legislation establishes that at every company having twenty or more employees, a Workers' Committee must be functioning, comprised by equal number of representatives of the employees and of the employers, who may discuss disciplinary matters, claims from any of the parties, and matters related to the productivity of the company.

### Employees' Right To Strike

The strike is a right converted into constitutional rank, but requires that the employer and the union representing its employees had exhausted the previous conciliation proceeding established in the Labour Code.

### Employees on Strike

Employees on strike may not be dismissed by their employer. Under specific circumstances strictly contemplated in the Labour Code, the employer may be legally obliged to recognize and pay the salaries during the execution of the Labour Contract.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

The Labour Code contemplates formal requirements and exact procedures for the termination of the Labour Contract.

### Instant Dismissal

The employer may dismiss instantly and unjustifiably all those employees with less than two years of service, with the only obligation of paying them the compensation, labour benefits, and one month of salary in concept of notice.

Being employees with more than two years of service, the employer may dismiss all those employees who incur in the justified causes of dismissal strictly classified in the Labour Code. The dismissal must be notified in writing, clearly describing the conditions of mode, time and place related to the supposedly fault committed by the employee.

### Employee's Resignation

The resignation of the employee is valid provided it is in writing and duly confirmed (sealed) before the Ministry of Labour and Labour Development. The employee is under the obligation to notify the employer of his decision of waiving the work post, with fifteen days in advance.



### Termination On Notice

Being employees with less than two years of continued services, the employer may announce to the employee his decision of dismissing him with thirty days in advance and thus avoiding to pay the notice (one month of salary).

### Termination By Reason Of The Employee's Age

The Labour Code does not contemplate this possibility. Age per se does not constitute cause for dismissal of the Labour Contract.

### Automatic Termination In Cases Of Force Majeure

Where a Force Majeure situation entails as a necessary, forthwith and direct result, the definite suspension of the activities of the employer, the latter may dismiss justifiably its employees.

### Termination By Parties' Agreement

Termination on mutual agreement is valid provided that it is in writing and does not imply resignation of rights on the part of the employee.

### Directors Or Other Senior Officers

These are governed by the same rules which govern the termination of the labour relationship for the rest of the employees of the company.

### Special Rules For Categories Of Employee

Only for the union directors and representatives, as well as for the pregnant employees, a special rule or requirement is established, which consists in the need to have a prior judicial authorization in order to dismiss this category of employees.

### Specific Rules For Companies in Financial Difficulties

The companies that are going through financial difficulties may request the authorization for dismissal before the Ministry of Labour and Labour Development; if the employer manages to prove the financial cause that brought the requested dismissal, he may dismiss their employees, but he shall be obliged to pay them a complete compensation.

### Restricting Future Activities

This matter is not regulated by the Labour Code.

### Severance Payments

In the event of terminations without a justified cause, the employer must pay the employee its severance pay and its retroactive wage payments, plus its acquired labour benefits. If the termination is with justified cause, the employer is obliged only to pay the acquired labour benefits of the employee.

### Special Tax Provisions And Severance Payments

The first US$5,000.00 of compensation is exempt from income tax; thereafter, there is an additional deduction equivalent to 1% per each year of complete service. Neither the compensation nor the seniority premium pays social security.

### Allowances Payable To Employees After Termination

There is no obligation for the employers relating to this matter.

### Time Limits For Claims Following Termination

The employee has two months to sue the employer for unjustified dismissal, starting from the dismissal date.

Regarding the claim of salaries and other labour benefits, the limitation term is one year starting from the date of termination of the labour relationship.

The claim of overtime expires five years after the date in which the right of payment arose, except if when dealing with employees in a position of trust, in whose case the limitation term is three months only.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

In the Panamanian labour legislation it is understood that a labour relationship exists when a personal service is rendered under conditions of legal subordination or of economic dependence.

Therefore, in our labour legislation, the supremacy of the principle of reality prevails by virtue of which the material reality of the facts prevails over the written agreements.

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# Paraguay

# Paraguay

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Labour Tribunal ("ET") has exclusive jurisdiction for all labour claims. It is composed of the First Instance Court, Court of Appeals and Supreme Court of Justice.

### The Main Sources Of Employment Law

Paraguay is a civil law jurisdiction. In the Paraguayan Constitution there is a specific chapter which refers to the prevailing labour rights and the general principles governing labour relationships. The basic principles contained in the Paraguay Constitution include right of employment; no discrimination, women employment, women and minor employment, working days and vacations, employee´s benefits, social security, the right to work in a dignified and equal manner; indemnification minimum wage declared by law; right to strike and collective bargaining.

The Labour Code, Law No. 213 published in 1994 (Codigo Laboural, the EC) and the Labour Procedural Code Law, No. 742/61 govern the majority of both: substantive and procedural matters related to labour relationship.

Other sources below are Collective bargaining agreements (Convenios colectivos de trabajo or CBA's) agreements between the employer and employee, general principles of labour law and customs in workplace. None of them may stipulate conditions below the ones established in havor of the employee in the Constitution and Labour Code; they can only modify to the extent that it improves the employee's position.

The labour contracts that are originated between a firm and the employee are ruled by the Labour Code. Said contracts can be either written or verbal. The lack of any of these formalities does not prevent that these contracts are not ruled by the Code.

### National Law And Employees Working For Foreign Companies

The territorial principle governs labour matters in Paraguay and, therefore, any employee working in Paraguay is subject to Paraguayan labour law notwithstanding the employee's nationality, where the employee was first hired or where the employment contract was entered into or signed.



### National Law And Employees Of National Companies Working In Another Jurisdiction

Our law establishes that all contracts signed by Paraguayan citizens in order to perform services in other jurisdictions must be approved and registered by the Administrative Authority of Labour and proven by the Consul of the Nation of the country whereby the employee must perform his work.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

The contracts can be, either, written or verbal. If the payment is more than the applicable legal minimum wage, the contract must be written and there should be as many copies of the same as the number of parties.

On this note, please bear in mind that verbal contracts are generally used whenever the work of the employee is temporal, not permanent.

### Mandatory Requirements:

#### Trial Period

The time frame of the trail period varies according the type of employee. Please note as follows:

a) Thirty working days for the domestic work and not qualified employee.

b) Sixty working days for the qualified employee and apprentices.

c) Being the case of technical employee highly specialized; the parties could convene in a period different from above, according to the work to be performed.

During this period, either party can end the contract without assuming any responsibility. Likewise, during this period, the employee will have all the rights established in the law, except for prior notice and dismissal compensation.

#### Hours Of Work

According to the Article 194 of the Labour Code, the standard time of the daily office work cannot exceed eight hours per day or forty eight hours per week, unless the work is related to special cases anticipated.

Likewise, the working hours cannot exceed seven hours per day nor forty two hours per week if the same is perform during the night.

There is a specific regime for minor´s working hours. Section 123 of the Labour Code prohibits work of minors between 12 and 15 for more than four hours per day and 24 per week and between 15 and 18 for more than six hours per day and 36 hours per week.

#### Earnings

The salary can be stipulated freely; however it cannot be lower than the applicable legal minimum wage. However, there are some exceptions to this rule for certain types of employees, e.g. domestic employees.

The work can be paid in time frames (monthly, quarterly, weekly, daily or per hour); or in work units (pieces, assignments or part-time); or with commissions over the sales or payments made to the employer.

The salary must be paid in the legal currency and the employee cannot resign it.

#### Holidays / Rest Periods

According to the Labour Code, the employees have the following rest periods:

- Rest periods during the working day.
- Daily rest upon ending the daily work.
- Weekly rest which traditionally is for Sundays, unless agreed for another day.
- National and Religious Holidays.
- Vacations.

### Minimum/Maximum Age

Section 119 prohibits work of minors younger than fifteen years of age, whereas section 120 establishes an exception which establishes that minors under1 5 and above 12 will be entitled to work in places where are primarily occupied by relatives of the employer, whenever the work performed do not attempt against their life, health or moral of the minors.

Our law does not mention a maximum age; nonetheless all workers above 60 years old are entitled to retire if desired.

### Illness/Disability

An employee who is ill or disabled and covered by the health insurance license cannot be fired. During the period of illness or disability the social security system is obliged to pay wages.

### Location Of Work/Mobility

The location of work must be duly determined in the contract.

The employer will be obliged to pay the employee for the mobility round trip expenses, if the employee has moved in order to perform his work.

If the employee is hired to work in another city, the employer must cover all the expenses of the mobility, and other expenses related to the employee's family.

### Pension Plans

Please note that our Labour Code does not mention the pension plans.

The Law Nº 17071/1943, whereby the Social Security System was created, mentions two types of pensions:

- Disability Pension: all workers are covered and will receive a pension when suffering an illness or accident at work.
- Retirement pension: all workers above 60 years old are entitled to a retirement pension, as long as they do not have a disability pension. (Later on, the Law N º 430-73, which regulates the Social Security system, states that the worker must be 60 years old and fulfill as minimum twenty five years of services at his work in order to be considered as an ordinary retirement. If he fulfilled fifteen years at work, he will also be entitled to an extraordinary retirement).

The contribution of the employer or employee, during his months or years at work, made to the Social Security System will be considered as pension.

### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

The parental rights are protected by our Constitution, especially the maternity rights. Now, if any risk of danger for the woman or son, the mother cannot provide services or perform duties during the pregnancy or lactating period, also, the mother cannot work in night shift at industries, commercial establishment or services, after 10 PM.

Upon notification to the employer of the woman's pregnancy and, whilst the employee is on maternity license, notice of dismissal and dismissal are considered null.

The pregnant employee will have no less than12 weeks for maternity license once the child is born.

Likewise, our Constitution establishes the right for paternity, although no legislation has regulated this matter.

Moreover and in order to support the family, the employer is obligated to pay an allowance to the employee considering the number of children the employee has.

### Compulsory Terms

If the contract is written, the same must contain the names of the parties who are entering the agreement, age, domicile, nationality, type of work that the employee must perform, the working hours, benefits that the employer will provide to the employee, salary, method of payment and other clauses applicable.

### Non-Compulsory Terms

The employer and employee are free to stipulate clauses which they believe are appropriate for the type of work.

However, it is established in the Labour Code that no employee may waive or limit any right to which he/she is entitled under any law, professional statute, collective bargaining agreement or individual labour agreement and if he/she does so, even by mutual consent, such waiver or limitation is not valid or enforceable.



## Types Of Agreement

All employment relationships are considered to be contractual, whether or not it is formalized in written.

Please find below the types of agreements considering the different criterions:

- Agreement
  - Written
  - Oral
- Duration
  - Definite Period.
  - Undefined Period.
  - Piece of work or to provide services.
- Method of Payment.
  - Salary
  - Daily
  - Commission Basis.
  - Piece of work.
  - Participation.
- According the employees:
  - Individual
  - Team
  - Collective

## Secrecy/Confidentiality

A confidentiality clause can be stipulated in the agreement, however according to the Labour Code, the employee is obligated to keep technical, commercial and manufacturing secrets of the product. Likewise, administrative matters must be kept in secret, if said release causes damages to the business.

If the employee does not comply with the above mentioned, the same can be considered as a justified cause for dismissal.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

All inventions made in the industries, firm, etc, will be considered property of the employer, if the employer has hired persons to develop the invention.

If the invention was created through the employee's work and it produces income for the firm, the employee is entitled to request a special compensation for his invention.

The IP rights over an invention will be exclusively of the employee if the idea came from his personal activity during work and if said idea, cannot be qualified as exploitation invention.

The employee cannot resign from his rights in favour of the employer or third party.

### Hiring Non-Nationals

According our National Migration Law Nº 978/1996, only those who have permanent residency can provide services or perform duties within the country.

### Hiring Specified Categories Of Individuals

Pregnant women and children cannot perform hazardous activities and restrictions on late work are also established for these categories.

### Outsourcing And/Or Sub-Contracting

There are no specific regulations for outsourcing contract or sub-contracting.

The Labour Code only refers to "intermediaries" in its provision 25, by establishing that the employer is responsible for all the actions made by the intermediary, whenever he declares acting on behalf of the employer.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Any modification or extension of the contract must be made in writing if the main contract was in writing. Each party must have agreed to the modification and have a copy of the document.

If the main contract between both parties was oral, the modification of the same are implied with the acceptance of the employee.

Oral contracts are often used to hire temporary employees, therefore and upon the employee's request, the employer must issue a certificate, whereby the salary, activities or worked hours of the employee are duly stated. This certificate will be considered as proof of the contract.

In all instances (whether written or oral), any of the parties can request an extension.

### Change In Ownership Of The Business

The change in ownership will not affect the current contract held with the former owner.

### Social Security Contributions

The Law Nº 430/73 of the Right of the Retirement and Pension, in charge of the Social Security Institution, states that all workers who perceive salary, without considering under which type of contract he was hired, will be covered by the Social Security benefits.



The social security system is mandatory for the employer and employee. The system can be either public or private, but under observation of the Government.

The employee must contribute 9% of his salary and the employer 3% to the Social Security System.

### Accidents At Work

The employer must guarantee the health, security and hygiene of his employees whilst the working hours. For said purpose, he will adopt every measure, including the information, developing and risk prevention activities in order to avoid any type of risk.

The sickness leave, accidents at work, not covered by the Social Security will be paid by the employer.

### Discipline And Grievance

The employer is authorized to create the administrative and technical regulations related to the production and function of his firm/corporation/industry for his employees and enforce them as well.

### Harassment/Discrimination/Equal pay

Chapter 18 of the Paraguayan Constitution contains rules for certain labour rights, including the principle of non-discrimination between employees, especially regarding gender, age, race, religion, social conditions, political affiliation and physical impairment. Section 92 refers to the principle of equal pay for equal work.

Section 89 refers to women at work and states that maternity will be subject of special protection, which will include social assistance and the corresponding maternity license, which will not be lower than twelve weeks. The woman will not be dismissed during the pregnancy and neither while the maternity license.

International treaties with the rank of constitutional rights regarding this matter have been incorporated. Paraguay is a member of the International Labour Organization and has approved several international labour conventions, including the Discrimination (Employment and Occupation) Convention of 1958 Nº 111 and the Equal Remuneration Convention of 1951 Nº 100.

The Labour Code in Section 9 also states the exact Constitutional principle of non-discrimination. It also includes additional chapters such a "Minor Work" and "Women Work" including discrimination practices. For example, section 128 establishes that women and men will share the exact same labour rights and obligations. The following provisions in this chapter refer to protection to pregnant women at work. Section 129 prohibits women from doing hard, dangerous or unhealthy tasks, or late night work during pregnancy. Gives the right to be translated to another place of work, without any type of wage reduction.. In addition, the law grants to the pregnant employee a protection against arbitrary dismissal as long as the employee is aware of her pregnancy. Section 136 declares invalid any dismissal notice made by the employer during the pregnancy or maternity license.

The chapter on Minor Work has been modified by the Minor and Adolescence Code Law No. 1680, year 2001.Section 119 prohibits work of minors younger than fifteen years of age, whereas section 120 establishes an exception which establishes that minors under 15 and above 12 will be entitled to work in places where are primarily occupied by the employee's relatives, whenever the work performed do not attempt against the life, health or moral of the minor. Section 123 prohibited work of minors between 12 and 15 for more than four hours per day and 24 per week and between 15 and 18 for more than six hours per day and 36 hours per week.

Harassed employees are entitled to terminate as with just cause the employment contract and pursue indemnification from their employers under the Labour Code.

Employers may dismiss a harasser with just cause, but must judicially prove such conduct.

### Compulsory Training Obligations

There are not specifically stated although they are implied at the general obligation of the parties.

### Offsetting Earnings

The maximum withholding (lien) is 50% of the employee's salary for child or family support. It cannot exceed 50%.

### Payments For Maternity And Disability Leave

The law grants to the pregnant employee a protection against arbitrary dismissal as long as the employee is aware of her pregnancy.

Section 136 declares invalid any dismissal notice made by the employer during the pregnancy or maternity license.

The employee absent due maternity and disability leave are entitled to collect their salary.

### Compulsory Insurance

For health insurance, the employer must contribute with 14% over his employee's salary and the employee must contribute with 9% of his salary.

### Absence For Military Or Public Service Duties

The employee's absence in order to participate at military services and other legal obligations, and if he enrolls at the Army, will be considered as a cause to suspend his contract and he will not be entitled to collect any compensation or salary.

### Works Councils or Trade Unions

An employee can be part of trade union in order to defend his professional and economic interest. Being part of a union trades guarantees to the employees to subscribe collective bargaining agreements, acquire assets, and register their trademarks, exemption of the tax contribution.



### Employees' Right To Strike

The employees have right to strike as long as they are negotiating with the employer in order to improve or acquire benefits from the contract. The military and polices cannot be part of the strike.

### Employees On Strike

The strike can be illegal or legal.

It is illegal when the strike has no purpose of ensuring or defending employees' legal rights, or it is held due to political issues, or the employees working in institutions that provide vital services do not guarantee at least the minimum necessary to the people.

The employer will have justified cause to fire all employees which participate in strife declared illegal.

If the strike is declared to be legal by the Authority, there is no penalty if the employees are and the labour relationship continues. The Authority, during the 72 hour of declaring the legal strike, must try an amicable agreement between the parties.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

In regards to the ending of a contract, either party (employer and employee) must duly notify the other party of the dismissal.

The notice can be written or verbal. The time frame of the same depends on years spent at the industry/firm/corporation.

Please note, that for a cause to be considered justified, it has to be proven before the competent Labour Authority. If this is not done, it will be considered unjustified and the employer will forced to pay the dismissal compensation along with the salary of one month to his employee.

Moreover, the contract of an employee who has been working within the company over the last ten years without interruption can only end if the employer has proven a legal cause of dismissal before the Labour Authority. If no justified cause is proven, the employer is obligated to reintegrate said employee to his work.

If the reintegration of the employee is not possible due to a misunderstanding with the employer, or legal representative of the company and it is proven before Labour Authorities, the employee is entitle to receive a compensation. This compensation will be equivalent to the double of the dismissal compensation he would have received if fired under unjustified cause.

### Instant Dismissal

If the employer is ending the contract due to the following justified causes, he will not incur in any responsibility regarding pre notice or compensation for dismissal:

- Filing false certificates and personal references about his capacities and professional activities.
- Robbery and other crimes against the employer's assets.
- Acts of violence, threads, gross misconduct, towards the employer or other co-workers.
- Material losses, such as machinery, tools, products, buildings and others due to negligence of the employee.
- Breach of the company's confidentiality information.
- The employee's appearance at work under the influence of alcohol and/or drugs or armed.
- To participate in an illegal strike.
- The nonappearance of the employee for three days in a row, without the respective certificates or justified causes.

On the contrary, the employer must pay dismissal compensation to the employee according to the years worked with the employer if the dismissal is unjustified.

### Employee's Resignation

If the employee should resign, he must duly notify his employer of it, depending on years spent at work.

If the resignation is unjustified, the employee is not entitled to collect any compensation.

### Termination On Notice

Any party can end the contract by notifying the other party. Please note the following time frame in order to proceed on notice:

- Upon completing the one year of trail period, thirty working days.
- One to Five years spent in the firm, forty five working days.
- Five to Ten years spent in the firm, sixty working days.
- More than ten years spent in the firm, ninety working days.

The notice can be written or verbal and individual. The law does not allow collective notices, nor partial or fractioned.

Also, the employee can notice the Labour Administrative Authority of the resign.

### Termination By Reason Of The Employee's Age

Please note that there is no maximum age to work, therefore it will be considered as discrimination if a person is fired by the age.



### Automatic Termination In Cases Of Force Majeure

The contract can end due to force majeure. If so, the employee has the right to receive dismissal compensation.

### Termination By Parties' Agreement

The contract can be terminated by both parties mutual consent or on any grounds established in the contract.

### Directors Or Other Senior Officers

If the director or other senior officers are employees, the same rules are applicable.

### Special Rules For Categories Of Employee

The Labour Code establishes special rules for the following categories of employees:

- Domestic workers
- Apprentices
- Rural workers
- Minors
- Women

### Specific Rules For Companies in Financial Difficulties

The employee must be notified of the financial difficulties of the company.

### Restricting Future Activities

It is possible to restrict future activity provided that both parties so agree.

### Severance Payments

The employer must pay the employee severance payment if he/she has been dismissed unfairly.

### Special Tax Provisions And Severance Payments

A section of the Law Nº 9371/2012, which regulates Personal Income Taxes, states that if proving professional services or activities, the worker generates an income of more than Gs. 180.000.000, he is obligated to contribute with 10% of the amount left upon deducting expenses to the National Treasury.

### Allowances Payable To Employees After Termination

The employer must pay the employee all the compensations according the years spent in the firm as well as the compensation according to pre notice. The parameters to calculate this types of compensations are established in Labour Code.

### Time Limits For Claims Following Termination

Claims relating to termination of the contract (to demand payment of salary, severance, vacations, etc) must be filed at court within sixty calendar days of termination.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

There are no specific matters unique to this jurisdiction.

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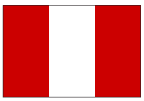
# Peru



# Peru

**Ariel Orrego-Villacorta**
Barrios & Fuentes Abogados

## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are specialised labour judges and labour courts, at first instance and at appellate level, respectively, who deal with employment labour claims. Labour issues that reach the Supreme Court are reviewed by a Chamber of the Supreme Court specialised in Constitutional and Social matters. All the aforementioned judges and courts have exclusive jurisdiction for most employment claims, but claims relating to constitutional rights linked with labour rights (e.g. right to labour freedom, reinstatement for violation of constitutional rights, etc.) can be brought to the constitutional courts in the first instance, and courts of appeal. The highest level in such cases is the Peruvian Constitutional Tribunal.

### The Main Sources Of Employment Law

The main source of employment law is Peruvian legislation related to labour matters. Other sources are all non-codified laws, collective bargaining agreements, individual employment contracts, local practice, the custom, court decisions (jurisprudence) and the doctrine.

### National Law And Employees Working For Foreign Companies

National Law applies to people who work within Peru, regardless of the nationality of the company and of the employees or workers.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under National Law will apply only when the employee or worker is working physically within the jurisdiction of Peru. However, National law may still be applied in appropriate cases if the employment contract has been signed in Peru even if the employee or worker is working in another jurisdiction.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

In general, there is no legal requirement as to the form of agreement (employment contract) when the employee or worker is hired with indefinite term. The majority of employees are hired verbally under an employment contract with indefinite term. If there is a reason to limit the period of the contract because of a temporary objective, a fixed term employment contract should be used, in which case it needs to be in writing and what is more, it needs to be registered with the Peruvian Ministry of Labour. Likewise, a written employment contract is mandatory when the employee is not a national of Peru. It is also permissible to use part-time employment contracts, by a written agreement, depending on the circumstances.

### Mandatory Requirements:

#### Trial Period

Under labour law, the trial period is three (3) months. This legal trial period may be extended to six (6) months when an employee holds a position of trust and up to one (1) year for high-rank executives in case of management staff (conventional trial periods). On the other hand, the parties may agree that the trial period is not applicable in the labour relationship.

#### Hours Of Work

The ordinary working hours for men and women over age is eight (8) hours per day or forty eight (48) hour per week, as maximum.

A lesser amount can be established, either by Law, by agreement of the parties or by the employer's unilateral decision.

#### Remuneration / Salary

Remunerations are fixed under the rules of the market.

In general terms there is a minimum wage (currently S/. 750.00 Nuevos Soles Peruvian Currency) per month. Employees or workers who work at night (from 10 p.m. to 6 a.m.) are paid with a special surcharge of 35% over the minimum wage aforementioned, (currently S/. 1,012.50 Nuevos Soles Peruvian Currency) per month.

#### Holidays / Rest Periods

There are 12 nonworking holidays established by Law in Peru (e.g. January 1st, Thursday and Friday in Easter week, May 1st, Christmas, Independence Day, etc.).

Likewise, employees and workers are entitled to one (1) or two (2) compulsory rest days in each week, normally Saturday and Sunday, depending on their workweek in their workplace.

Employees and workers are also entitled to 30 calendar days paid for rest period (vacation) per year, after one year of service.

#### Minimum/Maximum Age

Teenagers from 12 to 14 years old may work a maximum of 4 hours per day and 24 hours per week. Teenagers between 15 and 17 years old may work 6 hours per day and 36 hours per week.

At the age of 70, retirement is mandatory and automatic, except if the parties agree to continue the employment.

#### Illness/Disability

The first 20 days of illness in a year are paid by the employer. If the Employee or worker is ill for more than 20 days, he/she will receive sick pay (subsidy) from the Employer but the Employer is reimbursed by the Social Security.

There are Pension Funds and Insurance to cover disability.

#### Location Of Work/Mobility

The employee's normal workplace must be specified in the employment contract, if this contract is required in writing. When there is no requirement to have a written employment contract, the employer should establish it in a formal communication to avoid any misunderstanding.

Mobility allowance can be included within the employment contract, but it cannot be an unreasonable amount. When the job requires travel to other temporary locations, it is normal for the employer to reimburse the employee or worker, as applicable, for all reasonable travel expenses.

### Pension Plans

There are two pension plan systems. One is a public system and the other one is a private system. The public system is administered by a Government Agency (ONP) and the private one is administered by Pension Fund Administrators (AFP).

The employer should withhold and pay monthly these pension contributions to the public Administrator (ONP) or the corresponding AFP, depending on the chosen system.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A pregnant woman may not be dismissed from work during pregnancy and neither for 90 days after giving birth.

A pregnant woman has a right for 45 days of prenatal rest and 45 more days of postnatal rest. In case of multiple birth this right must be extended for 30 days more.

An employee is entitled to be paid a maternity subsidy for 90 days.

Since September 2,009 also there is a paid paternity leave of four (4) consecutive working days that must be taken between the birth and the day in which the mother or the new baby leaves the hospital or private clinic.

Finally, paid leave of up to 30 days is granted to an employee that adopts a child whose age does not exceed 12 years.

### Compulsory Terms

Employment contracts with non-nationals (foreign employees) must be worded in accordance with certain forms provided by the labour regulations (e.g.: the term of the employment contract will not exceed three (3) years – however, renewals are possible; the obligation of the foreign employee to train a Peruvian national in the same position where the foreign employee perform labour activities in the local company; payment of return tickets at the termination of the employment contract, etc.).

All the fixed-term employment contracts must include the following: objective cause of the temporal hiring (indicating the legal basis), the names of the parties, the date when employment begins, the remuneration, benefits, working day, working hours, place of work and job title/job description, etc.

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights.

## Types of Employment Contracts

Employment contracts with non-nationals as well as fixed-term and part-time employment contracts with national employees or workers , must be executed in writing and submitted to the Labour Authority for approval and registration in case of foreign employees, and only for registration in case of national staff.

## Secrecy/Confidentiality

Rules regarding secrecy and confidentiality are normally included in written employment contracts or in separated agreements. Breach of secrecy is cause for dismissal according to national law.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Normally inventions should be property of the inventor, unless the employee or worker uses working tools provided to him by the employer for his invention and he creates this in the worksite or during his working hours, or when the inventor has been hired to create such invention, in which case, the economical exploitation of the invention is agreed to belong to the employer.



## Hiring Non-Nationals

A specific labour law imposes a limit (in percentage terms) on the number of foreign employees or workers who can be hired in a local company.

The employment of non-nationals is limited to 20% of the total number of employees or workers and 30% of the overall payroll in the local company (employer). Employment contracts with non-nationals must be approved by the competent Labour Administrative Authority.

Once the non-national employment contract has been approved, the expatriate may initiate the corresponding migratory procedure at MIGRACIONES'S offices, to obtain his/her corresponding worker visa.

Andean Community members, as well as, Spanish people, Immigrants, etc., are exempt from such limits, but their employment contracts need to be registered with the Labour Authority. Once registered, such people may initiate the migratory procedure at MIGRACIONES'S offices, to obtain his/her corresponding worker visa.

## Hiring Specified Categories Of Individuals

There are certain benefits for employers that hire disabled people and also there are age limits for employees engaged in certain types of jobs (e.g. underground work, hazardous conditions, night work, etc.)

## Outsourcing And/Or Sub-Contracting

In Peru there are specific rules for special companies of services dedicated to the provision of workforce (staffing for temporary activities, supplementary roles or/ and specialized services) regulated by Law 27626 and its rules; and for Outsourcing companies, when the latter develop services with permanent personnel provision related to the core business of the main company (user company) regulated by Law 29245, Legislative Decree 1038 and its rules.

Staffing companies, who must be duly registered with the Labour Authority, in general are dedicated to provide personnel for complementary or auxiliary activities of their clients (user companies). Outsourcing companies, who are dedicated to perform an integral service related to the main activity of their clients (user companies), should act at their own risk and with their own financial, technical, material and human resources. In both cases the clients are jointly liable with their contracted companies, for unpaid labour duties of the staff who has provided the services. Moreover, if legal requirements are not met, the clients (user companies) shall incorporate the personnel (of the staffing company or the outsourcing company) onto their payroll and pay penalties.

Staffing: under the provisions of Law N° 27626 and its regulations, approved by Supreme Decree N° 003-2002-TR, the hiring of staff through a special company that offers provision of workforce services will proceed in only three (3) cases:

a) Highly specialized services unrelated to the main activity of the user company;

b) Complementary services and therefore outside the core business of the user company (such as safety, repair, cleaning, external messaging, or similar), and

c) Temporary services which are work of an occasional nature (transitional activities other than regular business of the user company) or replacement (activities designed to replace a worker of the user company that has his/her contract suspended by justified cause, or - for administrative reasons – the worker is performing other work in the same company) and in no case the number of workers hired under this modality should exceed 20% of the entire staff in the user company.

It is forbidden for staffing services to be involved in the continued implementation of the core business of the user company.

During the period of assignment of workforce provided in favor of the user company, the staffing services company remains the legal employer, which means that the user company is not responsible for the payment of wages or social benefits or any other right or benefit of the workforce assigned because the user company is not its employer.

The hiring of services provided by staffing companies are subject to certain rules, among which it should be noted that the contract between both companies (the staffing company and the user company) should be in writing and duly filed at the Peruvian Ministry of Labor. Also, the staffing company is obliged to grant a letter of guarantee (carta fianza) – in favor of the user company or in favor of the Ministry of Labor – in order to ensure the payment of one month of social benefits and pension obligations in favor of workforce assigned. If the letter of guarantee does not cover part or all of these obligations, the user company is severally liable thereon.

Additionally, the staffing company must be registered at the Ministry of Labor and its main and single core business should be the provision of staffing services (Workforce provision).

Outsourcing: the scope of the Outsourcing Law includes user companies whose workers belong to the private sector regime that outsource part of its core business commissioning it to another company (outsourcing company) provided that there is continuous placement of workers from the outsourcing company to the workplace or place of business of the user company rendering the required services.

By outsourcing, a company hires another one to develop specialized activities or work which shall be performed at its own account and risk, assuming responsibility for the results of its activities. The services are carried out by the outsourcing company with its own financial, technical or material resources; and with workers under its exclusive subordination. Outsourcing companies should comply with the following requirements: plurality of clients, have proper equipment, own capital investment, and the form of its retribution should be calculated by work or service.



If the integral service is performed with continuously appointing workers to the facilities of the user company, the outsourcing company must be registered at the Ministry of Labour and must inform its employees and the user company's employees about the integral services to be provided. Further, a written outsourcing service agreement is required. In this case, the user company is jointly and severally liable for worker's rights and obligations of social security of all the workers of the outsourcing company appointed to the facilities of the user company. Such liability remains for one year after the termination of the appointment and the user company might claim any amount paid against the outsourcing company.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

An employment contract cannot be changed unilaterally by either party. The Employer can, however, make reasonable changes to the working hours, holiday periods and other terms of the contract in order to ensure the performance of the work or required services. The employer cannot reduce an employee's salary or lower the category without the consent of the employee or worker, and reasonable grounds for the change.

### Change In Ownership Of The Business

There are certain rules which apply when there is a change in the ownership of the business. The general rule is that seniority will continue and the new owner is supposed to honour the terms and conditions of the employment contract of the employees and workers, taken over from the previous owner. This general rule applies unless agreed otherwise with the employees or workers, In such a case, an employee or worker, will cease in his/her previous labour relationship and be hired by the new owner. Certain formalities must to be followed. Employees or workers are allowed to refuse to transfer to the new employer. However, normally employees or workers will not refuse a change of employer provided that their labour rights and social benefits will be respected.

### Social Security Contributions

The Employer exclusively has to contribute 9% of each employee's (worker's) monthly pay to ESSALUD for health services in favour of his/her employee or worker, as applicable.

Moreover, the employee or worker has to contribute monthly between 11% up to 13% for pension plans (depending on which pension plan the Employee or Worker is a member of, that is to say, on a Private or Public system). The employer will act as withholder agent.

### Accidents At Work

Employers that are engaged in high-risk activities are under an obligation to take out a supplementary insurance policy for such work (Seguro Complementario de Trabajo de Riesgo – SCTR) to cover accidents at work or professional diseases. The law has listed the types of activities that are considered to be high risk. This insurance may be with ESSALUD (Health Public entity), or with a private health supplier (Empresas Prestadoras de Salud - EPS) regarding health services and with ONP (National Pension Administrator) regarding pensions. Alternatively, Employers can seek cover with a private insurance company that will cover both health services and pensions.

Moreover, all employers must comply with Health and Safety Regulations (mining, oil and gas, electricity and other high-risk activities have more strict regulations). Companies are jointly liable with their contractors and subcontractors for failing to comply with the Health and Safety Regulations.

Law N° 29783, published on August 20th 2,011 as approved by Supreme Decree N° 005-2012-TR dated April 24, 2012 regulates all issues regarding the safety and health at Workplace. This law states that every company must implement an Environmental Health and Safety at Work System, and also that the company is responsible for the economic implications, legal and other nature that may result from an accident or illness suffered by the employee or worker in the performance of his/her duties or following it.

Companies with 20 or more employees or workers must have a Safety Committee and Health at Work (CSST), and companies with fewer employees or workers are obliged to appoint a Supervisor.

Supreme Decree N° 005-2012-TR establishes that companies which have 20 or more employees or workers should have an Internal Safety and Health at Work Rules dully filed at the Ministry of Labour. Staff must be made aware of this document.

Additionally, the law also states that an employer who violates these rules or does not take preventive measures can receive a sentence of imprisonment for up to 5 years, as well as suffering joint and several liability between the user company and third parties (contractors, subcontractors, staffing companies, outsourcing companies, cooperatives, etc.) in terms of applicable insurance contracts in protecting employees and workers and in terms of monitoring compliance with this legislation.

### Discipline And Grievance

Warnings and unpaid suspension for acts of misconduct are not regulated by law. Companies with more than 100 employees should set out their internal grievance procedure in their Internal Regulations.



### Harassment/Discrimination/Equal pay

In cases of harassment and discrimination, Employees or workers may seek recourse from the Labour Authority. Harassment and discrimination are considered as hostile acts against the employee or worker. Employers must establish an internal procedure to allow the victim of sexual harassment to make a complaint and ensure that Employees and workers are duly informed of such a procedure.

### Compulsory Training Obligations

There are no compulsory training obligations for employees or workers generally, but obviously some trades/professions will impose their own standards/expectations.

### Offsetting Earnings / Incomes

Employers may not offset earnings / incomes of their employees or workers, against the employee's or worker's receivables (labour debts), unless the employee or worker gives his/her prior written consent to the deduction, which can only be made for a specific purpose.

### Payments For Maternity And Disability Leave

Both payments that are subsidies (called in Spanish: "Subsidios") are granted through Social Security System.

### Compulsory Insurance

Employees and workers with 4 or more years of work are entitled to life insurance.

### Absence For Military Or Public Service Duties

Employees and workers are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

Trade Unions are registered with the Labour Authority. After one year the trade union being active, the employer must negotiate with the authorized representatives of the Trade Union about the benefits requested by the employees and workers. (This does not mean that a collective agreement necessarily to be reached).

An employee or worker who is a member of a Trade Union has certain rights in relation to his/her employment. For example: Dismissal for membership of, or for taking part in the activities of a Trade Union, is automatically considered invalid, unless the employer justifies the ground of dismissal; A Trade Union officer has the right to time off work with pay to take part in Trade Union activities.

### Employees' Right To Strike

Employees and workers can strike if the strike is the outcome of a negotiation process in a collective bargaining or as a protest against the Employer's resistance to comply with laws, agreements or court decisions related to their work and benefits.

### Employees On Strike

Employers can still dismiss employees or workers on strike, if the strike was not properly authorised.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible by the acts of their Employees or Workers which take place within the scope of their duties within their job.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

Certain minimum steps must be followed before termination of the employment contract, to avoid severance indemnity for unfair dismissal or reinstatement. There is a strict list of dismissal's grounds, which are related to incapacity and misconduct of the employee or worker.

### Instant Dismissal

The employer can dismiss an employee or worker if he/she is guilty of gross misconduct, but in this instance the employer must still follow the minimum statutory steps for dismissal (see the previous answer). In general, an instant dismissal is not allowed except in case of flagrant gross misconduct.

### Employee's Resignation

The employment contract can be terminated by the employee's resignation (or worker resignation). The employee or worker must give to the employer 30 days of notice period for such purpose.

### Termination On Notice

The employer cannot terminate the employment contract by notice, unless it is provided for in the fixed-term employment contract and it is consistent with the temporal or transitory nature of the work or the specific temporary services, based on an objective ground, nevertheless, it is a moot issue.

### Termination By Reason Of The Employee's Age

At the age of 70 years, retirement is mandatory and automatic, unless the parties agree to continue the employment.

### Automatic Termination in Cases of Force Majeure or in Fortuitous Cases

In cases involving force majeure or fortuitous cases, employment is suspended and a process before the Labour Authorities is required.



### Termination By Parties' Agreement

The parties are entirely free to agree termination of the labour relationship on any grounds they might choose.

### Executives Directors or Other Senior Officers

There are no special rules which relate to the termination of the labour relationship of an executive director, manager or other senior officer.

### Special Rules For Categories Of Employee

There are no categories of Employees or Workers to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous protection from unfair dismissal.

### Specific Rules For Companies in Financial Difficulties

To terminate employment contracts collectively (more than a ten percent (10 %) of the personnel registered on the payroll), the Employer can invoke economic, technologic, structural or similar reasons. A process before the Labour Authority is required. The employer must justify the reasons for the termination of the employment.

### Restricting Future Activities

Such rules may be agreed provided that they will be reasonable.

### Severance Payments

The amount of the indemnification for arbitrary dismissal (severance payment) depends on the type of employment contract used. In the case of Indeterminate Employment Contracts, employers must pay a salary and a half for each year of service plus fractions of twelfths and thirtieths for months and days worked.

Moreover, in the case of Fixed-Term Employment Contracts, the indemnification is equivalent to a salary and a half for each month remaining to complete the term of the contract (called in Spanish "meses caídos"). Twelfths and thirtieths fractions are not applicable.

In both cases maximum severance payment is 12 months' pay.

The dismissal of an employee or worker is considered null and void if it occurs as a result of: (i) an employee's or worker's membership to a union or participation in union activities; (ii) initiating legal proceedings against the employer; (iii) discrimination on grounds of sex, race, religion, opinion or language; and (iv) pregnancy until 90 days after birth. The nullity of the dismissal has two consequences: a) The reinstatement of the employee or worker in his/her usual place of work and b) the payment of wages earned from the date of dismissal to the effective reinstatement of the employee or worker to his/her place of work.

According to current case law, the employee or worker has the right to decide the level of protection against arbitrary dismissal that is: the payment of an indemnification or the reinstatement in the job.

There are "objective grounds of dismissal" in which the employer is exempt from payment of the indemnification of arbitrary dismissal, the employee or worker have committed a serious misconduct that makes ineffectual the employment relationship, being the main faults: (i) breach of working obligations, resistance to superiors' orders, (ii) deliberate reduction in the performance at work, (iii) accomplished or frustrated appropriation of goods or services of the employer, (iv) the transmission of industrial secrets without permission from the employer; (v) to attend workplace or while intoxicated under the influence of alcohol or drugs; (vi) absence from the workplace for more than 3 consecutive days without justification, or more than 5 days in a period of 30 days or more than 15 days in a period of 180 days; (vii) acts of violence, serious misconduct or verbal offense against their superiors or other employees or workers; and (viii) intentional damage to facilities and equipment of the employer.

There are also other grounds for dismissal, related to the employee's or worker's ability, such as: (i) the detriment of physical or mental capacity to do the job; (ii) poor performance in relation to the employee's or worker's ability and the average yield in the work; (iii) the unjustified refusal to undergo a medical examination previously agreed or required by law, and (iv) conviction of a felony.

**Special Tax Provisions And Severance Payments**

Severance payments are free of tax.

**Allowances Payable To Employees After Termination**

It depends on the concept.

**Time Limits For Claims Following Termination**

The time limit varies according to the law in force at the time of the termination of the employment relation and the reason for the complaint. In general and nowadays the statute of limitations is four (4) years.



# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

The employer gives the employee or workers two (2) legal bonuses per year, one in July and another in December, which corresponds to the National holidays and Christmas, respectively. The legal bonus is equivalent to one month's payment in each time.

The legal bonuses must be paid in the first half of July and December, respectively.

In order to receive these legal bonuses, the employee or worker should be working at the time that corresponds to perceive the benefit. However, for those employees or workers who have not worked throughout the relevant period, but have worked at least a month during the period, are entitled to receive a pro rata bonus payment based on the number of months worked.

It is also important to mention that an employee or worker is entitled to receive a benefit known as "Compensation for Time of Services", which is deposited twice a year into a bank and can be withdrawn by the employee or worker at the termination of his/her employment. Withdrawals can take place,for housing as well.

Compensation or Time of Services (CTS) is a sum of money – like the unemployment insurance – with features and nature of social benefit that is recognized based on employee's / worker's length of services. The employee / worker who renders services more than 4 hours per day and reached a month of effective service in the company is entitled to receive this social benefit while the labour relationship is in force.

CTS is equivalent to a monthly salary and fractions (if applicable) and it is calculated on the basis of ordinary monthly salary and any other amount received regularly by the employee/ worker (i.e. Family Allowance, etc.) either in cash or in kind.

Employers should deposit in May and November each year as many twelfths computable remuneration received by employees / workers in April and October respectively, and have worked full months in the respective semester. The fraction of a month should be deposited by thirtieths.

According to Law N° 29352 published on the Official Gazette "El Peruano" on May 1st 2009, from May 2011 until the termination of employment, employees / workers may – in their CTS individual accounts – dispose just 70% of the leftover of 6 gross remunerations.

Finally, there is also compulsory profit sharing when the Employer employs more than 20 employees and workers. The rate goes from 5% to 10% depending on the kind of business the employer is engaged in.

Companies, which have more than 20 employees and workers, are obliged to distribute among their employees and workers a part of the profits obtained during the respective year.

The percentage to distribute depends on the activities, as follows:

- Fishing, telecommunication and industrial companies will distribute: 10%;
- Mining and commercial companies, as well as restaurants: 8%;
- Other companies: 5%.

The distribution of profits is computed as follows: 50% according to the effective days of work and the other 50% in proportion to the remunerations received by each worker. The participation in the profits for each worker should not exceed the equivalent of 18 monthly salaries. The excess is deposited into a special fund.

Finally, it is important to mention that from March 1st 2014 the Superintendence of Labour Inspection created in 2013, will start its functions in the country, and under its rules it has been established that a considerable increasing in the value of penalties to be imposed employers by infractions (non-compliance) of the labour legislation.

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# Philippines

# Philippines

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Labour disputes may arise between the employer and employee, between the employer and the union, and among the unions themselves.

The National Labour Relations Commission (the "NLRC") is the principal government agency with jurisdiction over disputes between employers and employees. The NLRC has regional arbitration branches, where labour arbiters hear and decide cases at the first instance. A labour arbiter's decision may be appealed to the NLRC. However, decisions of the NLRC division may be ultimately reviewed by the country's Court of Appeals and the Supreme Court in certain cases.

The Regional Director of the Department of Labour and Employment (DOLE) may hear small claims not exceeding five thousand pesos (PhP5,000) when the employee does not claim for reinstatement.

Med-arbiters of DOLE hear representation cases to determine which union shall represent the employees in collection bargaining. Intra-union disputes and cancellation of union registration fall under the jurisdiction of the DOLE's Bureau of Labour Relations.

Bargaining deadlocks needing preventive mediation are filed with the National Conciliation and Mediation Board (NCMB).

Administration of the collective bargaining agreement and disputes arising from its interpretation and implementation are to be settled through the grievance machinery of the establishment, and then the NCMB.

Other labour disputes may be submitted to voluntary arbitration by agreement of the parties.

### The Main Sources Of Employment Law

The Philippine Constitution guarantees the rights of workers and protects their interests. The Labour Code consolidates the laws on labour standards and labour relations, which includes: (a) the minimum requirements for wages and other monetary and welfare benefits, hours of work, and health and safety standards; (b) the definition of an employment relationship; (c) the grounds and procedure for terminating employment; and (d) the rules on self-organizing and collective bargaining with employers.

There are also special laws which deal with retirement and social security, women and children's rights in the workforce, and sexual harassment in the workplace.



### National Law And Employees Working For Foreign Companies

Labour laws apply indiscriminately to foreign and local companies. Foreign companies established in the Philippines must extend to their employees the Philippine statutory minimum standards of employment. However, international organizations and foreign governments may be considered exempt because of their immunities from suit.

### National Law And Employees Of National Companies Working In Another Jurisdiction

National labour laws are applicable only within the Philippine territory and therefore will not apply to employees of Filipino companies established and operating in other jurisdictions. However, the national laws apply to Filipino overseas contract workers whose employment abroad must be processed and approved by the Philippine Overseas Employment Administration (POEA).

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Unless specifically stated in the employment contract, an employee will be considered a regular employee. It is essential for the contract to clearly express the type of employment. An employee is entitled to security of tenure which means that the employment relationship can only be terminated on grounds provided by the Labour Code. The extent of an employee's right to security of tenure depends on the type of employment relationship established.

### Mandatory Requirements:

#### Trial Period

There is no trial period for employees hired under a regular, project, seasonal, or fixed-period employment. An employee may be hired under a probationary employment, during which time, the employer will determine whether the employee qualifies as a regular employee based on reasonable standards made known at the time of the engagement. This probationary period, which serves as a trial period to determine an employee's fitness for regular employment, is only up to six (6) months from the start of employment.

#### Hours Of Work

The maximum number of working hours per day is 8 hours, which includes breaks or rest periods of fifteen minutes or less, but excludes meal periods that shall not be less than an hour. If the employee works beyond eight (8) hours, the employer is required to pay the employee overtime at a rate of 25% of the regular wage for the additional hours worked.

Night shift employees are to be paid an additional 10% of their regular wage for work performed between 10:00 in the evening and 6:00 in the morning. Managerial employees, field personnel, or those working in the personal service of another or are paid by result are exempt from overtime pay and night shift differential pay. An employee may be required to perform overtime work in the following cases: (a) when the country is at war or when any other national or local emergency has been declared by Congress or the Chief executive; (b) when it is necessary to prevent loss of life or property or in case of imminent danger to public safety due to an actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity; (c) when there is urgent work to be performed on machines or equipment in order to avoid serious losses; (d) when the work is necessary to prevent loss to perishable goods;

and (e) where the continuation of the work started before the 8th hour is necessary to prevent serious obstruction or prejudice to the business operations.

Night time work is allowed under certain circumstances. Night workers who have been diagnosed and certified to be unfit for night work due to health reasons should be transferred by the employer, whenever practicable, to similar jobs during the dayto which they are fit to work.

### Earnings

Employees are entitled to the minimum wage for 8 hours of work as determined by the Regional Tripartite Wages and Productivity Board. The rates are classified by sector (e.g. construction, real estate, health work, plantation, fishing, manufacturing) and by region (e.g. Metro Manila, other provinces). The employer cannot make any deductions to the employee's wage without the permission of the employee, except for withholding taxes, Social Security System contributions and other deductions expressly authorized by law, such as union dues.

Employees are entitled to a 13th month pay computed at one-twelfth of the basic salary received by the employee within a calendar year. The "basic salary" of an employee for the purpose of computing the 13th month pay includes all payments for services rendered, but does not include allowances and monetary benefits which are not integrated into the regular salary such as the cash equivalent of unused leave credits, overtime, night differential and holiday pay.

### Holidays/Rest Periods

Employees are entitled to a rest period of at least 24 consecutive hours after 6 working days. An employee who works on his scheduled rest day shall be paid an additional 30% of his regular wage for that day's work.

Employees are also entitled to holiday pay at double their regular rate if they work on any of the 12 national holidays, which are New Year's Day, Maundy Thursday, Good Friday, Eidul Fitr, Eidul Adha, Araw ng Kagitingan, Labour Day, Independence Day, National Heroes Day, Bonifacio Day, Christmas Day and Rizal Day.

The following special days, Ninoy Aquino Day, All Saint's Day, and New Year's Eve, are considered as non-working days. Employees who work on special days are entitled to an additional 30% of their regular wage for that day's work. However, employees are not entitled to any pay if they do not work, unless the pay is granted under company policy or a collective bargaining agreement.

Employees may be required to work on rest days and holidays in the following cases: (a) there is an emergency caused by a natural disaster or an imminent danger to public safety; (b) there is urgent work on equipment or installation to avoid serious losses to the business; (c) there is abnormal volume of work due to special circumstances; (d) to prevent loss of perishable goods; or (e) the nature of the work requires continuous operations and the stoppage may result in irreparable injury or losses.

The law also grants employees who have rendered at least one year of service a yearly service incentive leave of five days with pay.

### Minimum/Maximum Age

The minimum age of employment is 18 years for hazardous jobs, and 15 years for non-hazardous jobs. Hazardous jobs are those that pose an imminent danger to the employee's health or safety.

Children below 15 may be employed by their parents or guardians as long as the employment does not interfere with their education. Children are also allowed employment if their participation is essential to public entertainment or information (i.e., cinema, theatre, television and radio) provided that their parents or guardian and the DOLE give prior approvals.

The employment contract and the collective bargaining agreement ("CBA") may provide a retirement age. In the absence of a retirement plan, an employee upon reaching the age of sixty (60) may take optional retirement and receive retirement pay. The compulsory retirement age is sixty five (65). Retail, service and agricultural establishments employing not more than ten (10) employees are exempted from providing this benefit.

### Illness/Disability

The Employees Compensation Commission provides employees suffering a work-related injury or disability with an income benefit. However, no compensation is granted when the injury was occasioned by the person's intoxication, wilful intention to injure oneself or another, or the person's notorious negligence.

### Location Of Work/Mobility

There is no legal requirement as regards the location of work and the mobility of employees.



### Pension Plans

An employee is entitled to retirement benefits under existing laws in the absence of a provision in the employment contract or the CBA.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

A female employee who has paid at least three (3) monthly contributions to the SSS in the twelve (12) month period preceding childbirth (or miscarriage) is entitled to maternity leave. Specifically, the employer must advance her full salary for sixty (60) days in the case of a normal delivery (or miscarriage), and seventy eight (78) days in the case of a caesarean delivery, and claim reimbursement from the SSS.

A male employee who is legally married has a right to paternity leave, which allows him to go on leave for seven (7) working days with pay before, during or after his spouse gives birth or suffers a miscarriage. However, the leave is only available to the employee for his wife's first four (4) childbirths or miscarriages.

An additional parental leave of at least seven (7) working days is available to an employee who has been issued a Solo Parent ID by the city or municipal social welfare and development office. A solo parent is one who is left alone with the responsibility of parenthood or any person who solely provides parental care and support to a child or children.

### Compulsory Terms

National laws on labour standards are deemed to be written into all employment contracts.

### Non-Compulsory Terms

The employer and employee are free to agree on matters not covered by law.

## Types Of Agreement

Depending on the type of agreement entered into with the employer, employees in the Philippines are classified as regular, project, seasonal, fixed-period, casual or probationary.

An employment is regular if it relates to activities that are usually necessary or desirable in the usual business of the employer. By way of exception to regular employment, there can be: (a) project employment, where the employment has been fixed for a specific project or undertaking, the completion of which has been determined at the time of the engagement; (b) seasonal, where the work to be performed is seasonal in nature and the employment is for the duration of the season; and (c) fixed-period, where the parties by free choice and dealing with each other on more or less equal terms, specify a fixed duration of employment. Casual employment covers employment on a temporary basis or employment for services which are not required in the usual course of business of the enterprise. The employment may also be probationary, where the employee may be terminated for failure to meet the reasonable performance standards made known at the time of the engagement to qualify for regular employment.

Unless specifically stated in the employment agreement, an employee will be considered a regular employee; thus, it is essential to clearly express the type of employment.

## Secrecy/Confidentiality

The employment contract may contain a confidentiality agreement or a non-disclosure clause. The country's penal code also imposes criminal liability on any employee of a manufacturing or industrial establishment who reveals the secrets of the employer's industry.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The Intellectual Property Code of the Philippines grants copyright to the employer if the work is the result of the employee's regularly assigned duties, unless there is an agreement to the contrary. Copyright belongs to the employee if the invention is not part of his regular duties, even if the employer's time, facilities and materials were used.

Similarly, the patent shall belong to the employee, if the inventive activity is not part of his regular duties even if the employee uses the time, facilities and materials of the employer. The patent shall belong to the employer, if the invention is the result of the performance of his regularly assigned duties, unless there is an agreement, express or implied, to the contrary.

### Hiring Non-Nationals

Non-resident non-nationals may be employed in foreign and local companies. In order that they may secure lawful employment, they must have an Alien Employment Permit ("AEP") and a valid work visa. To obtain the AEP, it must be shown that no Filipino is competent, able and willing to take the employment being offered.

### Hiring Specified Categories Of Individuals

An apprentice may be engaged to work in an establishment pursuant to an apprenticeship program approved by DOLE. There must be a written apprenticeship agreement. An apprenticeship is defined as hands-on training supplemented by theoretical instruction involving certain occupations and trades approved by the DOLE. It shall not exceed six (6) months.

There are also "learners". A learner is hired as a trainee in an industrial occupation that cannot be covered by an apprenticeship agreement. The engagement cannot exceed three (3) months, and there must be a commitment to employ the learner as a regular employee.

The wage rate of an apprentice or a learner is 75% of the statutory minimum wage.

### Outsourcing And/Or Sub-Contracting

The law prohibits labour-only contracting. Labour-only contracting refers to an arrangement where the contractor recruits or places workers to perform work or service for a principal, and either (a) the contractor does not have substantial capital or investment; or (b) the principal has the right or ability to control the manner the work is performed. In labour-only contracting, the principal (for whom the work is performed) will be treated as the employer.

Job contracting is permissible. A job contractor has an independent business and undertakes the contracted work on his or her own account, and free from the control and direction of the employer except as to the results thereof. The person must have substantial capital or investment in the form of tools and materials necessary to conduct the business.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

Changes to an employment contract are by agreement between the employer and the employee. Following Philippine contract law, the parties should deal with each other in good faith and freely agree on changes to the terms and conditions of employment (i.e., without duress or deceit). However, any change cannot fall below the statutory minimum standards.

### Change In Ownership Of The Business

A change in ownership of the business does not change the standing of the employees in the company. In the case of mergers, there is an automatic assumption of the employment contracts by the surviving entity. The employees will remain as employees of the company with the same terms and conditions of employment. The employees can only be removed on grounds set out by law.

### Social Security Contributions

Social security benefits are sourced from a common fund contributed by both the employers and employees. The Philippine social security programs consist of the SSS, Philippine Health Insurance Corporation (Philhealth), and Home Development and Mutual Fund (HDMF).

The SSS is geared towards providing support to the SSS members who have lost income due to sickness, disability, pregnancy, old age and death. An employee, under the age of sixty (60) and who earns an income of more than one thousand pesos (PhP1,000.00), and his employer, are required to contribute for the employee's social security benefits in accordance with the SSS schedule. The monthly contribution depends on the employee's monthly salary.

Philhealth is designed to provide employees with a means of paying for adequate medical care. Both the employer and employee must contribute to the medical insurance. The monthly contribution also depends on the employee's monthly salary.

HDMF is a savings system that provides housing loans to employees. The employer and the employee are each required to contribute not less than one hundred pesos (PhP100.00) per month to the employee's HDMF.

### Accidents At Work

For accidents arising out of and in the course of employment, an employee is entitled to an income benefit provided by the Employees Compensation Commission. Compensation will be disallowed if the accident was caused by the employee's intoxication or notorious negligence.

### Discipline And Grievance

Employees may be disciplined for violation of the national labour laws and company policies made known to them. Grievance may be heard through the grievance machinery required of all collective bargaining agreements, and if unresolved, through voluntary arbitration.

### Harassment/Discrimination/Equal pay

The anti-sexual harassment law defines sexual harassment in the workplace as requesting sexual favour as a condition for hiring or continued employment, or in granting favourable terms and conditions of employment. However, the term "request for sexual favour" includes mere sexual advances that result in an intimidating, hostile and offensive working environment. Sexual harassment in the workplace is unlawful. The penalty for sexual harassment is imprisonment of one (1) to six (6) months and/or a fine of ten thousand pesos (PhP10,000) to twenty thousand pesos (PhP20,000).

Discrimination has been defined as the failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured. Accordingly, employees who are not similarly situated may receive different terms and conditions of employment.

Employees are given protection under national law against discrimination on grounds of race, gender, age, belief or union affiliation. There are also specific provisions for women, single parents and the disabled, which give them protection from discrimination. For instance, it is unlawful for an employer to require as a condition, or continuation, of employment that a female employee shall not get married.

The principle of "equal pay for equal work" applies.

### Compulsory Training Obligations

When national security or economic developments demand, the Philippine President may require compulsory training of apprentices.

### Offsetting Earnings

In general, employee's earnings may not be offset against any monetary claim. The employer cannot make deductions from the wages of employees unless agreed by the employee concerned or authorized by law (e.g., taxes, SSS contributions, and union dues).

### Payments For Maternity And Disability Leave

There is maternity leave available for pregnant women. Any employee who suffers disability is entitled to an income benefit from the Employees Compensation Commission.

### Compulsory Insurance

All employees not over the age of sixty (60) years must be covered by the SSS, PhilHealth and the Home Development Mutual Fund or Pag-Ibig.



### Absence For Military Or Public Service Duties

The Philippine Constitution provides that the government may call upon the people to defend the country.

The law that implements the constitutional mandate states that male citizens between the ages of eighteen (18) and twenty-five (25) may be required to undergo military registration and training. Those to undergo compulsory training shall be selected by drawing lots. An employee working in a company with monthly operating volume of not less than PhP300,000 and not less than twenty (20) employees shall not be terminated from employment, shall not forfeit his seniority status, and shall continue to receive basic salary during such military training.

The law also allows the Philippine President to call on male citizens between the ages of eighteen (18) and thirty-five (35) to undergo draftee training and service for a period not to exceed twenty-four (24) months. A draftee during the period of active duty service is entitled to receive all the pay and allowances equivalent to that of a member of the regular force of the Armed Forces of the Philippines.

The fulfilment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from his relief from military or civic duty.

### Works Councils or Trade Unions

The law protects the right of employees to self organize. Employees may form or join unions for the purpose of collective bargaining. However, the right is limited to rank-and-file and supervisory employees. Managerial and confidential employees may not form, join or assist unions.

Managerial employees are those with powers to make policy decisions or people decisions, such as the hiring, disciplining and assigning of employees. Confidential employees are those with access to confidential matters or those who assist and act in a confidential capacity to persons who formulate, determine, effectuate management policies in the field of labour relations.

Supervisory employees are those with power to recommend managerial actions, as distinguished from rank-and-file employees who have no such powers. They may not join or assist the unions of rank-and-file employees, but they may form or join supervisors' unions.

Together, the employer and employees may form work councils or a labour-management committee to enable the employees to participate in policy and decision-making processes that affect their rights, benefits and welfare.

### Employees' Right To Strike

A strike can only be conducted when there is a labour dispute between the employer and employees concerned. A labour dispute is a dispute over the terms and conditions of employment, or the representation of persons in negotiating or changing the terms and conditions of employment.

The Labour Code lists the requirements for a valid strike, which are, as follows: (1) there must be a valid and factual ground (i.e. bargaining deadlock, unfair labour practice or union busting); (2) a notice of strike must be filed with DOLE at least thirty (30) days before the intended date of the strike or fifteen (15) days in certain cases; (3) a strike vote approved by a majority of the members of the union concerned during a secret ballot; (4) a notice to DOLE as to the results of the vote at least seven (7) days before the intended strike. The period between the notice of strike and the intended date of the strike constitutes a cooling-period where the parties are encouraged to settle their dispute amicably.

If the labour dispute involves an industry indispensable to the national interest, the Secretary of Labour and Employment may assume jurisdiction over the dispute such that it may decide the case or refer it to the NLRC for compulsory arbitration. The Secretary's involvement automatically ends the intended strike or terminates the one being held. If the strike continues in these circumstances, the strike will be illegal.

### Employees On Strike

The employer may dismiss a union officer who knowingly participates in an illegal strike. A non-officer may only be dismissed for knowingly participating in illegal acts during the strike. As a general rule, employees may be sanctioned for knowingly participating in an illegal strike.

### Employers' Responsibility For Actions Of Their Employees

The employer is deemed vicariously liable for the acts of their employees acting within the scope of their assigned tasks and in the course of their employment.

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# 04. Firing The Employee

### Procedures For Terminating the Agreement

No employee shall be dismissed from employment without following substantive and procedural due process. Substantive due process requires the dismissal to be based on valid grounds provided by law. Procedural due process means that an employee must be informed of the reason for dismissal and given reasonable time to answer the charges against him and present his defense. The failure to comply with substantive and procedural due process may give rise to an illegal dismissal.

The Labour Code sets out the circumstances under which an employee may be dismissed. These reasons are (a) just causes; (b) authorized causes; (c) termination due to disease; (d) enforcement of a union security clause in a CBA; (e) retirement; and (f) for probationary employees, the inability to meet the employer's prescribed standards of employment.

The just causes for terminating an employee are: (1) serious misconduct or wilful disobedience of the lawful order of the employer; (2) gross and habitual neglect of duties; (3) fraud or wilful breach by the employee of the employer's trust; (4) commission of a crime against the employer or any immediate member of his family; and (5) other causes analogous to the foregoing.



The authorized causes for terminating employment are installation of labour-saving devices (i.e., automation), redundancy, retrenchment, or closure.

In cases of termination for just causes, procedural due process requires that the employer serve the employee to be dismissed with two (2) written notices before the termination of employment is effected: the first, to inform them of the particular acts or omissions for which their dismissal is sought; and the second, to inform them of the employer's decision that they are being dismissed. The employee should be given an opportunity to respond and defend the charges in-between the two notices. In addition, the employee is also entitled to an administrative hearing where he may be represented by counsel, if he so desires.

In the case of separation due to authorized causes, procedural due process requires service of a written notice to the employee and to DOLE, at least 30 days prior to the effective date of termination and the payment of separation benefits mandated by law. Prior approval by the DOLE is not required to implement the termination.

### Instant Dismissal

Instant dismissal is not permissible. The employer must comply with the due process requirements of the law at all times.

### Employee's Resignation

An employee must give the employer at least one (1) month's notice prior to his intended date of resignation.

### Termination On Notice

Only the employee may terminate the employment relationship through mere notice. The employer must comply with both substantive and procedural due process at all times.

### Termination By Reason Of The Employee's Age

Employees have security of tenure until their compulsory retirement age. The employment relationship may be terminated only for grounds provided for by law.

### Automatic Termination in Cases of Force Majeure

There is no automatic termination of employees even in cases of force majeure.

### Termination By Parties' Agreement

Termination by mutual agreement is analogous to an employee's voluntary resignation.

### Directors or Other Senior Officers

Directors or other senior (corporate) officers are elected by the board of directors and their removal from office is governed by the Corporation Code.

### Special Rules For Categories Of Employee

There are special rules for domestic workers. Under Republic Act 10361 (Domestic Workers Act), neither the domestic worker nor the employer may terminate the contract before the expiration of the term except for grounds set out in the law. If the length of service is not set out or is implied by the nature of the service, the employer or the house helper may end the engagement by giving five (5) days notice prior to the intended termination date.

### Specific Rules For Companies in Financial Difficulties

Employers may temporarily shorten the working week provided that employees voluntarily agree, and there is no diminution in pay. Even without the agreement of the employees, the number of regular working days may be shortened in order to prevent serious losses. Shortening the working week is preferred over the outright termination of services or the closure of the company. Employees may also be put on temporary lay-off for a period not exceeding six (6) months.

Companies in financial difficulties may also terminate employment under the authorized causes provided by law (e.g., retrenchment or closure of a department).

### Restricting Future Activities

There is no express law governing restrictive covenants. Stipulations prohibiting an employee from engaging in a similar business in competition with the employer's business may be included in the employment contract provided that there is a reasonable limitation on the trade, geographical location and period.

### Severance Payments

Severance payments are mandatory in cases of termination for authorized causes. There is no severance pay for termination based on just causes or in case of voluntary resignation.

### Special Tax Provisions And Severance Payments

Any amount received by the employee or their dependent due to employment termination resulting from death, sickness or other physical disability, or any cause beyond the employee's control, is exempt from taxation.

### Allowances Payable To Employees After Termination

Other than severance pay for termination due to authorized causes, employers are not required to provide any allowance to employees after termination.

### Time Limits For Claims Following Termination

Claims arising from employer-employee relations must be filed within three (3) years from the time the cause of action accrued; otherwise, they are time-bared.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

National law encourages the peaceful settlement of labour disputes. For this reason mandatory conciliation is a required step prior to any form of labour litigation. Compulsory arbitration is provided in labour disputes involving industries indispensable to the national interest. Moreover, there is a grievance machinery for all collective bargaining agreements.

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# Poland

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employment disputes are adjudicated in the Labour Courts, which are departments of the regional and district courts, and in the Court of Appeal. Dispute can be settled also through a conciliatory procedure. However, this rarely happens in practice. A conciliatory commission is established by an employer in cooperation with employees.

### The Main Sources Of Employment Law

The Polish Constitution includes only general provisions concerning labour. The main source of employment law is the Labour Code and the Civil Code (regarding issues not regulated by the Labour Code). There are also particular laws and regulations which include the following: the Employment Promotion and Labour Market Institutions Act, Collective Dispute Settlement Act and Trade Unions Act. Jurisprudence of the Polish Supreme Court do not constitute a source of law, but provide an indication of how labour law will be interpreted and may set a precedent. Since 2004, when Poland entered the European Union, acquis communautaire has become a part of the Polish legal order.

### National Law And Employees Working For Foreign Companies

National Law is applied to employers and employees who are within the Polish territory regardless of their nationality and the seat of employer's company. However, the parties can agree that an employment contract is subject to the law of a different jurisdiction. The choice of jurisdiction cannot deprive an employee the protection of general rules which would be applicable in case of lack of selection of jurisdiction (pursuant to the provisions of convention 80/934/ECC on the law applicable to contractual obligations (Rome Convention)). If the parties do not chose which law is to be applied to the employment relationship, the law of the state in which the work is performed will be binding.

### National Law And Employees Of National Companies Working In Another Jurisdiction

If a Polish employee is employed abroad by a Polish company, national law is applicable only if the parties expressly agree. Where no express agreement has been made the law of the state in which the work is performed is applied.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The Polish Labour Code stipulates that an employment contract shall be concluded in writing. If there is no written contract, the employer shall confirm to the employee in writing the parties to the contract, the kind of employment and its conditions. The employee must receive this statement no later than on the first day of work. If there is no such written confirmation, the employer might be fined for violating the employee's rights.

## Mandatory Requirements:

### Trial Period

An employee may be preliminarily employed for a trial period of no more than 3 months. Trial periods are common practice, but are not mandatory.

### Hours Of Work

The standard working week is 40 hours per 5 working days, with an average of 8 hours per day. The employer keeps a record of the hours worked by all employees. The weekly hours of work, including overtime, must not exceed 48 hours. Variations to working hours may occur because of the nature of a particular profession.

### Earnings

The monthly minimum wage is decided every year by the Trilateral Commission and announced by the Prime Minister. The minimum wage applies equally to all employees regardless of their age and sector of economy in which they work.

### Holidays/Rest Periods

Employees are entitled to 20 to 26 days of paid holiday every year. The amount of holiday that each employee is entitled to depends on seniority (seniority takes into account an employee's education and includes periods of employment with previous employers). In addition to paid holiday, employees are entitled to apply for unpaid holiday leave.

Employees are entitled to a minimum weekly rest period of 35 uninterrupted hours. Employees should receive a minimum daily rest period of 11 hours.

### Minimum/Maximum Age

Employers cannot employ people below the age of 16. Specific rules apply to employees who are between 16 and 18 years old. In certain situations (e.g. upon gaining the consent of the State Labour Inspector) it is possible to employ children. There is no maximum age limit. However, it is common practice that employees cease to work when they reach the retirement age.

### Illness/Disability

On presenting the employer with a medical certificate, the employee is released from performing his/her duties. During sick leave the employee is entitled to receive 80% of his / her salary (sick pay). Sick pay is financed by the employer for 33 days (or 14 days in case of employees older than 50). If the illness lasts longer the employee receives a sickness benefit, which is a social security benefit financed by the Social Security Fund. If the illness/disability lasts longer than 182 days, then the employee might receive a rehabilitation benefit. Rehabilitation benefit is available if the employee is likely to go back to work after the rehabilitation period.

Where an employee is certified as disabled, the employee can apply for a pension and/or work in a place adjusted to accommodate his/her disability.

### Location Of Work/Mobility

The employee's place of work shall be included in the employment contract. If an employee is obliged to perform his duties outside his specified place of work, then he is entitled to be reimbursed the cost of his travel.



### Pension Plans

Pensions are part of the obligatory public social security system. The employer and the employee both make contributions to the public Social Security Institution and voluntary private Open Pension Fund, which then superannuate the pension. The Social Insurance Institution pension is superannuated on a pay-as-you-go basis. The Open Pension Fund is capitalized and invested until the end of the contribution period. Employees are also entitled to contribute to a voluntary pension plan.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

There are numerous "family friendly" rights in Poland. Such rights include: protection for pregnant women against dismissal; paid maternity, paternity and adoption leave; parental leave; and part-time employment. These rights are regulated by the Labour Code and the Sickness and Maternity Social Benefits Act.

### Compulsory Terms

The terms which shall be included in any employment contract are: the parties of the contract, the identification of the type of contract, date of its conclusion and the conditions of work and pay, the place of work, salary, hours of work and the date at which the employment starts.

No later than 7 days after concluding the contract, the employer must inform its employee in writing about: the standard daily and weekly working hours, when salaries are paid, the length of holiday leave, the period of notice and any collective agreement that is applicable to the employee. If there is no collective agreement then the employer will need to inform the employee about the regulation of night time work (if applicable), when and how salary payments are made, the way employees confirm their arrival at work and the justifiable reasons for an absence from work. The employer can provide the employees with some of the above information by giving the employees the relevant labour law regulations.

### Non-Compulsory Terms

The parties can agree other terms, however, they cannot be less favourable for the employee than those defined by labour law.

## Types Of Agreement

The type of employment agreement depends on the period of employment (indefinite, fixed, specific time in performance of a particular task) and their function (e.g. substitution, trial period). Compulsory terms apply to all types of employment agreements.

If the parties conclude a different kind of contract, which includes elements of an employment relationship as provided by labour law (performing work for the employer, under his direction, in a defined place and time, receiving a salary from the employer) then it is deemed an employment contract. Concluding a civil law contract instead of an employment agreement can be punished by a fine.

## Secrecy/Confidentiality

Employees are under an obligation to keep secret certain information that they acquire during the course of their employment confidential, according to the rules provided by law.

The scope of information which is regarded as company secret is defined in the act of April 16, 1993 on combating unfair competition or/and in non-competition contract, which is a separate contract, which may be concluded by the parties of the labour relation.

According to the provisions of the above mentioned Act, the secret of the enterprise is technical, technological, organizational or other information of the enterprise of economic value, which are not revealed to the public, with regard to which the entrepreneur undertook necessary steps to keep them secret.

The employee is obliged not to reveal information which would expose the employer to damage for two years after the termination of employment agreement. The parties of labour relation may also conclude a non-competition contract for the period after the termination of employment agreement. Such an agreement shall have a written form and shall define the period for which it is concluded as well as the amount of compensation, which the employee receives during the non-competition period for obeying the non-competition obligations (more details in: "restricting future activities").

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual term, there are statutory provisions which will apply to determine the ownership of IP rights. The legal status of such ownership depends, inter alia, on the subject of a particular IP right. Generally, the rights to any work created by an employee, in the scope of his employment, belong to the employer.

### Hiring Non-Nationals

The rules relating to the employment of a non-national depend on the citizenship of a particular employee. Nationals of EEA (including the EU) member states are employed according to the rules which are applied to the Polish citizens, subject to the acquis communautaire. To work in Poland, non-EEA employees need a work permit issued in accordance with the Employment Promotion and Labour Market Institutions Act.

Hiring a non-national without the relevant work permit can result in a penalty being issued against both the employer and the employee.

### Hiring Specified Categories Of Individuals

There are statutory restrictions mainly relating to the type of work, overtime, night time work and business trips for the following categories of employees: pregnant women, minors and disabled persons.

### Outsourcing And/Or Sub-Contracting

There are no labour law provisions concerning outsourcing. Outsourcing is regulated by civil law. However, principles relating to temporary workers are set out in the Employment of Temporary Workers Act.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

Any changes to the employment contract must be agreed by the employer and the employee.

The employer may change the terms of employment by giving the employee written notice of termination regarding the terms and conditions of employment and simultaneously propose new conditions of employment in a new contract. If an employee does not accept the new conditions, as set out in the new contract, then his contract terminates at the end of the notice period. If the employee does not inform the employer until half of the employee's notice period has passed that the new conditions are rejected, then the new conditions are deemed to be accepted.

If the change does not change the basic elements of terms and conditions of employment, does not mean a reduction in the employee's salary and does not last for longer than 3 calendar months then it is not necessary to make a formal change to the written conditions of the employee's contract.

### Change In Ownership Of The Business

The change in the ownership of the business does not result in an interruption of the employment relationship. The former and new employer shall inform the employees or the trade unions (where they operate) in writing about the change of ownership no later than 30 days before the transfer. The information shall define the expected date of the transfer, reason for the transfer and its consequences, planned actions referring to the conditions of employment, in particular to the conditions of work, remuneration and retraining. Within two months after the transfer of the business an employee can terminate her/his employment without notice, however, she or he is obliged to inform the employer of an intended termination at least 7 days in advance.

If the new employer intends to change the terms and conditions of employment of the transferring employees, consultation and agreement should be reached with the trade unions at least 30 days before the transfer.

The new owner becomes a party to the employment relationship by law. The new employer becomes liable for employees' claims resulting form employment relationship Where only part of the business is transferred, both the old and the new employer are jointly and severally liable for the obligations arising from the employment relationship, which came into existence before the transfer.

### Social Security Contributions

There are obligatory social security contributions towards old age pension insurance and other pension insurance, sickness insurance and work accident insurance. Only employees are obliged to contribute to sickness insurance and only employers are obliged to contribute to work accident insurance. The other contributions are financed by both, the employer and the employee in equal parts.

Health insurance is also obligatory and is paid by the insured persons from their own resources.

All the social security premiums are calculated, deducted and paid by the employer.

Failure to make social insurance contributions can be penalised with a fine.

### Accidents At Work

The employer is obliged to insure employees against accidents in the work place with the national Social Security Institution. The employer is also responsible for safety in the work place.

Where an accident occurs in the work place, the employer must identify the reasons for the accident, provide first aid, inform the district labour inspector and undertake necessary measures to prevent similar accidents from happening in the future.

If the employee loses the ability to work as a consequence of the accident at work, he is entitled to a pension financed by the Social Security Fund.

### Discipline And Grievance

If an employee fails to comply with workplace rules, safety and hygiene regulations or fire regulations, the employer can discipline the employee (by applying admonition or reprimand). In certain cases the employee may be punished by the imposition of a minor fine.

The employee shall be informed about such punishment in writing. The punishment must be enforced within 3 months of the employee's misconduct, but no later than 2 weeks from the day in which the employer becomes aware of the misconduct. The employee has the right to object to the punishment to the employer and to the court.

### Harassment/Discrimination/Equal pay

Work of a similar value shall be rewarded with a similar pay. Pay includes all elements of remuneration, regardless of their name and character, and other employment-related benefits whether monetary or in kind. For work to be of a similar value employees must be required to have comparable professional qualifications and be required to take on a similar degree of responsibility and effort.

Employees shall be treated equally, in particular regardless of their sex, age, disability, religion, race, nationality, political views, trade union affiliation, ethnic origins, faith, sexual orientation, as well as part time or full time employment and indefinite or fixed time employment. The catalogue of criteria which are considered discriminatory is open, what makes Polish anti-discriminatory regulation particularly broad. Equal treatment applies to the hiring of employees, the conditions of employment, promotion and the access to training. Direct and indirect discrimination is prohibited.



Discrimination based on sex is any unwanted behaviour of a sexual nature, or referring to the sex of an employee, which aims at or results in an infringement of the employee's dignity. Such behaviour creates an intimidating, hostile, humiliating or insulting atmosphere for the employee. The behaviour can be either verbal or non-verbal (harassment). Subjecting an employee to such behaviour as well as reporting such behaviour shall not have a negative impact on the employee's employment (victimisation).

The victim of discrimination is entitled to compensation and is protected from unfair dismissal based on discriminatory grounds.

The employers are obliged to inform the employees about their non-discrimination and harassment policy and try to prevent discrimination in the work place.

### Compulsory Training Obligations

The employer is obliged to organise training for the employees in safety and hygiene in the work place. The training shall take place within working hours, at the cost of the employer, before an employee starts performing his/her duties. The training shall be repeated periodically.

### Offsetting Earnings

Employer's can offset an employee's earnings but only when provided for by law or on the basis of written consent of the employee. Deductions which do not require the employee's consent concern amounts executed on the basis of enforceable titles, disciplinary fines and advance payments from the employer. The employer can deduct wages for periods of absence.

Other debts (including those credited by the employer) can only be deducted with the employee's written consent. Depending on the kind of debt there are limits to the amounts which can be deducted and part of the salary is protected from the deduction regardless of any legal title of a creditor.

### Payments For Maternity And Disability Leave

During sick leave the employee receives a sick pay, which amounts to 80% of his usual salary. In certain cases (e.g. accident at work) a sick pay may amount to 100% of employee's salary.

Maternity leave can last from 20 to 37 weeks depending on the number of children born. After 14 weeks of the maternity leave, the father is entitled to use a part of the maternity leave in addition to paternal leave.

Both male and female employees are entitled to additional maternity leave of 6 or 8 weeks. Employees must make a written application to the employer requesting such leave. The employer is obliged to consent to such leave. During maternity leave an employee has the right to a maternity benefit, which is a social security benefit and is equal to the employee's full salary.

Employees who fulfil certain conditions may also take up to additional 28 weeks of remunerated parental leave.

### Compulsory Insurance

The employer is not obliged to provide insurance other than social security. However, an obligation to insure may be imposed on the employer in certain kinds of business. The employees may conclude a contract with an insurance company without the assistance of their employer.

### Absence For Military Or Public Service Duties

Since there is a professional army in Poland, the need for the employer to allow employees' leave for military service is diminished significantly. Employees are entitled to take leave for public service duties.

### Works Councils or Trade Unions

The creation and activities of trade unions' are regulated by the Trade Union Act of 1991. Employees, regardless of their employment agreement, have the right to create a trade union. A trade union is independent in its statutory activity from the employer, public administration and other organisations. Being a member of a trade union is voluntary and employees who become members shall not suffer any negative consequences resulting from their membership. For example, becoming a trade union member cannot affect the employment, its duration or employment promotion.

A trade union can only be created by a minimum of 10 employees, who enact a resolution concerning its creation and its charter and then elect its founding committee. A trade union shall be registered in the National Court Register.

In an enterprise, in which there are no trade union representatives, the employees can elect their representatives. There is no unified procedure for such elections.

When there is a recognised trade union employers must e.g. notify to the trade union about an intention to terminate an indefinite employment agreement; notify to the trade union the employment conditions of transferring employees when a transfer of ownership (or part of) the business is planned; consult with the trade unions the conditions of group redundancy. A member of a trade union, who is elected the representative, shall not be dismissed without the trade union's consent.

The election of work council's members and the rules of their activity are regulated by act of April 7, 2006 on information and consultancy with employees. The act is in general applicable to companies, which employ at least 50 employees. It provides that the work council members are elected by employees. The employer shall inform the work council among others about the economic standing of the company, company's employment policy and planned changes in the organization of work. The employer shall consult with the work council relevant plans regarding employment in the company. Violation of regulations concerning creation of work council and obligation of information and consultancy can be penalized with a fine or restriction of liberty.

### Employees' Right To Strike

Where there is a collective dispute, employees can declare a strike if the employer ignores their demands. A strike can only take place 14 days after the declaration of a collective dispute.



### Employees On Strike

Where an employee goes on strike, in accordance with the statutory provisions, the employee's actions do not constitute a breach of his / her employee's duties. The employee keeps the right to receive social security benefits and other rights resulting from the employment relation, apart from the right to remuneration for the time of strike.

### Employers' Responsibility For Actions Of Their Employees

The employer is responsible for the employees' actions which are performed in relation with the business activity of the enterprise. However, an employee is responsible for the damage caused to the employer. The employer shall be required to prove the employee's responsibility.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

When an employer dismisses an employee, the employer must provide the employee with a written statement of termination. Where the employer dismisses an employee employed for an indefinite period the statement of termination must include the reasons for the dismissal. The termination of contract is effective after the period of notice or as a result of an instant dismissal or a mutual agreement.

Where an employee under an indefinite employment contract is dismissed, the employer shall inform in advance a trade union organisation, which represents an employee.

### Instant Dismissal

The instant dismissal of an employee is possible in three cases: (1) heavy breach of the employee's duties; (2) when the employee commits a crime which precludes further employment because the employee is subject to a final sentence; (3) when the employee loses necessary qualifications due to her/his fault.

The employee must be instantly dismissed within one month of the employer knowing about the employee's reason for the dismissal.

### Employee's Resignation

An employee can resign at any time. The resignation can involve a period of notice or it can be executed instantly. Resignation can be instant where an employee has a medical certificate to certify that the work is harming the employee's health and the employer is not able to provide the employee with other work which is appropriate for the employee's health condition and professional qualifications.

The employee can also resign instantly if the employer commits a gross breach of his basic duties. In this situation the employee has the right to compensation for the period of notice.

The employee must give the employer a written statement setting out the reason for the resignation. The employee must resign within a month of the reason for such a resignation.

### Termination On Notice

Termination on notice is applicable for contracts concluded for indefinite periods of time and for contracts concluded for more than 6 months (in the latter case - only if it is provided in the contract). The length of the notice period of contract concluded for indefinite period depends on the seniority (with the current employer) of the employee and ranges from 2 weeks to 3 months. When the notice period is a number of weeks, the notice period will end on a Saturday. When the notice period is given in months, the notice period will end on the last day of the last calendar month.

### Termination By Reason Of The Employee's Age

An employer is not allowed to terminate an employment contract for the sole reason of the employee's age; such an action would be considered discriminatory. However, if the age of the employee means that he cannot perform his job then the contract can be terminated and justified, even if it is indirectly based on the employee's age.

### Automatic Termination in Cases of Force Majeure

The employment contract will automatically end on the death of the employee, imprisonment of the employee which lasts more than three months and on any other circumstance defined in the specific provisions for the particular profession.

### Termination By Parties' Agreement

The parties are free to terminate the contract by mutual agreement at any time. The agreement shall be concluded in writing.

### Directors or Other Senior Officers

There are no particular regulations concerning the dismissal of a director or other senior officer. The termination of such a contract depends on the statutory provisions concerning the particular institution or enterprise, its internal regulations and the contract.

### Special Rules For Categories Of Employee

There are special rules for the dismissal of certain groups of vulnerable employees such as: pregnant women and the employees who are in the period of 4 years before their retirement age. It is also forbidden to terminate a contract with an employee during his/her justified absence from work (i.e. holiday leave, sick leave).

### Specific Rules For Companies in Financial Difficulties

If the employment contract is terminated because of the liquidation of the company, the notice period might be limited to one month (where it would last 3 months) and the employee is entitled to compensation for the remaining notice period.



The specific rules for companies in financial difficulties apply only to companies which employ more than 20 people and when at least 10 employees are dismissed at once. The group dismissal procedure starts with the consultation with the employees' union representatives. The employer must send the information about its redundancy plan to the employees' representatives and to the district labour office. Within 20 days of receiving the information, the employer and the union representatives will agree the redundancy conditions. However, if an agreement cannot be reached, the employer can establish by-laws and send these to the labour office. Only after following this procedure can the group of employees be dismissed.

### Restricting Future Activities

If the employer and the employee have access to particularly important information, which if revealed could expose the employer to damage, the parties can conclude a contract concerning non-competition during the employment relation as well as after their employment relationship terminates. The non-competition agreement for the period after termination of employment relationship is concluded in writing for a fixed period and provides the employee with compensation. The compensation cannot be less than 25% of the employee's salary and is paid for the whole non-competition period stipulated in the contract.

Where the employer fails to pay the due consideration, the employee is freed from the non-competition restriction but retains the right to claim compensation.

### Severance Payments

Where the employment contract is terminated with or without notice due to the employee's fault and the termination is justified and lawful, the employee is not entitled to severance pay. If however, the employee is made redundant due to reasons attributed to the employer, the employee is entitled to severance pay of the amount from 1 to 3 months salary, depending on the seniority of the employee, but no more than a maximum amount stipulated by law. There is a cap imposed on employees who have high salaries.

When the employment agreement terminates because the employee reaches the retirement age or the right to receive a pension, an employee has the right to severance pay equal to the amount of one month's salary.

Where an employee dies, his family has the right to severance pay equal to 1 to 6 months salary, depending on the seniority of the employee.

### Special Tax Provisions And Severance Payments

Contractual payments as well as non-contractual severance payments are subject to income tax. The employer is responsible for calculating and paying income tax.

### Allowances Payable To Employees After Termination

There are no obligations imposed on the employer to pay an allowance to employees after termination of an employment agreement. However, in some enterprises in which a Social Fund is established, the employees, whose contract was terminated for the reasons of pension or retirement, are sometimes included in the group of its beneficiaries.

### Time Limits For Claims Following Termination

The time limit for most claims arising from the employment relation is 3 years. The time limit for claims by the employer concerning compensation for damage caused by employees is one year from the date of the damage, but no more than 3 years after the day the damage was caused.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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# Portugal

# Portugal

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employment disputes fall within the jurisdiction of the Labour Courts.

There is also an employment arbitration system, governed by the Decree-Law No. 259/2009 of September 2009, which provides for mandatory arbitration and necessary arbitration, as well as arbitration in relation to minimum services during a strike and the means necessary to guarantee those services. Mandatory and voluntary arbitration is limited to cases involving collective bargaining disputes and to cases where the judicial courts do not have jurisdiction and the parties are free to agree terms (issues such as the termination of labour agreements, holidays, the working schedule and overtime work are not matters on which the parties are free to negotiate, and therefore such matters cannot be resolved by arbitration).

### The Main Sources Of Employment Law

There are a number of different sources: the Portuguese Constitution, International Law, EC law, the Labour Code and respective Regulation, the Labour Procedure Code, Collective Bargaining Agreements, Extension Regulations and harmonised case law.

### National Law And Employees Working For Foreign Companies

The parties are free to agree which law is applicable to their employment relationship. However, in the absence of an express agreement, determining the applicable law will depend on each specific situation and on international law.

Regardless of the law applicable to the contract, the mandatory provisions of Portuguese Labour law (which include provisions relating to maximum working hours, compensatory rest days, health and safety rules, minimum periods of holiday, minimum wage, payment for overtime work, equality and non discrimination) will apply to foreign employees living and working in Portugal, whether they are doing so on a permanent basis or simply as temporary expatriated employees.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Please see the above section. An employee working in another jurisdiction is entitled to request the application of the mandatory provisions of Portuguese Labour law (as set out above) without prejudice to any more favourable regime which may apply by virtue of working in that other jurisdiction, or by virtue of the parties' choice of contractual law.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

As a general rule, employment agreements do not need to take any particular form and therefore they may be oral or written. However, the exceptions to this general rule are fixed term employment agreements, employment agreements under a commission of services regime, part-time employment agreements, intermittent employment agreements, tele-work and temporary work.

Regardless of the form of agreement, there are a number of key terms and conditions that must be provided to the employee in writing, as follows:

- The identity of the employer. In the case of a corporate employer, this includes details of the company's structure (i.e. its holdings and subsidiaries and/or the existence of a group of companies) and its respective headquarters and address;
- The place where the work must be performed, or, if there is no fixed place, a statement to that effect;
- The job title or a brief description of its functions;
- The date of execution and when employment commenced;
- The duration of the contract (if it is subject to a fixed term);
- Holiday entitlement and the relevant method of calculation;
- The notice period required by the parties to terminate the employment relationship (if any) and/or the method for calculating such notice;
- The remuneration and the frequency of payment;
- The number of hours to be worked per day and per week. Where this is merely an average figure, that fact should be stated;.
- The identification of the labour accidents insurance policy and the name of the relevant insurance company;
- Details of any applicable collective agreements;
- The identification of the wage guarantee fund or equivalent mechanism (only when the respective regime is in force).

Although as a general rule, employment agreements do not have to be written there are several advantages to having a written agreement - it allows both parties to agree upon and confirm in writing the main aspects of the employment relationship.

## Mandatory Requirements:

### Trial Period

A trial period of up to 240 days will be granted on the commencement of employment. The duration depends on the type of contract and/or of the employees' job title/functions. The parties may expressly waive the right to a trial period or reduce its length by agreement; this can also happen by means of applicable collective agreement. Where the trial period lasts longer than 60 or 120 days, the employer is obliged to give 7 days' notice of termination; where the trial period last for more than 120 days, the relevant notice period is 15 days.

The trial period will be reduced or even excluded where there is a fixed term or temporary contract, or where there has been a previous contract between the same employer and employee under which the employee carried out the same work. In the latter instance, the amount of the reduction or exclusion depends on the length of the previous contract.

### Hours Of Work

Under statute, the normal maximum permitted working period is 8 hours per day and 40 hours per week. These maximum amounts may be increased or reduced in certain situations, for example through collective bargaining agreements or agreement between both parties. In certain economic sectors of activity or job titles/functions the maximum working period may be lesser than 40 hours per week (for instance in the insurance sector).

### Earnings

There are minimum wage restrictions which apply in Portugal. For 2014 the minimum wage is equivalent to €485 per month.

### Holidays/Rest Periods

In general, all employees are entitled to a minimum of 22 working days paid holiday per year, though there are some exceptions to this general rule. During the first year of employment, holiday entitlement accrues at the rate of 2 days for each full month of work, but is subject to a maximum of 20 days. It is mandatory for employees to take one holiday period of at least 10 consecutive working days per year.

Generally, the parties are free to agree between themselves when holiday should be taken. However, if agreement cannot be reached, (unless otherwise prescribed in collective bargaining agreements or other instruments) the employer is entitled to determine when holidays should be taken provided that it allows the employee to take holiday between 1st May and 31st October.

In exceptional circumstances, employees are allowed to carry unused holiday forward to the following year, provided that such holiday days are taken prior to 30th April of the subsequent year. The circumstances previously referred to are: agreement between both parties or if the employee wishes to spend the holidays with relatives living abroad. Employees are also allowed to accumulate half of the holiday period that became due at the beginning of the previous year by agreement with the employer.

In addition to the above holiday entitlements, employees will also benefit from two kinds of annual public holiday: mandatory public holidays and optional public holidays.

### Minimum/Maximum Age

An employee has to be at least 16 years of age (plus completion of compulsory schooling), although in certain circumstances it is permissible to employ someone younger. Different rules apply to children and young workers.

The retirement age is 66 years, but is not compulsory.

### Illness/Disability

Inherent subsidy is granted by the Portuguese Social Security System to eligible employees. Employees maintain all rights and obligations when they are ill, except the rights concerning the remuneration. The amount of the subsidy varies in accordance with the nature and the period of absence between 55% and 75% of the remuneration according with the duration of the disease or, in case of tuberculosis between 80% and 100% of the remuneration depending on the household, with a minimum limit and a maximum limit (which is the reference remuneration of the employee). The conditions to be granted are the registry of remunerations during the previous 6 months of the absence and 12 days of registry of remuneration for effective work in the previous 4 months preceding the month in which the disability occurs. The maximum period during which it is granted is 1095 days (in case of tuberculosis the subsidy is granted by an unlimited period time).



### Location Of Work/Mobility

Employees may be temporarily or permanently transferred to a different working place, provided there is reasonable justification and prior notice is given. Parties are allowed to extend the transfer as long as it is applied within 2 years from the date of the agreement, otherwise such an agreement/provision will expire.

### Pension Plans

Employers are free to implement/subscribe to Pension Plans to complement the Portuguese Social Security Pension Scheme, which his mandatory.

### Parental Rights (Pregnancy/Maternity Paternity/Adoption)

There are several statutory right's granted to pregnant women, puerperal women and nursing women, as well as to parents or adoptive parents or candidates to adoption.

Employees (male or female) are entitled to take up to 120 or 150 consecutive days of initial parental leave where they are entitled to a subsidy equal to 100% or 80% of their remuneration, respectively. This leave may be increased by 30 days if both parents share the initial parental leave, i.e. both parents must enjoy 30 consecutive days or two periods of 15 consecutive days after the mandatory six-week period enjoyed by the mother. Therefore, when shared, the initial parental leave may achieve 180 days and a subsidy equal to 83% of their remuneration will be granted.

Fathers of newborn children are entitled to take paid leave of up to 20 working days as follows: 10 mandatory working days, from which 5 working days must be taken immediately after birth and the other 5 working days during the following 30 days after birth. The remaining 10 working days are not mandatory and may be taken consecutively or interpolated after the above mentioned 10 day period and along with the initial parental leave taken by the mother.

The termination of pregnant women, puerperal women or nursing women on grounds of redundancy benefits from a special legal regime. There is a presumption that such a termination is unfair and it is necessary to obtain an advance legal opinion issued by the Portuguese Equality Entity (CITE).

### Compulsory Terms

Please see the answers to paragraph 2 above - Legal Requirements as to the Form of Agreement.

### Non-Compulsory Terms

Without prejudice of the existence of mandatory rules that allow the parties to provide otherwise, parties are free to agree non-compulsory provisions provided such provisions are more favourable to the employee than the mandatory ones.

## Types Of Agreement

Employment agreements may be for an indefinite term, and this is the general rule, or for a term which is fixed either by time or by the completion of a task. Fixed term employment agreements may only be executed to satisfy temporary needs of the employer and only during the period strictly required for that purpose, otherwise they will be deemed as an indefinite term employment agreement. There are also temporary agreements, part-time agreements, intermittent work agreements, telework agreements and labour agreement under a commission of services regime.

## Secrecy/Confidentiality

The parties may insert in the employment agreements clauses where it is established that during its execution, as well as after its termination, the employee shall not disclose any trade secrets or confidential information related to the employer.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Both Portuguese Industrial Property Code and the Copyright Code contain several provisions on this regard.

An invention created during the course of employment belongs to the employer, provided that the creation of inventions is one of the intentional purposes of the employee's employment and he is remunerated accordingly.

If separate remuneration has not been agreed, the employee will be entitled to receive reasonable compensation based on the value of the invention to the employer.

If the invention is made during the regular course of employment and within the scope of activity of the employer, and although it is not part of the employee's specific job function, the employer shall be entitled to assume ownership of it or to reserve the right to the exclusive working of the invention. The employer shall be entitled to the acquisition of the correspondent right and title and the right to apply and acquire a foreign correspondent title.

Copyright for the work created during employment will belong to the employee unless agreed otherwise within the contract of employment or if the work is not signed by its author. Moreover, if the employer decides to sell or to exploit such copyright, the employee/author may claim compensation based on the profits made by the employer.

### Hiring Non-Nationals

Citizens from countries that are not members of the European Union (nor of countries that have a similar regime, like Switzerland) must request a visa to entry, stay and a residence authorisation to work in Portugal without any special requirement or formality other than having a valid Identity Card or Passport and must have an employment contract or the promise of an employment contract.

In case of EEA nationals, if their permanence in national territory lasts more than 3 months those citizens should formalise their right of residence. They may do so by obtaining a Certificate of Register but there is no need to request a visa or a residence authorisation.

### Hiring Specified Categories Of Individuals

There are several restrictions regarding the performance of activities by young employees, pregnant and disabled people, namely activities involving risks to their health and safety.

### Outsourcing And/Or Sub-Contracting

These issues are regulated by the Portuguese Civil Code.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

As a general rule, employers may not unilaterally change the employment agreement provisions, unless they foresee terms and conditions that may not be considered as individually/specifically agreed by parties. All terms and conditions individually agreed between the parties (that is, that are not determined by one of the parties, usually the employer), may only be changed by mutual agreement, otherwise will be deemed null and void and cannot be enforced.

### Change In Ownership Of The Business

Where there is a change in the person of the employer, the Portuguese Labour Code provides for an automatic transfer of the individual contracts to the transferee. All the obligations and benefits related to the individual contracts are transferred, thus remain unaltered.

Several information and consultation obligations must be complied with by both the transferor and the transferee.

In principle employees cannot oppose to a transfer and/or can not prevent the deal to occur.

### Social Security Contributions

As a general rule, for ordinary employees mandatory monthly contributions are as follows: 23,75% and 11% of the reference salary to employers and employees and, respectively. In some specific economic sectors and under certain circumstances provided for by legislation that aims to promote employment, the amount of the contributions may vary.

Since February 2013 the percentages referred to above are also mandatory to the statutory members of the board of the companies in the same terms as the ordinary employees: 23,75% paid by the company and 11% due by the statutory member of the board[1].

### Accidents At Work

The employer is obliged to insure employees against accidents in the work place with the national Social Security Institution. The employer is also responsible for safety in the work place.

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[1] *The self-employed person is also subject to social security contributions of 29, 6% or of 34,75%, in case of entrepreneur or owner of individual limited liability establishment, as well as their spouses in case of joint exercise of activity.*

### Discipline And Grievance

As a general rule employers cannot terminate employment agreements at will and/or by giving notice, unless there is just cause; either objective, due to economic or market reasons, or subjective. The latter generally relates to a serious misconduct for a serious incident that prevents the maintenance into force of the employment relationship. Subjective 'just cause' has to be evidenced through a disciplinary proceeding, which might be used not only to apply the most serious sanction – the dismissal –, but also for a series of warnings or other sanctions for minor offences or misconduct. This procedure implies a formal accusation, and allows the employee to state his case in defence before making the ultimate decision to dismiss.

### Harassment/Discrimination/Equal pay

Along with constitutional principles, the Labour Code expressly establishes the prohibition of discrimination at work, forbids any type of harassment and foresees the principle of equal work equal pay. Indeed, the Labour Code expressly establishes the prohibition of discrimination at work, complying discrimination based namely on ascendancy, age, sex, sexual orientation, marital status, family situation, genetic patrimony, reduced capacity to work, disability, incurable disease, ethnical origin, religion, political or ideological orientations and union membership.

Discrimination-based claims are rare in Portugal.

### Compulsory Training Obligations

Professional training (35 hours per year minimum) is deemed to be continuous and should involve at least 10% of the employees per year.

Regarding fixed-term labour agreements, the employer is obliged to provide professional training only if the contract period is equal or exceeds 3 months and in this case the number of hours is proportional to the duration of such contract.

Where the employment agreement is terminated, the employee has the right to be paid according to the credits of professional training he was not offered.

### Offsetting Earnings

Allowed only under exceptional circumstances, namely in case of deductions in favour of the State, Social Security or ordered by law or court, amortisation of capital or interests on loans granted to the employee, expenses with meals or related with the use of telephones at the workplace, among others. As a general rule (exceptions exist in case of deductions in favour of the State, Social Security or ordered by law or court) the maximum amount of the deduction is of 1/6 of the remuneration of the employee.

### Payments For Maternity And Disability Leave

These payments are granted by means of a subsidy by the Portuguese Social Security. Please see point 2 above on Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption) and note that often those subsidies are complemented by the employer up to the amount of the remuneration of the employee or such a complement is mandatory through collective bargaining agreements.



### Compulsory Insurance

An Employer's liability for accidents at work (latu sensu) must be transferred to an insurance company. Failure to do so - apart from constituting a very serious offence, which may imply the payment of a fine - will constitute the employer liable for any damages suffered by the employee as a consequence of the labour accident.

### Absence For Military Or Public Service Duties

Although military service is nowadays voluntary, it is an example of the circumstances under which an employment agreement will be suspended for the period of its duration.

Candidates to public offices are also entitled to absence according to the electoral law and in general candidates are entitled to absence during (and often before) the electoral campaign.

### Works Councils Or Trade Unions

There are several rules concerning the election, powers and the protection of Trade Unions and Works Council's representative bodies.

Employees in Portugal have the constitutional right to be represented by works councils. Works councils have certain rights which are recognised constitutionally and statutorily, namely:

- to receive from the employer all and any information relevant to its function and activities;
- to exercise some control over the management of the company;
- to be involved in any proposals to reorganise the structure of the business;
- to organise or be involved in the company's social activities;
- to meet regularly with management to discuss issues of interest (such meetings to take place at least on a monthly basis);
- to be provided with a place at the employer's premises to meet and carry out its activities generally; and
- to express an opinion on issues prior to the management of the company making a formal decision (that opinion should be given genuine consideration but need not be followed).

In addition to representation by works councils, the Portuguese Constitution recognises the right for employees to organise themselves into trade unions and other similar organizations.

### Employees' Right To Strike

This is a Constitutional right. Trade unions are principally responsible for organising official strike action. Works councils may also organise a strike provided they do so following a secret ballot and provided the majority of the employees are not trade union members, participate in the voting and that the council is convened by 20% or 200 workers. If the majority of employees are trade union members then it is the union that should organise the strike and any strike organised by the works council would be held to be unlawful.

Prior to taking strike action the union (or works councils as the case may be) must give the employer or employers' association at least five working days' notice and such notice must also be given to the Labour Ministry, or published through the media. Where strike action may impact on public services, at least 10 working days' notice must be given.

### Employees On Strike

During strike action the contracts of employment of participating employees are suspended and employers are prohibited from employing temporary or permanent labour to replace those on strike (but the notice referred above must contain a proposal for a definition of services necessary for the safety and maintenance of equipment and facilities). Employers are also prohibited from offering incentives to those who do not go on strike, so any form of cash reward is unlawful.

### Employers' Responsibility For Actions Of Their Employees

As a general rule, employers are responsible for the actions of their employees while working, except where the latter are acting against their labour duties.

## 04. Firing The Employee

### Procedures For Terminating the Agreement

Please refer to Discipline and Grievance above.

### Instant Dismissal

This is unlawful. Doing so will determine the "dismissal" as illegal and entitle the employee to file a claim before a Labour Court and claim his reinstatement or compensation for unlawful dismissal (which varies between 15 and 45 days of basic remuneration and seniority allowance per each year of seniority or fraction of seniority) as well as to receive the salaries vested since the dismissal occurred until the final judgement and other damages (e.g. moral damages).

### Employee's Resignation

Depending on the length of service and on the type of agreement in force, prior notice should be given by the employee (15 days for fixed term contracts of less than 6 months, 30 days for longer fixed term contracts or open ended contracts which have lasted up to 2 years, increasing to 60 days where the employment has lasted for 2 years or longer). If the required notice period is not provided, the employee should indemnify the employer in the amount correspondent to such period of time and having in mind the salary that the employee would receive plus, if applicable, the amount correspondent to the damages/losses caused to the employer due to such employee's behaviour.



### Termination On Notice

This is not possible for the employer in non-fixed term employment agreements. Only fixed term employment agreements can be terminated by the employer on notice.

### Termination By Reason Of The Employee's Age

Retirement age is of 66, however it is up to the employee to retire at that age or from that age on. Notwithstanding, by reaching the age of 70 without having retired, the employment agreement is conveyed into a 6 month fixed term agreement, which means that the employer can terminate it unilaterally, by notice, for its term.

### Automatic Termination In Cases Of Force Majeure

This is feasible where it is impossible for the employee to carry out his duties or for the employer to receive them, in which case the agreement terminates/expires. In certain situations the termination under this context (for instance the closing of the company) entitles the employee to a compensation of 12 days[2] basic remuneration and seniority allowance for each year of seniority (the fraction of seniority is calculated in proportion).

### Termination By Parties' Agreement

Termination can be mutually agreed between employer and employee at will and under the correct conditions.

### Directors Or Other Senior Officers

A Commission of Service Agreement is a specific modality of the indefinite employment agreement, usually used in functions that imply a special relation of trust with the employee. It's particularity is that it may be terminated by any of the parties at all time by giving a minimum 30 or 60 days written prior notice to the other party, depending if the agreement lasted less or more than 2 years. Upon termination of the present Agreement, the employee might be entitled to compensation, except if the termination is caused by fault or initiative of the employee.

### Special Rules For Categories Of Employee

Pregnant employees, employees who have recently given birth and employees who are breastfeeding; members of trade unions and corporate bodies and trade union representatives; works councils representative; health and safety officers. Special regime is applicable in what concerns termination of agreement by just cause of, i.e., those employees benefit, in general, from the presumption that the dismissal is unlawful and in case they are successful in a judicial claim the amount of the compensation will be increased.

[2] *This is the general rule for agreements concluded after 1 October 2013. Therefore, specific rules are applicable to agreements concluded previously to 1 October 2013.*

### Specific Rules For Companies In Financial Difficulties

Lay off, collective dismissals and redundancies' provisions are set out by the Portuguese Labour Code along with other rules foreseen in the Portuguese Insolvency Code.

The law distinguishes between collective dismissals, that is, where several people are dismissed by reason of redundancy and individual redundancy.

The first condition to be met is that an objective reason must exist, which may be either market, structural or technological reasons.

A demanding, formal and mandatory procedure must be complied with by the employer. Employees affected are entitled to a compensation which corresponds to 12 days[3] pay and seniority allowance (if applicable) for each full year of service.

The lay-off (suspension or reduction of the company's activity for a 6 month period, which may be renewed for equal period) often presents as an important measure to employers.

The insolvency of the company does not determine the automatic termination of the employment agreement, only the closing of the premises does or a decision of the insolvency director prior to the mentioned closing.

### Restricting Future Activities

Non-compete clauses may be applicable for a maximum of 2 years, (which can be increased to 3 years for top employees), either when the parties enter into the employment agreement or on its termination. Compensation should be paid to the employee during the inactivity period. There is no statutory amount which means that the parties have to enter into an agreement on this, by foreseeing a fair amount. Such clauses are enforceable as long as the competition and the respective damages are evidenced and the compensation agreed is adequate.

### Severance Payments

Severance payments are calculated according to the seniority of the employee, the ground for dismissal and, if more favourable, the terms of the agreement. It should be noted that termination with just cause does not entitle the employee to a severance payment.

### Special Tax Provisions And Severance Payments

Compensations paid to employees (directors are excluded form this regime) are only subject to taxation in the amount exceeding the average amount of regular remuneration considered as salary subject to taxation, earned in the last 12 months prior to termination, multiplied by the number of years or fraction of seniority or performance of functions.

[3] *This is the general rule for agreements concluded after 1 October 2013. Therefore, specific rules are applicable to agreements concluded previously to 1 October 2013.*



However if in the following 24 months, a new professional or business relationship is executed, directly or indirectly, between the same parties or related parties (for instance with family of the employee or with a parent company of the employer), tax will apply to total amount received. As of 2011 with the foreseen entry into force of new legislation regarding the social security system severance payments are subject to social security contributions in the same terms as provided in the tax provisions referred to above.

### Allowances Payable To Employees After Termination

Unemployed people are entitled to receive unemployment subsidy, whenever specific requirements are met, during a period of time that may vary between 150 and 900 days, depending on the particular contributory situation of the unemployed, namely, the years with registry of contributions and the age. The amount of such subsidy may vary between the equivalent to the Indexation Mechanism for Social Supports (€419,22 in 2014) except in cases where the net value of the remuneration used as reference, is inferior to such value and 75% of the net value of the reference remuneration that was used as basis for the calculation of the subsidy or two and half times the higher Indexation Mechanism for Social Supports (€1,048,05 for 2014) and it ispaid by the Portuguese Social Security Services.

### Time Limits For Claims Following Termination

As a general rule, the time limit for filing a claim following termination is 60 days, in cases of formal dismissal, except for collective dismissals which is 6 months. The time limit for claiming other credits is 1 year. The said time limits are counted from the date of the termination of the agreement.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Not applicable.

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# Romania

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employment conflicts are mainly settled by the district court of law having jurisdiction over the territorial area where the employee has his/her domicile or work place. By means of exceptions, specific employment disputes may be settled by other courts of law, upon special legal provisions issued in this respect.

### The Main Sources Of Employment Law

Romania is a civil law jurisdiction and the core employment regulation is the Labour Code. Beside the Labour Code, specific tailored legal enactments regulate other employment related aspects, such as employment safety and health, insurances for work accidents and professional diseases, employment conflicts and disputes. Finally, collective bargaining agreements provide binding rules and obligations to be complied with by the employers.

In addition, considering Romania's accession to the European Union, which took place on 1st of January 2007, European legislation and ECJ court decisions are also relevant.

Under Romanian law, a particular source of the labour law is represented by the collective bargaining agreements. Such agreements may be concluded at different levels: company, group of companies and industry sectors. Collective bargaining agreements concluded at lower levels cannot provide for rights inferior to those set forth by collective bargaining agreements concluded at higher levels.

The Labour Code set up a legal obligation for companies with more than 21 employees to conduct collective negotiations in view of concluding a collective bargaining agreement. The obligation is to carry out negotiations only, and not to actually conclude the agreement.

The provisions of collective bargaining agreements are compulsory for the parties and apply to all employees of a company or group of companies, irrespective of whether they are members of a trade union or not.

A collective bargaining agreement concluded at industry sector level shall be applicable to all employers who are members of the employers' organisation participating in the collective negotiation. The application of such collective agreement can be extended to the entire industry sector, if certain conditions are met. Employers shall be considered part of an industry sector depending on their main object of activity stated in their registration documents.

Collective bargaining agreements can be concluded for at least 12 months and maximum 24 months.

### National Law And Employees Working For Foreign Companies

If employees working for foreign companies are Romanian citizens working on Romanian territory, the law applicable to their employment relationship shall be Romanian law. In cases where the employees are non-nationals working for foreign companies on Romanian territory, the law applicable is that of the state where they have concluded the employment agreement (or another law chosen by the parties). Romanian law is not applicable in case where an employment relationship is established between a non-national and a foreign employer.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Employees working for national companies on the Romanian territory, irrespective of their nationality, may be seconded to another employer having its place of business in another jurisdiction, for a determined period. In such a case, the applicable law to their contractual relationship is Romanian law.

Another possibility for the employees working for national companies to work abroad is by means of delegation. This may be disposed by the employer for a maximum period of 60 days within 12 months and may be prolonged with successive periods of up to 60 days based on the employee's consent. As opposed to secondment, delegation represents the temporary relocation of the employee, in view of performing specific tasks for his employer. The Romanian law remain the applicable law between the employee and employer during the delegation period.

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# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Individual employment agreements must be concluded in writing, based on the parties' consent, failing which the agreement will be a nullity. Prior to concluding the agreement, the employer is required to inform each employee of the general clauses to be included in the employment agreement. Such obligation is considered to be fulfilled by the employer upon the signing of the individual employment agreement. Additionally, the employer is under an obligation to register the individual employment agreement on the employee's record one day before the employee commences work. Failure to observe the written form requirement can result, aside from the nullity of the employment agreement, in the administrative liability of both the employer and the employee and even the criminal liability of the employer if more than five employees are put to work without concluding employment agreements.



### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide a trial period within the individual employment agreement as long as the parties establish an employment relationship without a trial period. Where the employer does decide to set up a trial period for the new employee, it must be reflected within the employment agreement.

The trial period cannot exceed 90 days for employees holding a non-management position and 120 days for employees holding a management position. Other trial periods are provided by the Labour Code for specific situations.

#### Hours Of Work

On average, an employee will work 8 hours a day and 40 hours a week. Employees' consent is required for overtime work. The maximum working week is 48 hours, including overtime. Additional overtime is accepted in exceptional circumstances, provided that the average work time computed on a four- month basis does not exceed 48 hours a week.

#### Earnings

The mandatory minimum monthly gross salary in Romania is regulated by Government Decisions. Thus, the wages stipulated under the individual employment agreement cannot fall below the minimum national gross salary.

#### Holidays / Rest Periods

The minimum paid leave provided under Romanian law is 20 working days. The Labour Code provides for a number of days off that must be observed by employers, These are: (i) January 1st and 2nd; (ii) first and second Easter days; (iii) May 1st; (iv) first and second Pentecost days; (v) August 15th; (vi) November 30; (vii) December 1st; (viii) first and second Christmas days; (ix) 2 days for each of the 3 annual religious holidays, declared as such by the legal religions other than Christian-orthodox ones, for Employees belonging to such religions.

#### Minimum/Maximum Age

The average age for employment is 16 years old. However, an individual employment agreement may be concluded at the age of 15, based on parents' consent, taking into consideration the physical development of the teenager, his/her aptitudes and knowledge. Employment of persons under the age of 15 is prohibited. There is no maximum age limit.

#### Illness/Disability

A medical certificate upon hiring an applicant represents a mandatory prerequisite for concluding an individual employment agreement, in order to determine if he or she is fit for the job position offered by the employer. The lack of such certificate shall trigger the nullity of the agreement.

#### Location Of Work/Mobility

The place of work must be clearly identified in the individual employment agreement. In cases where the work place is not static, it has to be stated that the employee may be requested to work in various places. Also, the parties may provide a mobility clause within the employment agreement. If this is the case, the employee shall benefit from additional pay in cash or in kind.

#### Pension Plans

There are no mandatory requirements relating to pension plans to be included in the employment agreement. However, the employer is under a legal obligation to pay all the social security contributions (including contributions to the pension fund) payable by both employee and employer based on their employment relationship.

#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

There are no legal requirements to provide "family rights" within the individual employment agreement. Nevertheless, such rights are recognised under Romanian law (referring to maternity leave and allowance, childcare leave, leave to care for a sick child, additional protection in case of maternity) and their observance is compulsory.

### Compulsory Terms

The compulsory terms to be included in the individual employment agreement are as follows: the identity of the parties, the place of work or in case where the work place is not static, the provision that the employee may work at various places, the position/occupation of the employee according to the specifications of the Classification of Occupations in Romania or other regulatory acts, as well as the job description, the evaluation criteria of the professional activities performed by the employee applicable within the employer, the specific risks of the job position, the effective date of the agreement, the length of the employment agreement, the length of the rest leave the employee is entitled to, the length and the specific conditions of the prior notice term (both for dismissal and for resignation), the wage, other elements of the wage, as well as the payment terms, the working time, expressed in hours/day and hours/week, provisions on the applicable collective bargaining agreement, the length of the trial period (if applicable).

### Non-Compulsory Terms

The parties of an employment agreement may agree any other provisions in addition to the compulsory terms, provided that these terms are no less favourable then certain statutory rights. Such non-compulsory terms may refer to confidentiality, non-competition and intellectual property rights.

### Types Of Agreement

The individual employment agreements regulated under Romanian law may be categorized by considering specific criteria. These criteria are (i) length of employment: undetermined and determined agreements, or, work through a temporary employment agent; (ii) working time: full–time and part-time agreements. A distinctive agreement is that referring to home–based work (concluded with employees who carry out, at home, the specific duties of their job position).

### Secrecy/Confidentiality

General provisions are stipulated under the Labour Code as regards to the confidentiality obligation of the employee during the course of employment. In addition, more detailed provisions may be included in the employment agreement. Specific amounts of damages may be stipulated to be paid by the employees in case of breach of the confidentiality clause.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms agreed by the parties, there are statutory provisions which will apply to determine the ownership of IP rights. There are different provisions in respect of copy-right, respectively patent rights. In case of copy-right, the holder of the intellectual property right shall be, as a matter of principle, the person who created the work. As regards the patent rights, the holder of the intellectual property rights created by an employee during working time shall be either the employer, in case he granted a specific research task to the employee or the employee, in case he creates such rights in the normal course of his duties without a specific mandate from the employer. Although not mandatory, provisions on IP rights are commonly included within individual employment agreements.



### Hiring Non-Nationals

For this specific issue, it is important to distinguish between EU/EEA/Swiss nationals and non–EU/EEA/Swiss nationals. EU/EEA/Swiss nationals have an automatic right (subject to certain exceptions) to enter and work on Romanian territory. For non-EU/EEA/Swiss nationals, working in Romania is permitted only for those who obtain a work permit. The number of work permits issued every year is limited and is determined by a government decision.

### Hiring Specified Categories Of Individuals

There are specific provisions of Romanian law that protect certain categories of employees (e.g. teenagers, pregnant women).

### Outsourcing And/Or Sub-Contracting

Under Romanian law there are no specific rules for outsourcing. However, it may be possible to apply, subject to a case by case analysis, the rules on the "transfer of undertaking". Further details about the transfer of an undertaking are set out below.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

As a general rule, the employment agreement may not be unilaterally amended by the employer. Any change in respect of the terms and conditions provided within the agreement shall be based on the parties' consent and it shall be reflected in an addendum to the employment agreement.

By means of exception, some specific provisions of the agreement may be unilaterally amended by the employer, in accordance with the provisions of the Labour Code. One specific exception regards the work place. The employer may change the work place of the employee by delegating or assigning the employee to another work place or employer, for a determined period of time. During the delegation or assignment period, the employer shall preserve the employee's position and all other rights stipulated in the individual employment agreement.

The employer may also temporarily change the place and nature of work, without the employee's consent. This may be done in cases of force majeure, as a disciplinary sanction, or as a measure aimed at protecting the employee. Such changes must be made in accordance with the terms stipulated by the Labour Code.

### Change In Ownership Of The Business

The change of the employer within the employment relationship may trigger, in principle, the application of the "transfer of undertaking" rules. The main enactments regulating the "transfer of undertaking, business or part of an undertaking or business" are the Labour Code and the Law No. 67/2006 on safeguarding employees' rights in cases of transfer of undertakings, businesses or parts of undertakings or businesses. The latter has transposed the Council Directive 2001/23/EC of 12 March 2001 on the approximation of laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses. The above legislation provides protection for employees.

In this respect, the transferee employer is liable to observe the rights which the transferred employee had with the transferor employer under their individual employment agreement and the applicable collective bargaining agreement. Both the transferor and the transferee shall be under an obligation to consult their employees about the transfer and to inform them on specific issues.

For the purpose of the transfer, no consent from the employees is required. However, the transfer of undertakings, businesses or parts of undertakings or businesses shall not be used as grounds for the transferor or the transferee to perform individual or collective dismissal of employees. If a transfer involves a substantial change in working conditions to the detriment of the employee, the transferee is liable for the termination of the individual employment agreement.

### Social Security Contributions

Under Romanian law, the social security contributions (i.e. contributions to the social security system, the health system and the unemployment system) are owed both by the employee and the employer. The payments of such contributions are made solely by the employer. The aforementioned contributions relate to the salary incomes granted by the employer to the employee, in exchange for his work. The level of the social security contributions is mainly regulated by the Law on State Social Security Budget issued annually.

### Accidents At Work

There are specific enactments relating to the health and safety of employees. For such purpose, the employer shall provide all employees with insurance for risks of employment accidents and professional diseases.



### Discipline And Grievance

Breach of the employment agreement by the employee represents misconduct and entitles the employer to take disciplinary action, provided that the breach is not due to the employee's professional unfitness. Before imposing a sanction on the employee, a preliminary investigation procedure has to be followed by the employer. During the preliminary investigation stage the employee will be presented the facts deemed as disciplinary misconduct and will be asked to present arguments in his favour. The employee may be assisted by a member of the trade union during the investigation stage. The employer's failure to observe the disciplinary procedure may lead to the annulment of the sanction applied to the employee.

The sanction imposed may be challenged before the courts of law by the employee where the judge considers the sanction imposed to be too severe or to be unjustified, it may be declared null and void.

### Harassment/Discrimination/Equal pay

General provisions on harassment/discrimination/equal pay are applicable in Romania, to all citizens. In addition, special provisions in respect of the employees are regulated under the Labour Code. Thus, all direct or indirect discrimination towards an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, skin colour, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, trade union membership or activity, shall be prohibited. Similar provisions exist in respect of harassment.

As regards equal pay, the Labour Code expressly provides equal treatment in the field of remuneration.

### Compulsory Training Obligations

Employers with more than 20 employees are under a legal obligation to issue and apply, annually, professional training plans, after consulting the trade unions in this respect. In addition, the employer shall ensure the participation of all employees in professional training programmes as follows: at least once in two years for employers having more than 21 employees; at least once in three years for employers having less than 21 employees.

### Offsetting Earnings

As a general rule, employers may not withhold from the wages of their employees any amount of money, except for specific cases and under certain conditions. However, the employer may withhold any amounts held as damages, considering that the employee's debt is outstanding and has been found as such by a court decision which is final and irrevocable.

### Payments For Maternity And Disability Leave

Employees who have paid income tax within the 12 months prior to childbirth shall benefit from childcare leave of one or two years, upon request, or, where they have a disabled child, three years, and a monthly allowance. Such allowance ranges between RON 600 to 85% of the average income of the last 12 months, but no more than RON 3,400. The above provisions are applicable either to the mother or father.

Disability payment is to be paid to the employee during disability leave. Payment is due by the employer from the first until the fifth day of leave; starting with the sixth day of disability leave, the corresponding leave is paid from the budget of the Sole National Fund of Social Health Insurance. The allowance for temporary work incapacity is granted for no more that 183 days per year. A longer period of paid leave is available in case of certain diseases, such as heart diseases, tuberculosis and AIDS.

### Compulsory Insurance

The employer is under a legal obligation to provide all employees with insurance for risks of employment accidents and professional diseases. Such insurance is part of the social security system, being guaranteed by the state, and it assures the social protection of employees against diminishing or losing their work capacity or against their death following work accidents or professional diseases.

### Absence For Military Or Public Service Duties

Considering that the mandatory military service in Romania was suspended, there are no provisions within the Labour Code regarding the effects of the military or public service duties over the individual employment agreement.

### Works Councils or Trade Unions

The right to establish trade union organisations and to become a member of such organisations is guaranteed under Romanian law. For such purpose, employers cannot ban access to trade unions. At least 15 people working in the same unit are required to set up a trade union.

A person may only belong to one trade union organisation within an employer at the same time and there are certain people, such as public officials, members of the military and members of government ministries who may not establish a trade union.

In defending the rights of their members, trade unions have the right to undertake any action provided for by the law. This includes the ability to bring a court action on behalf of their members based on an express mandate from the persons concerned (the action cannot be continued if the person concerned opposes or renounces the trial).

The representative trade union is entitled to receive from employers any necessary information for the negotiation of collective bargaining agreements and other agreements relating to employment relations.



Employees who are elected to the management body of a trade union are protected against all forms of constraint or the limiting of the exercise of their functions.

As regards the works councils, the European Directive on the establishment of European Works Councils has been implemented within Romanian law. The main provisions regulate the creation of a European works council (or an alternative procedure) for informing and consulting employees at the European level.

### Employees' Right To Strike

Employees shall be entitled, based on the provisions of the Labour Code, to strike, with a view to defend their professional, economic, and social interests. Any limitation or prohibition of the right to strike may only intervene in those cases and for those employee categories expressly provided for by law.

### Employees On Strike

No employee may be forced to participate in a strike. Participating in or organising a legal strike does not represent a breach of the employees' duties and cannot have negative implications for their employment relationship. During the strike, the individual employment agreements of the employees participating to the strike are suspended.

### Employers' Responsibility For Actions Of Their Employees

According to the general rules of civil law, employers are responsible for the damages caused by their employees, in the exercise of their work duties. Therefore, the employer is liable to pay any compensation resulting from the employee's actions. However, the employer may request the employee to return the compensation he/she was paid as a result of his/her actions.

# 04. Firing The Employee

### Procedures For Terminating the Agreement

The employment agreement can only be terminated in specific and limited cases as provided for by the Labour Code, and the procedural requirements must be met. The main categories of dismissals regulated under Romanian law are dismissal for cause (restructuring) and dismissal without cause. Dismissal for cause can be done if economic or operational reasons cause employers to reduce the workforce. Dismissals for bad performance and for disciplinary reasons are among the most common types of dismissal for cause. In both cases, specific procedures must be followed. An Employer's failure to comply with such procedures may trigger the annulment of the dismissal decisions in court. The same sanction shall apply if the employers cannot prove that the dismissal reasons are real and fall within the categories recognised by the Labour Code as entitling employers to perform dismissals.

Where the number of redundancies throughout a consecutive period of 30 calendar days exceeds certain thresholds, the collective dismissal procedure will be activated. Specific steps have to be observed and consultations with trade unions need to be conducted. The collective dismissal procedure takes about two months and a half to complete.

### Instant Dismissal

Under Romanian law, employers cannot terminate an employment agreement by means of instant dismissal for any reason whatsoever. Employers have to observe the procedures laid down in the Labour Code in this respect.

### Employee's Resignation

The individual employment agreement may be unilaterally terminated by the employee provided that he or she delivers to the employer prior notice. The notice period in cases of resignation is of 20 days for employees holding non-management positions and 45 days for those holding management positions. However, the employer may choose to accept immediate resignation.

### Termination On Notice

Where the employment agreement is terminated by the employer, the employee is entitled to a prior notice period. An employer is obliged to observe a 20-day prior notice period for all categories of dismissals, except when the dismissal is done for disciplinary reasons or when the employee is arrested for more than 30 days.

### Termination By Reason Of The Employee's Age

The provisions of the Labour Code which regulated the possibility of the employer dismissing an employee when he reaches retirement age and where he did not request the retirement have been repealed.

Thus, the individual employment agreement of an employee who reaches the retirement age and who also fulfils the minimum standards provided under the social security system is terminated automatically by law.



### Automatic Termination In Cases Of Force Majeure

Romanian law does not provide for the possibility of automatic termination of an employment agreement in cases of force majeure. The termination of an employment agreement by law is only possible in the limited cases provided by the Labour Code.

### Termination By Parties' Agreement

Employment may be terminated by mutual consent of the parties by way of a termination agreement. The employer may also use a so-called "voluntary plan" to terminate the employment agreement, provided that the employee agrees with such termination.

### Directors Or Other Senior Officers

Under Romanian law, there are no special rules which relate to the termination of employment agreements of employees holding a management position. In such cases, the general rules provided by the Labour Code shall apply. In cases of joint stock companies, the directors and the general manager cannot conclude an employment agreement for their job positions. In such a case, they conclude management agreements which may be terminated according to commercial regulations.

### Special Rules For Categories Of Employee

There are some categories of employees (e.g. pregnant women, trade union leader) who benefit from more generous rules for protection against dismissals.

### Specific Rules For Companies in Financial Difficulties

In principle, there are no special provisions regarding the termination of employment agreements in cases where the employer is in financial difficulties. However, specific rules apply in cases where a bankruptcy procedure has been declared against a company. Thus, by means of exception from the general employment rules set up by the Labour Code, the employment agreement concluded by a company which is subject to a bankruptcy procedure shall be immediately terminated by the judicial administrator/liquidator. In such cases, the rules relating to collective dismissals shall not be applicable. However, the employees are entitled to benefit of a prior notice term of 15 days.

Within the bankruptcy procedure, wages shall be paid before any other debts owed to other creditors.

### Restricting Future Activities

Under Romanian law, the clauses restricting future activities of the employees are permitted with certain limitations. Such clauses may refer to non-competition obligations of the employees for a determined period, after the termination of the employment relationship with the employer.

Based on the provisions of the Labour Code, employees have a general obligation of loyalty towards their employers, preventing them from performing similar activities for other employers throughout the duration of the individual employment agreement. In addition, the parties may agree to turn this into a non-competition obligation applicable after the termination of the individual employment agreement for a maximum period of 2 years after termination of employment. In such a case, a monthly indemnification shall be granted by the employer to the employee for the entire non-competition period following the termination of the employment, which cannot be less than 50% of the employee's average gross salary in the 6 months prior to termination.

### Severance Payments

Employees whose individual employment agreements are terminated without cause (for reasons not related to their person) are entitled to receive severance payments, if regulated under the applicable collective bargaining agreements.

### Special Tax Provisions And Severance Payments

The contractual payments made by the employer in consideration of the employment agreement are subject to income tax. Under Romanian law, the level of income tax is 16% applicable to the gross wage and the related rights. The severance payments made upon the termination of the employment agreement are also subject to income tax. Specific exemptions in relation to the payment of income tax for certain employment allowances are provided by the Romanian Fiscal Code.

### Allowances Payable To Employees After Termination

Under Romanian law, employers are not required to contribute to any allowances payable to employees after termination of the employment agreement, except for those agreed by the parties (i.e. for fulfilment of a non-competition obligation).

### Time Limits For Claims Following Termination

The employee may challenge the dismissal decision before the competent court of law, within a period of 45 days starting with the communication. Such provisions should be clearly stipulated in the dismissal decision.

In employment conflicts, the burden of proof is upon the employer. Therefore, the employee simply has to prove that employment has been terminated; then it is for the employer to prove that the employee's dismissal was legally carried out.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

A specific matter within Romanian law is the lack of instant dismissals. For no reasons whatsoever the employer can dismiss an employee on the spot. Dismissals under Romanian law are strictly integrated within specific procedures.

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# The Russian Federation

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## 01. General Principles

**Forums For Adjudicating Employment Disputes**

Individual employment disputes are resolved by in-house employment disputes commissions (EDCs) and by the courts of general jurisdiction in the Russian Federation.

Representatives of employers and employees form such EDCs on a parity basis. Such EDCs may consider all types of individual employment disputes except for disputes which may be adjudicated by courts only, such as:

1) unfair dismissal claims and claims for losses caused by unfair dismissal;
2) disputes connected with an employer's illegal actions (inaction) while processing and protecting the personal data of the employee;
3) disputes connected with unfair refusal to hire and discrimination disputes; and
4) employers' claims for damages caused by employees.

Resolution of a dispute by an EDC does not prevent subsequent judicial consideration of the same dispute. Importantly, a court of justice does not act as appellate instance for an EDC, it simply hears the case anew.

Collective employment disputes are resolved as follows:

1) it always starts in an in-house conciliation commission with employers and employees acting on a parity basis (this is a mandatory stage);
2) the parties may invite an independent mediator (this stage is optional); and
3) if the dispute has not been resolved by the in-house conciliation commission or by the independent mediator, it will be submitted to labor arbitration. This arbitration includes representatives of the employers and employees and also of a special state authority for the resolution of collective labor disputes.

### The Main Sources Of Employment Law

The Russian Federation is a continental law country. The main sources of employment law are as follows:

1) International treaties, for instance, International Labor Organization conventions ratified by Russia; the Labor Code of the Russian Federation;

2) federal laws concerning separate issues of employment law, such as: Federal Law of 27 July, 2004 No. 79-FZ On State Civil Service in the Russian Federation (as amended); Federal Law of 12 January, 1996 No. 10-FZ On Trade Unions (as amended); Law of 19 April, 1991 No. 1032-1 On Employment in the Russian Federation (as amended); Federal Law of 28 December, 2013 No. 426-FZ On Special Working Conditions Assessment.

3) Decrees issued by the President of the Russian Federation, and

4) Resolutions issued by the Government of the Russian Federation.

Regions of the Russian Federation and municipalities are able to pass their own regulations. These may only further improve the position of employees under the federal regulations.

Since Russia is a continental law country, court rulings do not become precedents. However, the resolutions of Plenum of the Supreme Court of the Russian Federation are binding for the lower courts of lower instances when they consider employment disputes.

### National Law And Employees Working For Foreign Companies

Employment relations of employees working for companies with foreign investments, representative offices and branches of foreign companies doing business in the territory of the Russian Federation, are governed by Russian law.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Russian employment legislation applies to all employers and employees within the territory of the Russian Federation. Russian employment legislation does not necessarily apply to employment relations of Russian nationals abroad. In this case the relations are governed by the legislation of the country of employment.

Besides, the Labor Code of the Russian Federation provides for the following cases when its provisions apply to the Russian employees who work abroad:

1) an employee is on a business trip abroad,

2) an employee works at a diplomatic or consular mission of the Russian Federation as well as at representative offices of federal authorities and state institutions of the Russian Federation abroad.



# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

An employment agreement must be made in writing. However, if the employee starts his/her work without a written agreement but with the knowledge of the employer, the agreement shall be deemed to have been entered into on the first day of employment. Failure to enter into such agreement does not affect its validity, but may result in an employer`s administrative liability.

### Mandatory Requirements:

#### Trial Period

An employment agreement may provide for a trial period for an employee. In general, the trial period cannot last longer than three months. For some categories of employees (for example, a chief executive of a company), the trial period can be up to six months. It is prohibited to set a trial period for some categories of employees (for example, young professionals and pregnant women).

#### Hours Of Work

Normal business week may not exceed 40 hours. Some categories of employees (for instance, minors, handicapped persons, employees performing hazardous work) work shorter hours, but they will be paid as if they worked normal working hours. Upon the agreement between the parties, an employee may be allowed to work part-time (for example, a part-time working day, a part-time working week) and paid in proportion to the time worked.

#### Earnings

Monthly salary of an employee who works standard working hours and performs his/her employment duties may not be lower than the minimum salary specified in the federal law. The top level of salaries is not limited.

#### Holidays / Rest Periods

An employer is bound to grant annual leave to an employee. The leave lasts no less than 28 calendar days. Also employees are entitled to a weekly rest period of no less than 48 hours and to public holidays.

#### Minimum/Maximum Age

In general, persons who have achieved the age of 16 years may be employed. In some cases the hiring age may be reduced to 14 years or increased to 21 years. For some occupations there is a maximum possible age.

#### Illness/Disability

In case of sickness an employee is entitled to a paid sick leave. The amount of this payment is limited by law. The law specifies guaranties and compensations in case of an industrial accident or occupational disease: an employee (his/her family) shall be reimbursed his/her lost earnings (income) and also additional expenses on medical, social and occupational rehabilitation related to health injury, or expenses caused by employee's death.

#### Location Of Work/Mobility

A workplace is a place where an employee must be based or where he/she is required to arrive at due to his/her work and which is directly or indirectly controlled by an employer. Permanent workplace means a place of business for an organization (separate unit of an organization). An employee's workplace must be defined in the employment agreement.

#### Pension Plans

The legislation provides for obligatory and optional pension plans.

An employer is bound to contribute to the Pension Fund of the Russian Federation in favor of all the employees in order to accumulate pensions guaranteed by the state.

In addition, employers can contribute to non-state pension funds upon the consent and in favor of employees.

#### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

Persons who have family duties enjoy a wide range of additional labor rights and guaranties, including: additional paid and unpaid types of rest time (days off, leaves); reduced working hours with salaries unchanged as if they worked normal hours; limitation of an employer's right to terminate an agreement on a number of grounds, etc.

### Compulsory Terms

Compulsory terms of an employment agreement include: an employee's place of work; employment duties; first day of work; payment conditions; rules of working hours and rest hours (if these differ from general internal rules of the employer). The Labor Code of the Russian Federation and other laws and regulations may specify other compulsory conditions for certain categories of employees. For example, employment agreements of fixed-term employees must specify a period of employment.

### Non-Compulsory Terms

The parties normally agree on the following supplementary (non-compulsory) terms of an employment agreement: a trial period for an employee; confidentiality provisions; an employee's obligation to work for an employer for a specified period of time upon receiving education if the employer has paid for it; employee's insurance; improvement of social and living conditions for an employee and his/her family; etc.

### Types Of Agreement

Employment agreements may be classified into indefinite term agreements and fixed-term agreements. Also, there are employment agreements for primary and secondary employment, special types of agreements for certain categories of employees, such as: employees of public sector; employees whose work requires a lot of traveling; employees who work at home; athletes and many others.

### Secrecy/Confidentiality

An employee may be bound by an employment agreement not to disclose employer's secrets protected by law (secrets of state, official secrets, commercial secrets and other). If an employee violates this duty, he/she may be dismissed and may be held liable for damages caused to the employer by this breach. The duty of confidentiality continues for a certain period of time upon the termination of employment.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

An employee owns rights to the IP created in the course of employment, unless the parties agree otherwise. In any case, an employee retains the right to be named as an author.

### Hiring Non-Nationals

Employers are obliged to ensure that all foreign employees have complied with the double permit system before they can work in the territory of the Russian Federation. First, an employer must obtain a permit to retain foreign employees that includes justification as to why Russian nationals cannot be hired to do this job. Furthermore all foreign employees must also have a work permit to work in the Russian Federation. Finally, employers may hire foreign employees only within the limits of the annual quotas set by the Government of the Russian Federation. According to the Federal Law of 25 July, 2002 No. 115-FZ On the Legal Status of Foreign Nationals in the Russian Federation (as amended) there is simplified procedure of obtaining a permit for highly qualified foreign employees. Also this law fixes a simplified procedure of receipt of work permit – patent for those foreigners, who do not require visa for their stay in Russia. Such special provisions concern the instances of hiring foreigners by individuals for performing works (rendering services) of personal, household and similar needs not related to entrepreneurial activity.



### Hiring Specified Categories Of Individuals

Russian legislation provides for special hiring rules for some sectors of economy and types of activities (for instance: transport, food industry, medicine, etc.), as well as for certain categories of employees, such as: minors, incapacitated people, and other socially vulnerable persons. In 2013 the employer's liability for breach of its duty to create jobs for, or to allocate jobs to, persons with disabilities, as well as for a refusal to work within the established quota, increased.

### Outsourcing And/Or Sub-Contracting

These forms of employment are not regulated by Russian employment legislation. In practice, such relations are formalized as civil relations under the Civil Code of the Russian Federation. Since outsourcing and sub-contracting can be confused with employment, one should be careful when analyzing these relationships. Otherwise, this can lead to adverse after-effects for both parties, such as potential breach of employment and/or tax legislation.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In general, terms of an employment agreement may only be changed with the parties' written consent.

An employer may change an employment agreement upon his/her own initiative if there are business reasons for that. This requires giving a two months' advance notice to an employee. If an employee disagrees with the proposed changes, an employer should offer a different job to him/her in the same company. This job must match with an employee's qualification and health status. If no such job is available, the employer must offer a lower position or a job with a lowery salary. Should such a job be unavailable or should an employee refuse to do this job, an employment agreement shall be terminated.

An employer may transfer an employee to a different job without an employee's consent for a period of up to one month in case of a natural disaster, industrial accident, fire, and in other exceptional cases threatening the lives or standard living conditions of general public. In this case, an employee can be transferred only to a job that is connected with the prevention of mentioned cases or with clearing the after-effects of the same.

### Change In Ownership Of The Business

In general, change in the ownership of the business does not entitle the termination of employment agreements. In case a company is transferred from state to municipal or private ownership (i.e. privatization), a new owner may terminate an employment agreement with a chief executive officer (CEO), his/her deputies and a chief accountant within three months.

This rule does not apply to what is related to the change of shareholders in a company. In this case, according to the law, rank-and-file employees shall be safe to continue with the jobs, whereas the powers of a CEO may be terminated by new shareholders at any time (three months' prior notice is not required).

### Social Security Contributions

The law requires an employer to pay the following insurance contributions:

1. mandatory pension insurance contributions (to the Pension Fund of the Russian Federation);
2. mandatory social insurance contributions payable for temporary incapacity and maternity leave (to the Social Insurance Fund of the Russian Federation);
3. mandatory medical insurance contributions (to Federal and Territorial Medical Insurance Funds).

The purpose of these contributions is to compensate an employee for their lost earnings in cases of severe injury, an industrial or other disease, and to insure financial support of retired persons, pregnant women and other qualified persons.

### Accidents At Work

The law guaranties reimbursement both of an employee's lost wages and additional health recovery costs in cases of industrial accident disease. Employee's death involves reimbursement of lost income and funeral costs to his/her family.

### Discipline And Grievance

One of the main duties of an employee is the duty to comply with the internal rules of an employer. Breach of this duty entails the application of the following disciplinary remedies: reprimand or dismissal. Employment legislation provides for other types of disciplinary remedies for certain categories of employees. An employer may not invent his/her own disciplinary remedies.

The Labor Code of the Russian Federation sets forth the procedure for bringing employees to disciplinary liability. If an employer does not comply with this procedure, the disciplinary remedies may be invalidated.

### Harassment/Discrimination/Equal pay

All types of discrimination, which are not related to employees` business skills are prohibited, including the discrimination by sex, race, skin color, nationality, language, origin, property status, social status, official capacity, age, place of residence, attitude to religion, etc.

An employer is obliged to provide equal pay for work of equal value. Persons who believe that they have been discriminated at work may file an application with the court to regain their violated rights, reimburse lost wages and moral injury.



### Compulsory Training Obligations

There are no compulsory requirements for employers to provide training for employees. Additional training and retraining of employees is arranged by an employer on his/her own initiative. An employee may be bound by an employment agreement to improve his/her skills.

### Offsetting Earnings

Deductions from an employee's wages can be made only as stipulated in the Labor Code of the Russian Federation and other federal laws in order to repay debts to the employer or other persons. The amount of these deductions is limited. Not more than 20 per cent as a general rule, up to 50 per cent when the law specifies so, and up to 70 per cent in case of collection of child support payment or reimbursement of personal health injury.

### Payments For Maternity And Disability Leave

Women are guaranteed a maternity leave with a maternity allowance, lasting 70 calendar days (84 calendar days for multiple pregnancy) prior to the childbirth and 70 calendar days (86 calendar days for complicated childbirth, 110 calendar days when two children or more are born) after the childbirth.

Also, it is guaranteed that one of the family members (mother, father, or another family member) be granted a paid maternity and childcare leave until three years of age.

An employee is entitled to temporary disability payments in case of a disease or injury until his/her recovery or medical certification of permanent disability. The amount of this payment ranges from 60 to 100 per cent of employee's wages.

### Compulsory Insurance

An employer must provide mandatory social insurance (see Paragraph 3 "Social Security Contributions").

### Absence For Military Or Public Service Duties

Conscription of an employee to military or mandatory civilian service is a ground to terminate an employment agreement.

### Works Councils or Trade Unions

Labor trade unions in the Russian Federation represent and protect their members and non-members – the employees who have authorized trade unions to do so.

Trade unions may demand that employers remedy the breaches of employees' rights. In turn, an employer must notify the relevant trade union about the review results for the trade union`s claims and of the measures taken.

Furthermore, an employer is obliged to take into consideration all opinions voiced by the relevant trade union whilst adopting certain internal documents, and when terminating an employment agreement with a trade union member.

According to amendments in the Labor Code of the Russian Federation, employers (except for individuals not being entrepreneurs) shall have the right to create a works council, an advisory body of employees on a voluntary basis, for the improvement of production activities.

### Employees' Right To Strike

Employee's right to strike as a method to settle collective labor disputes is guaranteed by the Constitution of the Russian Federation and by the Labor Code of the Russian Federation.

Employees and their representatives have the right to start arranging a strike when:

1. statutory mediation procedures (see Paragraph 1 "Forums for Adjudicating Employment Disputes") have not resulted in the settlement of a collective labor dispute,
2. an employer or his/her representative avoids participating in mediation procedures,
3. an employer has breached the settlement agreement for a collective labor dispute, or
4. an employer has not complied with a labor arbitration award.

### Employees On Strike

A representative body of employees which is authorized to settle collective labor disputes has the right to propose starting a strike. If an employees meeting has approved this proposal, a strike begins.

An employer must be given a written notice about a forthcoming strike no later than ten calendar days prior to the event. An employer must then notify the Service for the Settlement of Collective Labor Disputes about the forthcoming strike.

The Labor Code of the Russian Federation prohibits dismissal of employees due to their participation in the labor dispute or strike. An employer may be fined for doing so.

Employees on strike are not entitled to any salary during the strike. Employees who have not participated in the strike, but could not work because of the strike retain their salary.

### Employers' Responsibility For Actions Of Their Employees

An employer is responsible for an employee's actions and he/she is bound to reimburse damage caused by his/her employee while performing job-related duties.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

The labor legislation provides for several groups of grounds to terminate an employment agreement such as: termination on the initiative of an employee, on the initiative of an employer, and in case of circumstances beyond the reasonable control of the parties.

In general, an employment agreement may be terminated on statutory grounds only. The law establishes a special procedure for each of these grounds. Any breach of these procedures may lead to the invalidation of the termination of an employment agreement.

The termination of an employment agreement must be formalized by an order issued by an employer that must be made known to the employee. An employer shall be bound to hand over a work record book to an employee and pay all the amounts due to an employee on the day of the termination of an employment agreement.

### Instant Dismissal

An instant termination of an employment agreement is only permitted in case of a gross violation of labor discipline as defined by the law.

In general, gross violations are as follows: unjustified absence for more than 4 consecutive hours; appearance at work in a state of alcoholic or drug intoxication; violation by an employee of the commitment not to disclose confidential information of an employer (for example, commercial secrets); commitment of a theft; violation of safety engineering requirements by an employee if such violation has resulted in heavy after-effects (job-related accident or emergency) or knowingly posed a real threat of such after-effects.

Some other grounds for instant dismissal have been provided by the legislation for certain categories of employees.

### Employee's Resignation

An employee may terminate an employment agreement at any time subject to two weeks written notice to the employer. Should an employer violate an employee's rights an employee may terminate the employment agreement instantly.

### Termination On Notice

In general an employment agreement can not be terminated without a reason specified in the law.

### Termination By Reason Of The Employee's Age

As a general rule, the existing labor legislation does not allow an employer to terminate an employment agreement for the reason of an employee's age. However some categories of employees (for instance, public sector employees, transport workers) may be dismissed because of their age.

### Automatic Termination In Cases Of Force Majeure

Force majeure events may serve as grounds to terminate an employment agreement. The right to use such grounds to terminate an employment agreement must be supported by a resolution of the Government of the Russian Federation and/or the respective region of the Russian Federation, confirming relevant force-majeure circumstances.

### Termination By Parties' Agreement

An employment agreement may be terminated any time upon the agreement of the parties. The parties may determine conditions of such termination.

### Directors Or Other Senior Officers

The law provides for a special procedure and grounds to terminate an employment agreement with a chief executive officer (CEO). As a matter of fact, a CEO himself/herself may terminate an employment agreement early by giving a one month's prior written notice to an employer.

An employer may terminate an employment agreement with a CEO at any time without specifying any reasons. Other grounds provided for rank-and-file employees may be applied to the termination of an employment agreement with a CEO.

If an early termination of an employment agreement with a CEO is not related to guilty activities of a CEO, an employer must pay compensation to a CEO to the amount of three months wages. Greater amounts of compensation may be stipulated in an employment agreement.

### Special Rules For Categories Of Employee

There are special rules relating to termination of employment agreements for certain categories of employees: minors, pregnant women and other persons with family duties, CEO of companies, dual job-holders, temporary employees, seasonal employees, athletes and some others.

### Specific Rules For Companies in Financial Difficulties

Should any financial problems occur, a company may undertake downsizing. The law provides for a mandatory procedure for redundancy. An employer must do the following: give a written notice to each employee about a forthcoming dismissal no later than two months prior to the dismissal; offer vacancies, including lower-ranking and lower paid vacancies, to such employees available with an employer; observe the employees' priority right to keep their job; pay loss-of-employment compensation for the first two months after the dismissal, and in exceptional cases for the third month following dismissal, unless he/she has found another job by then.

### Restricting Future Activities

Russian law does not permit employers to restrict the future activities of an employee. Such clauses are viewed as violating one of the basic constitutional provisions: freedom of labor.



### Severance Payments

A severance payment shall be made to an employee unless the employee's dismissal is in relation to an offence of a guilty activity or the employee has activated the termination of their own employment agreement.

### Special Tax Provisions And Severance Payments

All types of payments related to an employee's dismissal, including severance and additional compensations are not taxable. These amounts are accounted for as expenses reducing an employer's taxable base for profit tax.

### Allowances Payable To Employees After Termination

Employers are not required to pay any allowances to employees after termination except the loss-of-employment compensation for the first two (sometimes three) months after the dismissal.

### Time Limits For Claims Following Termination

An employee may file an unfair dismissal claim with the court within one month following termination. Others claims, e.g. claims for unpaid wages, may be filed within three months after it became known to the employee that his/her rights had been violated. A year's period has been set for an employer to sue an employee for damages. This period starts on the date when the damage is discovered by the employer.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

A specific feature of Russian employment law is that an employee may be dismissed by an employer only for the reasons specified in legislation. An employment agreement may not set forth any additional reasons for dismissal. For each of these reasons there is a specific procedure of employee's dismissal which must be complied with by an employer. The court invalidates the dismissal if an employer breaches this procedure or dismisses an employee without a valid reason.

Also, it should be noted that the Russian legislation contains a lot of mandatory rules, the violation of which may lead to an employer's administrative liability.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The employment relationship is generally contractual in nature. Contractual claims may be brought in the civil courts or by way of arbitration, depending on the terms of the employment contract.

Where an employee is covered under the Employment Act, the employee may bring a claim in the Labour Court if the employee meets the prescribed conditions.

If the dispute relates to an industrial matter, the Industrial Arbitration Court will be the proper forum for adjudication.

The Ministry of Manpower (MOM) investigates and mediates claims and complaints on salary matters and other terms and conditions of employment for all employees covered by the Employment Act. Employers who breach certain obligations under the Employment Act may be prosecuted in the criminal courts.

### The Main Sources Of Employment Law

Singapore employment law is a combination of legislation (both the Act and its Regulations) promulgated by the Singapore Legislature and common law principles of contract law. Legislative rights override contractual terms in certain areas.

The main legislation relating to employment law is the Employment Act and its Regulations. Other employment-related legislations include the Industrial Relations Act, Trade Unions Act, Central Provident Fund Act, Income Tax Act, Employment of Foreign Manpower Act, Immigration Act, Work Injury Compensation Act, Retirement and Re-employment Act, Enlistment Act and Workplace Safety and Health Act.

Collective agreements on industrial matters may also bind employers.

### National Law And Employees Working For Foreign Companies

The statutory rights under national law apply to all individuals working in Singapore regardless of their nationality and the governing law of the employment contract.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under national law do not extend to employees of Singapore companies working in another jurisdiction, but they may be incorporated as contractual rights in the contract between the employer and the employee. In certain instances, if the terms of the contract governed by Singapore law are inconsistent with or less favourable than statutory rights, such terms are illegal and void. In this situation the statutory rights will take precedent.

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# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Contract law principles, particularly those relating to contracts of service, will govern the employment contract. There is no legal requirement for the employment contract to be in writing. Where there is no written agreement, the terms of the contract will be inferred from the conduct of the parties and terms which are commonly implied into a contract of employment and where applicable, the terms provided in the Employment Act.

### Basic Requirements:

The Employment Act imposes certain requirements on employment contracts. The requirements vary depending on the capacity (eg. whether the employee is employed as a workman or in a managerial or executive position) and the salary of the employee.

Currently, the Employment Act does not cover professionals, managers and executives (other than providing protection against non-payment of salary for junior managers and executives). Part IV of the Employment Act, which provides for rest days, hours of work and conditions of service, applies only to workmen (persons employed for manual labour) earning not more than $4,500 per month and other non-workmen employees earning not more than $2,000 per month.

From 1 April 2014, the general provisions of the Employment Act, including sick leave benefits and protection against unfair dismissal, will be extended to professionals, managers and executives who earn a basic monthly salary of up to $4,500. However, Part IV will remain non-applicable to these professionals, managers and executives. The salary threshold for non-workmen employees covered under Part IV will be raised from $2,000 to $2,500 with effect from 1 April 2014.

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#### Trial Period

A trial period or probationary period is commonly provided although this is not a legal requirement.

#### Hours of Work

The Employment Act regulates the hours of work that a workman in receipt of a salary not exceeding $4,500 a month or an employee who is not a workman and earning a salary not exceeding S$2,000 per month can be required to perform under his contract of service. With effect from 1 April 2014, the salary threshold for non-workmen will be raised from a basic salary of $2,000 to $2,500, in line with recent increase in salary levels. An employee cannot be required to work:

- More than 6 consecutive hours without a break;
- More than 8 hours a day; or
- More than 44 hours a week.

The above limits are open to slight adjustments by agreement in the contract of service between the employer and employee.

Outside the standard hours of work, an employee is permitted to do up to 72 hours of overtime a month for which he will receive a higher rate of pay.

#### Earnings

Earnings are not fixed by law except in the case of children and young persons under the age of 16 working in particular industries, for whom MOM has the power to prescribe minimum wages in this situation. Matters such as the amount of pay and annual salary increments are negotiated between employers and individual employees or their trade unions.

#### Holidays/Rest Periods

An employee is entitled to one day of rest (24 hours) each week and public holidays on various occasions such as religious holidays. By mutual arrangement, the employer and employee can substitute any other day for any of the public holidays.

An employee who is a workman in receipt of a salary not exceeding $4,500 a month or is someone who is not a workman and earning a salary not exceeding $2,000 per month and has been employed for not less than 3 months is entitled to paid annual leave of 7 days in respect of the first 12 months of continuous service. From 1 April 2014, the salary threshold for non workmen will be raised from a basic salary of $2,000 to $2,500. Employees are then entitled to an additional day per year for every subsequent 12 months of employment, subject to a maximum of 14 days. This is in addition to any rest days, public holidays or sick leave that the employee is entitled to.

#### Minimum/Maximum Age

No child below the age of 13 years is allowed to be employed. A child between the age of 13 and 15 years may be employed in light work suited to his capacity in a non-industrial environment. For young persons between 15 and 16 years of age, they may only be employed in an industrial undertaking if certified to be medically fit.

No person below the age of 18 years is allowed to enter into a contract of service, although there are certain exceptions. Where a person below the age of 18 years is employed he/she may sue the employer under the contract of service to which he/she is a party for any benefit accruing to him under the contract. The employer, on the other hand, will not be able to enforce the contract against him/her and no damages or indemnity is recoverable from the employee in respect of the contract of service.

There is no maximum age limit for an employee.

#### Illness/Disability

An employee is entitled to 14 days paid sick leave a year. If hospitalisation is necessary, he is entitled to up to 60 days paid sick leave.

There are no compulsory terms relating to disability which must be included in the employment contract. However, most employers will arrange for medical insurance for their employees, which may provide coverage for disability.

### Location Of Work/Mobility

The place of work is usually specified in the employment contract. Where it is envisaged that an employee may be posted aboard or required to travel abroad as part of his/her work, this should be provided for in the employment contract, otherwise, the employer should seek the employee's express consent before posting the employee abroad.

### Pension Plans

There is no mandatory requirement for pension plans to be provided by an employer other than the sums payable under the Central Provident Fund Act on the cessation of an employee's service with the employer (see "Social Security Contributions" below).

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Parental benefits are governed by the Employment Act, and, for parents of Singapore citizens, the Child Development Co-Savings Act.

Every married female employee who is a Singapore citizen is entitled to paid maternity leave of 4 weeks immediately before and 12 weeks immediately after delivery, totalling 16 weeks. Where there is a mutual agreement with her employer, an employee may choose to take 8 weeks of her paid maternity leave over a 12 month period after delivery. The employee may work the equivalent of 8 weeks' worth of working days flexibly, up to a maximum of 48 days. An employee and employer may mutually agree on the employee taking a shorter period of paid maternity leave before the birth so that she can have a longer period of paid maternity leave after the birth. The total period of paid maternity leave is still subject to a maximum of 16 weeks. For the 1st and 2nd child, the pay of the employee for the 1st 8 weeks of her maternity leave is borne by the employer and the balance 8 weeks' pay will be reimbursed by the government to the employer. For the 3rd and subsequent child, the government will reimburse the employer the full 16 weeks' pay of the employee.

Working fathers, including those who are self-employed, are entitled to share 1 week out of the 16 weeks' maternity leave, subject to the agreement of the mother and provided they meet the following criteria:

- The child is a Singapore citizen born on or after 1 May 2013;
- The child's mother qualifies for government-paid maternity leave;
- The father is lawfully married to the child's mother.

A single (unmarried) employee is entitled to maternity leave benefit if she is covered under the Employment Act. She will be paid for the first 8 weeks of maternity leave if she has fewer than two children (excluding the newborn), and she has worked for the employer for at least 90 days before the birth of the child. Beyond the first 8 weeks, maternity leave and payment from the employer is voluntary and the employer is not entitled to claim any reimbursement from the government. This also applies to mothers of newborns who are not Singapore citizens.

An employee who is a parent is entitled to 6 days of childcare leave per year if he or she has a child below 7 years of age and the following conditions are met:

- The child (including legally adopted children or stepchildren) is a Singapore citizen;
- The child's parents are lawfully married (including divorced or widowed parents);
- The employee has worked for the employer for at least 3 months.

Each parent is also be entitled to 2 days' government-paid childcare leave if they have a child who is a Singapore citizen between the ages of 7 and 12 and meet the conditions above.

Parents of non-citizens or single (unmarried) parents are entitled to 2 days of childcare leave per year if the child is below 7 years of age and the employee has worked for the employer for at least 3 months.

Over and above the paid childcare leave, an employee is also entitled to 6 days' unpaid infant care leave per year if he or she is covered under the Child Development Co-Savings Act. The Child Development Co-Savings Act applies to all managerial, executive or confidential staff provided that the following conditions are met:



- The child (including legally adopted children or stepchildren) is below 2 years of age;
- The child is a Singapore citizen;
- The parent has served the employer for a continuous period of at least 3 months.

Employers are required by law to provide 4 weeks' government-paid adoption leave for mothers who have adopted a child, to be taken within 12 months after the child is born.

### Compulsory Terms

The Employment Act sets out the minimum conditions with regard to certain terms relating to payment, rest days, hours of work, retrenchment, retirement, etc.

### Non-Compulsory Terms

An employer may agree to terms of employment that are more advantageous to the employee than the provisions in the Employment Act. However, an employment contract cannot contain terms which are less favourable than the minimum conditions stipulated in the Employment Act. Any term in an employment contract which is less favourable than the conditions prescribed by the Act is illegal and void to the extent that it is less favourable.

## Types Of Agreement

The terms of the employment contract are largely left to negotiations between the employer and employee. As such, the type of agreement varies according to the requirements of the parties. Common types of agreement are contracts for employment on full-time, part-time, fixed term and temporary basis.

## Secrecy/Confidentiality

It is common to include confidentiality clauses in an employment contract to protect the confidential information and trade secrets of the employer.

Even in the absence of a confidentiality clause, common law implies a duty of fidelity by an employee to his employer.

The common law of confidentiality also imposes an implied duty on an employee not to disclose information which is confidential in nature and trade secrets to third parties. After employment, the implied duty of confidentiality continues to apply.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Legislation, common law and the terms in the employment agreement determine the ownership of inventions and other intellectual property rights of the employer and the employee in relation to works created during the period of employment.

### Hiring Non-Nationals

Non-nationals are required to apply for work passes before they can be employed to work in Singapore. It is the obligation of the employer to ensure that non-nationals under his employment have the required passes.

The different types of passes include the following:

- Employment pass – for non-national professionals
- S pass – for mid-level skilled workers such as technicians
- Work permit – for unskilled or semi-skilled non-national workers
- Work permit (domestic workers) – for non-national domestic workers who wish to work in Singapore households

### Hiring Specified Categories Of Individuals

There are special provisions in the Employment Act relating to the employment of children and young persons.

### Outsourcing And/Or Sub-Contracting

Where a principal contracts with another party for the supply of labour or for the other party to execute a part or the whole of a contract on behalf of the principal, the principal and such other party shall be jointly and severally liable for any salary due to the other party's employees. In the case of a contract for construction work, the principal shall not be liable unless the principal is also a construction contractor.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

The employer cannot alter the terms of the contract unilaterally and any change to a term of the contract must be agreed between both parties. Such agreement may be express or implied.

Terms in the contract giving the employer the absolute discretion to vary the contractual terms at any time without the employee's consent, may be struck out by the courts for being an unfair contract term, despite the employee having signed his agreement.

Where there is no agreement to a proposed change to the employment contract, either the employer or the employee may elect to end the employment relationship because of the change by serving the requisite notice to the other party.



### Change In Ownership Of The Business

Where another party takes over ownership of the business (whether due to transfer of ownership or due to the death of an employer), the employment contracts of the employees will follow the transfer and the continuity of the period of the employment will not be broken.

The employment contracts shall have effect after the transfer as if it was originally made between the employee and the person taking over the business. All the rights, powers, duties and liabilities under or in connection with the employment contract shall be transferred to the new owner. Any act or omission done before the transfer by an employee shall be deemed to have been done in relation to the new owner.

The terms and conditions of service of an employee shall be the same as those enjoyed by him immediately prior to the transfer.

### Social Security Contributions

The Central Provident Fund (CPF) is a compulsory savings scheme for the Singaporean and Singapore P. R. employees (excluding the non-nationals). Its objective is to provide financial security for workers in their retirement. The CPF is administered by the CPF Board whose operations are governed by the Central Provident Fund Act.

Contributions to the CPF are made by both employers and employees based on a certain percentage of the employee's wages.

CPF savings may be used for home-ownership, approved life and medical insurance, approved hospitalisation expenses, approved investments and education at local approved institutions.

### Accidents At Work

The Workplace Safety and Health Act governs occupational safety and health and the Work Injury Compensation Act provides a framework for employees to claim compensation for injuries sustained during the course of employment.

Under common law, an employer has a duty to provide a competent staff of employees, adequate materials and a proper system and effective supervision. The duty on employers to take reasonable care for the safety of their employees cannot be delegated. Employers may also be vicariously liable for the negligence of any of their employees in the course of employment. Where an employee's own lack of care contributes to the cause of his injury, the employee is said to be contributory negligent. A claim by the employee will not be defeated simply because the damage caused to the employee was caused partly by his own fault, and partly by the fault of other persons. However, the damages recoverable by the employee will be reduced to such an extent as the court thinks just and equitable having regard to the employee's share in the responsibility for the damage.

An employee who is injured or falls sick as a result of his employer's negligence may bring an action for damages against his employer for breach of his duty to take reasonable care for his employee's safety. If the employee comes under the Work Injury Compensation Act, the employee may also choose to claim compensation under the Act.

An employee must elect whether to make his claim under common law or under the Work Injury Compensation Act for the same injury.

### Discipline And Grievance

An employer may dismiss an employee without notice on the ground of misconduct after due inquiry into the misconduct. Misconduct refers to a breach of duty or discipline that is inconsistent with the express or implied conditions of an employee's contract of service. Examples of misconduct include theft, dishonesty, willful insubordination, disorderly or immoral conduct at work, etc.

During an inquiry, the employer may suspend an employee from work for a period not exceeding 1 week and shall pay him not less than half his salary for the period of suspension. If the inquiry does not disclose any misconduct on the part of the employee, the employer must restore to him the full amount of the salary payable for the period of suspension.

An employee covered under the Employment Act who is unfairly dismissed without notice may make representations to the MOM within a month of the dismissal to be reinstated to his former position. He can also sue for damages for wrongful dismissal, which will generally be quantified by the salary which would have been payable during the requisite notice period.

Employees with grievances may make complaints to the MOM if they are covered by the Employment Act. MOM will look into the complaints and arrange for meetings between parties to try and resolve the matter.

### Harassment/Discrimination/Equal pay

While the Singapore Constitution prohibits discrimination against Singapore citizens on the grounds of religion, race, descent or place of birth, there is no specific equal opportunity legislation and sexual discrimination is not outlawed.

However, there are guidelines on fair employment practices published by MOM together with other industry partners seeking to make non-discrimination and other desirable practices more entrenched within labour management in Singapore.

### Compulsory Training Obligations

There are no compulsory training obligations for employees in general.



### Offsetting Earnings

The Employment Act lists the authorised deductions which may be made from the salary of an employee. These include:

- deductions for absence from work;
- deductions for damage to or loss of goods expressly entrusted to an employee for custody or for loss of money for which an employee is required to account, where the damage or loss is directly attributable to his neglect or default;
- deductions for the actual cost of meals supplied by the employer at the request of the employee;
- deductions for house accommodation supplied by the employer;
- deductions for such amenities and services supplied by the employer as the Commissioner for Labour may authorise;
- deductions for recovery of advances or loans or for adjustment of over-payments of salary;
- deductions for income tax payable by the employee;
- deductions of contributions payable by an employer on behalf of an employee under and in accordance with the provisions of the Central Provident Fund Act;
- deductions made at the request of the employee for the purpose of a superannuation scheme or provident fund or any other scheme which is lawfully established for the benefit of the employee and is approved by the Commissioner for Labour;
- deductions made with the written consent of the employee and paid by the employer to any cooperative society registered under any written law for the time being in force in respect of subscriptions, entrance fees, instalments of loans, interest and other dues payable by the employee to such society; and
- any other deductions which may be approved from time to time by the Minister for Manpower.

### Payments For Maternity And Disability Leave

Employees are paid for the periods of maternity and sick leave to which they are entitled under the legislation. With regard to any further entitlement under the employment contract, the terms of payment for the periods of such further entitlement is a matter of contract to be negotiated between the employer and employee.

### Compulsory Insurance

Employers are required to comply with legislative requirements with regard to providing medical and accident insurance coverage for certain employees.

There is a compulsory insurance requirement for employees who are covered under the old Workmen's Compensation Act (renamed the Work Injury Compensation Act in 2008) prior to 1 April 2008 (i.e. manual workers regardless of their level of earnings, and non-manual workers with monthly earnings of $1,600 or less). Employers are required by law to buy insurance for these employees, unless they are specifically exempted.

It is not mandatory for employers to buy insurance for employees who are newly covered under the Work Injury Compensation Act (i.e. employees who are involved in non-manual work and have monthly earnings of above $1,600). Nonetheless, employers will be required to pay compensation in the event of a valid claim, even if they do not buy insurance. As such, employers can decide whether or not to buy insurance for these newly-covered employees, after weighing their risks with the cost of insurance premiums.

For non-national domestic workers, the employer is required to provide medical insurance and personal accident insurance of a minimum coverage.

### Absence For Military Or Public Service Duties

The Enlistment Act obligates employers to allow male employees to be absent from work for military service duties.

### Works Councils or Trade Unions

The Employment Act prohibits an employment contract to restrict the right of any employee, who is a party to such contract, to engage in the following activities:

- join a registered trade union;
- participate in the activities of a registered trade union, whether as an officer of the trade union or otherwise; and
- associate with any other persons for the purpose of organising a trade union.

### Employees Right To Strike

Strikes are prohibited for water, gas and electricity services. In the case of any other essential service, written notice must be given of a strike. Notice of a strike in an essential service must be given to the employer not less than 14 days before the proposed action. A strike notice must be in the prescribed form and signed by at least seven employees. Strikes are not allowed before the date specified in the written notice or if the trade dispute has already been taken cognisance by the courts or referred to MOM for conciliation



### Employees On Strike

There are no statutory provisions prohibiting termination of the services of an employee on strike, provided the notice requirements in the contract are complied with.

### Employers' Responsibility For Actions Of Their Employees

An employer will be held responsible for the actions of employees in the course of their employment, and which cause injuries to other employees or third parties. Such a liability of the employer is known as "vicarious liability".

An act will be within the course of employment if it is:

- Authorised by the employer and a lawful act;
- Authorised by the employer and an unlawful act – if the employer directs an employee to perform duties in a manner which involves the commission of an unlawful act, the employer will be liable in damages to compensate any third party suffering loss of injury as a result of the unlawful act; and
- An unlawful method of performing what is otherwise an authorised act.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

### Instant Dismissal

An employer may dismiss an employee without notice on grounds of misconduct. However, the Employment Act requires that dismissal without notice on the grounds of misconduct be effected only after due enquiry. The employee has recourse to make representations to MOM for reinstatement if he considers that he has been dismissed without just cause by his employer. Alternatively, the employee may also pursue an action under common law for breach of contract.

In order to avoid an action for wrongful dismissal or breach of contract, the employer must ensure that employees know what is required of them in terms of behaviour. It would be prudent to have a workplace policy or a code of conduct which is distributed to all employees and to include a term in the contract making it clear what action may be taken by the employer in the event of a transgression by the employee. Where the employee signs his acknowledgement or agreement to adhere to the code of conduct, such agreement may also be incorporated into the terms of the employment contract.

### Employee's Resignation

The employee may terminate the employment contract according to the term of his employment contract. Where there is a notice period specified in the employment contract, notice must be given to the employer. Where the employee does not serve the required notice period, the employer is entitled to compensation in lieu of notice. Where no notice period is specified in the contract, the Employment Act makes provision for the requisite notice to be given.

The Employment Act also provides for an employee to terminate his contract of service without notice where he or his dependant is immediately threatened by danger through violence or disease such as the employee did not by his contract of service undertake to run.

### Termination On Notice

Both the employer and employee may terminate their employment relationship by giving the other notice of termination according to the contractual term or in the absence of such a term, according to the Employment Act which states that the following notice periods shall apply:

- one day's notice if the employee has been employed for less than 26 weeks;
- one day's notice if the employee has been employed for 26 weeks or more but less than 2 years;
- 2 weeks' notice if the employee has been employed for 2 years or more but less than 5 years; and
- 4 weeks' notice if the employee has been employed for 5 years or more.

### Automatic Termination In Cases Of Force Majeure

As with other contracts, the contract will be terminated automatically if there are events outside the control of either the employer or the employee which make continued performance of the contract impossible. Examples would be the development of an incapacitating illness or the occurrence of an accident causing long-term disability to the employee, and imprisonment for a substantial period of time.



### Termination By Parties' Agreement

Notwithstanding the provisions of the employment contract, it is open for the employer and employee to agree on termination on terms which both parties find acceptable. This would constitute a variation of the employment contract by mutual consent between the employer and employee.

### Directors Or Other Senior Officers

The general principles and rules for the termination of employment apply similarly to directors or other senior officers.

### Special Rules For Categories Of Employee

#### Pregnant employees

Currently, if an employer terminates the employment of a pregnant employee within 6 months before the date of estimated delivery or the date of her confinement without sufficient cause, the employer is required to pay the employee the maternity benefits she would have otherwise been eligible for. Similarly, an employer is required to pay an eligible employee maternity benefits if she is retrenched within 3 months before the date of estimated delivery or the date of her confinement.

Maternity protection for retrenchment and for dismissal without sufficient cause will cover the full pregnancy period. This means that if a pregnant employee is retrenched or dismissed without sufficient cause during any point of her pregnancy, the employer will be required to pay her maternity benefits, provided she has been in employment for at least 3 months prior to her receipt of her notice of dismissal or retrenchment.

Employers are prohibited from dismissing an employee who is on maternity leave. An employer who does so is liable to a fine and/or imprisonment.

#### Employees who have reached retirement age

Under the Retirement and Re-Employment Act, employers are required to offer re-employment contracts to employees who have reached the statutory retirement age of 62, if they assess the employee to have at least a satisfactory work performance and the employee himself is medically fit to continue working. Re-employment contracts must be of at least 1 year's duration and renewable by the employee up to the age of 65 or such other age, up to 67 years, as may be prescribed by the Minister. However, if the employer is unable to find a suitable vacancy despite reasonable attempts being made in accordance with the tripartite guidelines, the employer is allowed to retire the employee and pay the employee an employment assistance payment.

Terms of the re-employment contracts (e.g. relating to salary and/or benefits) may be negotiated based on the redefined scope of duties of the employee.

In the event an employee disputes the employer's grounds for not offering re-employment, he may notify the Commissioner for Labour in writing within w month after his last day of employment. If he wishes to dispute the terms of re-employment on the basis that they are unreasonable, he may notify the Commissioner for Labour in writing within 6 months after his last day of employment.

### Specific Rules For Companies in Financial Difficulties

The mere appointment of a receiver for a company in financial difficulty does not operate to terminate contracts of employment, unless the receiver is appointed by the courts. However, when a company in receivership is wound up, the employees of the company are technically redundant since their services are no longer required and all existing contracts of services will be terminated.

A compulsory winding-up results in the termination of all existing contracts of service. The publication of a winding-up order operates as a notice of dismissal to all employees effective on the date of publication.

Whether a voluntary winding-up terminates all existing contracts of service depends on several factors, including whether the company is solvent, whether the business will be ceased immediately, etc.

### Restricting Future Activities

In order to prevent a former employee from utilising the employer's trade secrets and goodwill to his advantage and to the detriment of the employer, it is common to have clauses restricting the employee from undertaking competing activities within a period of time after leaving the employment. However, these clauses may not be enforceable if they are overly restrictive. Courts are more likely to uphold these clauses if they are drafted narrowly and do not restrict the employee beyond what is necessary to protect the legitimate business interests of the employer.

For example, a clause prohibiting a former employee from engaging in competing activities or soliciting business from the employer's customers within the country for a period of 2 years after employment may be enforceable while a clause imposing a worldwide restriction on the former employee for a period of 10 years may be struck out. Whether a clause is overly restrictive would depend on the nature of the business in question.

### Severance Payments

Under the Employment Act, an employee who has been employed in a company for at least 3 years may request for retrenchment benefits if he is retrenched. However, there are no stipulations as to the quantum to be paid. The amount of the retrenchment benefit is subject to negotiation between the employee and the employer.

From 1 April 2015, the non-eligibility period for retrenchment benefits will be reduced to 2 years from 3 years (i.e. the employee must have been employed for at least 2 years prior to retrenchment), in line with shorter employment tenures.



### Special Tax Provisions And Severance Payments

Retrenchment pay that is a genuine compensation for loss of employment is not taxable. However, employers often include payments for other purposes when paying out retrenchment benefits. Such other payments are taxable to the employees. Examples are salary in lieu of notice and gratuity for past services. These other payments are not payments received by the retrenched employees as compensation for loss of employment. They are payments for services which constitute gains or profit from employment, and are therefore taxable.

### Allowances Payable To Employees After Termination

No allowances are payable by the employer to the employee after termination.

### Time Limits For Claims Following Termination

An action may be commenced in court for contractual claims arising from termination within 6 years of the termination. Appeals to the Minister for Manpower for wrongful dismissal must be made in writing within 1 month of dismissal. From 1 April 2014, professionals, managers and executives earning up to $4,500 will need to have served with the same employer for at least 12 months to be eligible so seek redress against unfair dismissal, where notice is given. This will provide employers time to assess suitability of the employees for their jobs.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Employment laws in Singapore are generally considered to be employer friendly, largely due to the special needs of Singapore which relies heavily on her human resources and foreign investments.

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# Slovakia

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

In the Slovak Republic, no special labour courts have been established. Employment disputes are settled by civil courts applying the Code of Civil Procedure where applicable. Employment disputes can also be settled by arbitration courts provided that an arbitration clause was concluded.

### The Main Sources Of Employment Law

In the Slovak Republic, Labour Law is an independent branch of law based upon the Labour Code. Employment matters are also governed and regulated by the Constitution of the Slovak Republic, the Civil Code, the Anti-Discrimination Act, the Collective Bargaining Act, the Occupational Safety and Health Act, etc. together with international agreements and EU law.

### National Law And Employees Working For Foreign Companies

In the case of an employment relationship with a foreign aspect (i.e. in the event that the employer´s and the employee´s nationality are different), the law applied would be determined based on the rules of international private law. Under the Regulation of the European Parliament and Council EC no. 593/2008 on the law applicable to contractual obligations (Rome I), an individual employment contract is governed by the law chosen by the parties. Such a choice of jurisdiction may not, however, have the result of depriving an employee of the protection afforded to him by provisions that cannot be derogated from him/her by agreement under the law that would have been applicable in the absence of the choice. In the absence of any choice of law, a contract shall be governed:

- by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract;
- by the law of the country where the place of business through which the employee was engaged is situated;
- where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated above, the law of that other country shall apply.

### National Law And Employees Of National Companies Working In Another Jurisdiction

In the event that an employment contract is governed by Slovak national law, this law also applies to individuals working for Slovak entities abroad. Where the place of work is located abroad, i) the work period abroad; ii) the currency of remuneration; iii) other benefits and bonuses made in cash or in kind in connection with working abroad; and iv) potential terms and conditions regulating the employee's return back home shall additionally be specified by the employer in the employment contract.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

The employment relationship is established between the employee and the employer in writing. However, failure to conclude a written contract does not make an employment relationship void. The foregoing implies that an employment relationship may be established orally. An employment contract concluded orally for a fixed period of time is legally considered as to be indefinite.

If there is no written employment contract, an employee is to receive a written notification from the employer, within one month of starting employment, containing the following information: payment terms, working hours, holidays and the notice period, and, additionally, in the event that the place of work is located abroad the period of work to be performed abroad; the currency of remuneration; other benefits or bonuses made in cash or in kind in connection with the work abroad; and the potential terms and conditions regulating the employee's return home back from abroad.

### Mandatory Requirements

#### Trial Period

A trial period may be agreed in writing by the parties for a maximum period of three months; and in the case of a senior employee, who falls under the direct supervision of a statutory body or a member of a statutory body, for a maximum period of six months. Trial periods can only be extended if an employee has caused delay to the trial period due to reasons on his part (i. e. the employee´s sick leave). A trial period cannot be agreed on with an employee who repeatedly is employed under a fixed term contract.

#### Hours of Work

Employees may be required to work up to 40 hours per week. Where a two-shift pattern rota is operated, the employee may be required to work up to 38.75 hours per week; employees working a three - shift pattern rota or in uninterrupted operation can work a maximum of 37.5 hour per week. In specific cases, a strict regulation of working hours applies (e.g. employing minors, handling hazardous material). The average weekly working hours – including overtime – may not exceed 48 hours.



#### Earnings

Unless defined in the collective agreement, pay terms and conditions shall be specified in the employment contract. The wage in any case cannot be lower than the statutory minimum wage rates that are set annually by the government of the Slovak Republic. Specification of the wage is an essential part of the employment contract, therefore in the case that the wage is not agreed upon in the employment agreement nor is the collective agreement regulating the wage referred to in the employment agreement, then the employment agreement is void.

#### Holidays/Rest Periods

The employee is entitled to a minimum of 4 weeks holiday per year. Employees that reach the minimum of 33 years of age in the respective calendar year, are entitled to a minimum of 5 weeks holiday per year.

In addition, employees are entitled to obligatory breaks at work, uninterrupted daily rest and bank holidays.

#### Minimum/Maximum Age

Employees must be at least 15 years old and must have completed compulsory school attendance. People older than 15 years who are still attending school and persons under 15 years may be able to undertake only light work ( i.e. activities of a scope and character as to not affect their health, safety and future development and/or school attendance) in i) cultural and artistic performances; ii) sport activities; and iii) advertising activities upon the approval of state authorities. No maximum age is defined.

#### Illness/Disability

Employers are obliged to take measures to protect the life and health of their employees at work. Under the Labour Code, the employer is liable for damages incurred by employees as the result of an industrial accident or illness. Employees are entitled to maintenance and support (benefits) during an absence from work which is a result of their incapacity to work, old age, pregnancy or parenthood (in compliance with the social security legislation).

Employers have to provide disabled employees with appropriate working conditions which provides for their participation in and development of their work related skills and abilities.

Employees who are absent from work because of an accident or illness are protected against dismissal during the absence provided their incapacity to work is not a result of their intentional action or drug or alcohol intoxication. Employees are also protected against dismissal during the period after filing an application for clinical treatment or after commencing a spa treatment until the completion of this treatment. The protective period ensures that the employee is not dismissed because of his disability or illness.

#### Location of Work/Mobility

The employee's place of work should be specified in the employment contract and cannot be unilaterally changed by the employer. Where the work needs to be performed at a number of places, this is required to be specified directly in the employment contract. The employee may be sent by the employer on a business trip outside the municipal district of his/her regular workplace only if, and when, the employee agrees; this general consent can already be obtained in the employment agreement.

#### Pension Plans

Slovak labour legislation does not provide for compulsory pension plans.

Pursuant to the Social Security Act, the pension insurance system in the Slovak Republic has three elements:

- State pension insurance; a pay-as-you-go system (statutory levies paid by both the employer and employee each month) with levies paid to the Social Insurance Agency used for pension benefits.
- Savings (statutory contributions of the employer and employee) managed by special companies, i.e. pension management companies. Saved in a private pension account, these contributions become the saver's property.
- Voluntary savings: contributions paid from net earnings in an amount defined by the employee themselves.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Pregnant and nursing employees, employees on maternity or parental leave and single parent employees who look after a child under the age of three years are afforded special protection under the labour laws. Employees are entitled to up to 34 weeks of maternity leave, and parental leave until the child reaches 3 years of age. Where an employee's child has a long-term illness parental leave may be extended up to the time when the child is six years of age.

### Compulsory Terms

Any employment contract failing to include the following agreed essential elements is void: the type and a brief description of the work; the place of work – city, area or any place defined in other manner; starting day and pay terms and conditions (unless defined in the collective agreement).

If there is no written employment contract, the employee is to receive a written notification from the employer, within one month of starting employment, which contains the following information: payment terms, working hours, holidays and the notice period.

### Non-Compulsory Terms

In an employment contract, the parties may agree on any additional terms and conditions that are of the interest to the participants, in particular material benefits.

## Types Of Agreement

In addition to ordinary employment contracts, the employer and the individual may conclude a specific agreement to provide extra work or services required. Employers can conclude :

- an Agreement on Performance of Work - the scope of work shall not exceed 350 hours in a calendar year;
- an agreement on student work - this can be concluded with a high school student or college student who has not reached 26 years of age; the scope of work shall not exceed 20 hours a week;
- an agreement on work activities – the scope of work shall not exceed 10 hours a week.

In addition to the above, an employer and employee can conclude a labour contract for a fixed term. The law requires this contract to be executed in a written form, and limits its maximum duration to 2 years (this employment contract can be repeatedly concluded, or be prolonged by 2 years, twice). The Slovak Labour Code also allows for part-time labour contracts, i.e. contracts concerning less than 40 working hours per week.



## Secrecy/Confidentiality

Under the Labour Code, the employee undertakes not to disclose any information they receive or obtain during the course of or as a result of their employment which, in the interest of the employer, cannot be disclosed to third parties.

Employers can define the scope and content of confidential information, for instance in the employment contract or in a seperate non-disclosure agreement. Breach of this fundamental obligation by the employee may amount to gross misconduct resulting in instant dismissal. Employees can be held liable for damage as a result for the foregoing. Damages payable by the employee are limited by the Labour Code in an amount of up to four times an employee's average pay and they cover damages for breach of contract as well as compensation for loss of profit.

Pursuant to the Labour Code, the obligation to maintain confidentiality usually ends with the termination of employment. If the employer and employee have expressly concluded an non-disclosure agreement, the obligation to maintain confidentiality may continue even after employment is terminated. However, it should be noted that legal literature suggests that such agreements are not valid after an employment contract has ended, and, as such, the information can be used by the employee freely even in order to pursue their own business purposes. That does not apply in the case of a trade secret which is protected under the Commercial Code regardless of the duration of the employment.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Under the Copyright Act, works created by an employee in the course of his employment are considered to be „the employee's works". Unless agreed otherwise, employers will claim copyright over the employee´s work in their own name and on their behalf. It is presumed that the employee gives the employer his consent when the employer exercises copyright over the work. When the employment ends, the rights and duties relating to the employee's work remain unaffected, i.e. they continue to be excercised by the employer.

## Hiring Non-Nationals

EU nationals are subject to the same employment laws as national employees. EU nationals do not need a work permit (granted by the state authorities) to work in the Slovak Republic. Employers may not require a work permit in certain situations, such as when an employee holds a permanent residence permit.

In Slovakia, only citizens of non-EU or non-EEC countries holding valid work and residence permits – granted by the Office of Labour, Social Affairs and Family, pursuant to a suitable application – can be employed.

Employers are required to inform the Office of Labour, Social Affairs and Family in writing about the commencement and termination of the employment of EU nationals and their relatives and concerning the commencement and termination of the employment of employees who are required to hold a work permit.

### Hiring Specified Categories Of Individuals

If it has at least 20 employees, an employer is required to employ disabled persons so as to make up at least 3.2% of the total number of its employees.

The statutory obligation to employ disabled persons can also be fulfilled through granting a contract which is suitable for an employed disabled persons to a to self-employed disabled persons. Employers can also purchase goods and services from protected workshops (which employ the disabled ), self-employed disabled persons and from other employers whose goods and services are additionally produced and provided by their disabled employees.

Employers who do not meet these statutory obligation are penalised and required to pay special charges. In addition, special obligations defined by law apply to employers employing pregnant women, children under 15 years of age and persons looking after young children, etc.

### Outsourcing And/Or Sub-Contracting

Employers and/or temporary job agencies may agree with employees on their assignment to work temporarily for other legal entities or individuals. However, a temporary assignment often can result in a temporary change in the place of work and – quite often – the type of work. The original employment relationship remains unchanged, but the employees are required to receive instructions from a third party (customer employer); however, the remuneration and travel expenses are provided by the original employer or the temporary job agency.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

Generally, an employment contract can be amended by agreement between the employer and the employee. However, under certain conditions some temporary changes may be made without the consent of the employee (e.g. type of work, place of work).

### Change In Ownership Of The Business

Based on the law, if a business has a change in ownership, all rights and duties arising out of the employment relationship are transferred from the transferor employer to the transferee employer. A transfer of rights and duties occurs when the ownership of the business is changed by merger, consolidation or division of the business/employer or upon division of a part of the owner's business or upon transfer of the employer´s tasks.



Both the transferor and the transferee employer are obliged to inform the employees concerning the date, reason, impacts of the transfer and planned measures relating to the transfer one month prior to it. At the same time, the employer is obliged to discuss the proposed transfer with the employees' representatives with a goal as to reach an agreement one month prior to the transfer date.

If the terms agreed on in the employment contract change due to the transfer, and the employee does not agree with such a change, the employment is considered to be terminated by agreement of the parties as of the date of the transfer.

### Social Security Contributions

Both the employer and the employee have a duty to levy a certain percentage of the employee's income as a contribution to the Social Insurance Agency (the amount of the contribution is set by the Social Insurance Act).

### Accidents At Work

The law imposes a series of duties on the employer to ensure the occupational health and safety of the employees. When an employee starts to work the employer is obliged to provide the employee with health and safety information, as well as identify any potential risks to them. The employer is under a duty to keep employees up-to-date on health and safety regulations in the workplace every two years.

The employer must notify the respective authorities of any industrial accidents that occur (respective health and safety inspectorates which are competent with respect to the registered office of the employer, etc.). It is the employer who is liable for injury occasioned upon to the employee as a result of an industrial accident. This applies even in the case where the employer has fulfilled all the duties related to ensuring health and safety protection in the workplace.

The Labour Code provides relief for employers from liability for injury where the employer is only partially liable. The employer will not be held liable upon proving that the reason for the injury was that i) the injury was caused by the aggrieved employee breaching any legal regulation or instructions aimed at ensuring health and safety in the workplace and that it occured despite she he being dully and demonstrably notified of these and their awareness were constantly requested and verified; or ii) the injury was caused by the aggrieved employee being intoxicated and the employer was unable to prevent the injury.

### Discipline And Grievance

The employee is obliged to maintain discipline in the workplace, i.e. to meet all legal duties following from the employment contract, collective agreement, legal regulation and other regulation they have been familiarised with. The employee is obliged to obey the in-house directions of the employer only if properly informed about them.

Upon an employee breaching work rules, the employer might impose legal sanctions in the form of curtailing their period of holiday (in case of unexcused absence); terminating their employment according to the notice period, as a result of the the breach; instant dismissal due to a material breach, or reducing compensatory pay or other remuneration-related measures.

Employees who are aggrieved can file a complaint with the appropriate body of the Labour Inspectorate (Ministry of Labour, Social Affairs and Family of the Slovak Republic, National Labour Inspectorate and individual labour inspectorates).

### Harassment/Discrimination/Equal pay

The employer is obliged to comply with the equality principle laid down in the Discrimination Act and the Labour Code. It is unlawful for an employer to discriminate on grounds of marital status, skin colour, language, political or other beliefs, professional activity, national or social origin, property, descent or other status. According to the Discrimination Act, discrimination shall include harassment, unfair sanctions, cause others to discriminate and encouraging others to discriminate someone.

An employer must apply the principle of equal pay to all employees. Where employees perform the same kind or work of an equal value they must receive equal pay. The rights and duties of the parties inside the labour relationship should be exercised in compliance with good morals. Employees are protected from victimisation in the workplace either from the employer or from a fellow employee.

An employee is entitled to file a complaint with an employer for alleged violation of the principle of equal treatment. The employer is obliged to reply to the employee's complaint without undue delay, remove the discriminatory behaviour and refrain from such conduct and remove its consequences.

An employee, feeling they are being discriminated or persecuted against, might turn to the court and seek legal protection pursuant to the Discrimination Act.

### Compulsory Training Obligations

The Act does not provide for any obligatory training. However, some occupations/professions require certain qualifications or experience.



### Offsetting Earnings

The Slovak Labour Code allows for monthly deductions from the employee's wage. However, the pay-as-you-earn system is subject to a statutory maximum. Further deductions exceeding the statutory minimum are only permissible with the written agreement of the employee.

### Payments For Maternity And Disability Leave

Female employees provided they paid their contributions for least 270 days during the previous two years are entitled to statutory maternity pay from the beginning of the sixth week prior to the expected day of childbirth, or as early as eight weeks prior to the birth-date. If the child is born before the due date, maternity leave can be taken from the delivery date. Employees are entitled to receive maternity pay for a period of thirty four weeks after maternity pay was initiated.

Disabled employees fulfilling statutory conditions imposed by the Social Insurance Act (an employee who i) is disabled; ii) has fulfilled the necessary requirement for the number of years of contributing to the national pension insurance scheme; and iii) as of the day of commencement of disability has not met the requirement to become entitled to an old-age pension or has not been granted an early old-age pension) are entitled to disability benefits. The purpose of the disability benefit is to provide the employee with income in case of their impaired ability to undertake work.

Both maternity and disability benefits are paid by the Social Insurance Agency.

Employees dismissed by the employer, either by termination on notice or by the parties' agreement, due to their becoming incapable of performing their job as a result of medical problems are also entitled to redundancy payment in the amount of one to five months' pay depending on the length of their employment. If the employment was terminated, on notice or by the parties' agreement, due to an industrial accident or industrial illness, the employee is entitled to a redundancy payment amounting to ten months' salary.

### Compulsory Insurance

The employer is obliged to pay contributions to the health insurance scheme, sickness insurance scheme, pension scheme, disability scheme, unemployment scheme, and accident insurance scheme, as well as to a guarantee fund for claims arising from the employer's possible insolvency, and the reserve solidarity fund.

### Absence For Military Or Public Service Duties

The law enables the employee to hold a public office or perform military service. At the same time, it provides these employees with protection against termination of their employment during this period of service. However, it should be pointed out that compulsory military service was abolished in 2006, therefore this provision has almost no relevance anymore with regard to military service.

The time off work referred to above is provided by the employer without compensation unless the law provides otherwise.

### Works Councils or Trade Unions

Employees take part in the decision-making process of the employer where decisions relate to their economic and social interests. Employees become involved either directly or through their trade union (unincorporated association), works council or employee´s representative.

The works council is a body representing all employees of an employer who has at least 50 employees. If the employer has between 3 and 50 employees an employees' representative can be appointed.

The members of a trade union, works council or the employees' representative enjoy certain benefits. The employer provides such individuals with paid time to carry out their duties. The employer can only terminate the employment of such an employee with the prior consent of their employee representatives. This consent is deemed to be given if the employer does not receive a response from the employees representatives within 15 days subsequent to any request.

### Employees' Right To Strike

The right to strike is provided for in Article 37(4) of the Constitution. The right to strike in relation to collective labour disputes is defined separately in the Collective Bargaining Act. Some kinds of jobs are subject to certain restrictions. A legal strike does not breach an employee's employment contract.

### Employees On Strike

The employer must grant the employee time to strike; however, a striking employee is not entitled to pay. If the court decides that the strike is unlawful, continued participation in the strike is deemed as unexcused absence from work.

### Employers' Responsibility For Actions Of Their Employees

The employer is vicariously liable if the employee causes damage to a third party whilst performing work tasks. However, the employer may (in recourse) claim the respective damages from the employee. Damages payable as a result of an employee's negligence are limited to the sum of four months' average salary. If the employee caused damage wilfully then lost profit might also be claimed.



# 04. Firing The Employee

### Procedures For Terminating The Agreement

Employment can be legally terminated in four different ways: 1) by agreement of the parties, 2) notice of termination, 3) instant dismissal and 4) termination during the trial period. Further, the employment might be terminated by a lapse of time (in the case of a fixed-term contract), by the employee's death, upon decision of an authority (e.g. employment of foreign nationals) or by virtue of law (e.g. university teachers).

### Instant Dismissal

The employer can only instantly dismiss an employee in two cases: i) conviction of the employee for an intentional criminal act; and ii) gross misconduct. The instant dismissal of the employee is subject to a subjective two-month time limit and an objective one-year time limit. Pregnant employees, employees on maternity or parental leave, single parent employees nursing a child under the age of three or employees taking care of a disabled dependent cannot be instantly dismissed. Their employment, however, may be terminated on notice – employees on maternity or parental leave are exempted from this.

The employee might instantly terminate employment in three cases: i) if the employee is unable to work due to work posing a danger to their health (confirmed by an expert) and the employer is unable to provide the employee with another type of work within 15 days; ii) the employer fails to pay the employee the wage, the wage compensation, travel expenses, compensation for any standby, wage compensation in the case of sick leave, in whole or part, within 15 days of it being due; or iii) the life or health of the employee is immediately endangered. The employee is entitled to a one-month subjective time limit for the termination of employment and two months' pay.

If either party is instantly terminating employment, it must do so in writing, clearly stating the statutory reason and serve it on the other party. Failing to do this will result in the termination being invalid. The employer must discuss the dismissal with the employee representative. If there is no employee representative then no such duty arises. The employee representative must then discuss the dismissal with the employee within two days of receipt of the notice. If the employee representative does not discuss the dismissal within the prescribed period, then it is deemed, in any case, that the discussion has taken place.

### Employee's Resignation

The issue of resignation does not fall within the scope of Labour Law. The Labour Code does not define resignation as a means of terminating employment.

### Termination On Notice

Employment can be terminated by either party upon written notice. The notice period starts on the first day of the following month in which the notice was delivered. The employee does not need to give a reason, whereas the employer is bound by statute to give a reason (organisational changes, the employee does not meet the statutory requirements for the given job, breach of discipline in the workplace etc.). The employer cannot serve notice within the so-called protected periods of employment e.g. sick leave, maternity leave, exercising a public office etc. The minimum notice period is 1 month. In the case of termination for organisational reasons or because the employee is medically certified as unable to perform his/her work on a long term basis, the notice period is 2 months if the employment lasted for at least 1 year or 3 months if the employment lasted at least 5 years. In the other cases, as mentioned above, the notice period is at least 2 months if the employment lasted at least one year.

### Termination By Reason Of The Employee's Age

Apart from reaching the age of retirement employment cannot be terminated due to an employee's age, apart from in the case of university teachers (the employment of university teachers terminates with the end of the academic year in which they have reached the age of 70).

### Automatic Termination In Cases Of Force Majeure

Generally, the law does not regulate the consequences of force majeure. Under the Labour Law, therefore, the general rules of the Civil Code shall apply.

### Termination By Parties' Agreement

The parties may conclude a written agreement in which they agree to end the employment. If so required by the employee or if it concerns organisational changes, the reasons for terminating the employment must be specified in the agreement.

### Directors Or Other Senior Officers

Directors and other senior officers can be dismissed in the same manner as with any other employee.

### Special Rules For Categories Of Employee

The Labour Code does not provide any special rules for certain categories of employees. However, due to their status, some employees are provided with enhanced protection as discussed above.



### Specific Rules For Companies in Financial Difficulties

The employer, interim bankruptcy trustee or the bankruptcy trustee is obliged to inform the Social Security Agency regarding the insolvency of an employer in writing within 8 days after its inception. The claims of the employees are paid from the guarantee insurance.

By virtue of the Bankruptcy and Restructuring Act, rights and duties arising out of labour relationships are transferred from the employer to the bankruptcy trustee.

### Restricting Future Activities

The employee's activities after the termination of the employment can be restricted by an arrangement in the employment contract stating that the employee is obliged to refrain from the activities that are competitive to the activities of the employer for a maximum of 1 year.

Such an agreement may be concluded only where the employee is to acquire, during the period of employment, information or skills that are not readily available, and their use would bring about substantial harm to the employer.

If the restriction of employment agreed in the employment contract is greater than is legitimate for the protection of the employer, a court may limit or cancel the employee´s obligation. The employer is obliged to provide the employee with a reasonable monetary compensation in the amount of at least 50% of average monthly earnings per each month of the obligation.

An employee and employer may agree to fair financial compensation that the employee is required to pay, if he breaches the obligation to refrain from the stipulated competitive activities. The amount of the compensation to be paid by the employee shall not exceed the total amount of the compensation provided by the employer. By paying such a financial compensation the obligation of the employee shall cease.

### Severance Payments

Upon notice of termination or agreement of the parties due to organisational reasons, dissolution or change of the employer's location or the employee becoming unable to work, the employee is entitled to a severance payment amounting to one to five months' pay depending on the length of the employment. Where the employment is terminated upon notice or agreement of the parties due an industrial accident, industrial illness or related risks, the employee is entitled to a severance payment of ten months' pay.

### Special Tax Provisions And Severance Payments

Severance payments are subject to income tax.

### Allowances Payable To Employees After Termination

The employer has no duty to pay the former employees any kind of pension or similar allowance after the employment relationship has ended.

### Time Limits For Claims Following Termination

Claims arising out of a void termination of employment are to be made within two months of the end of the employment.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The Slovak legal order does not have any unique features.

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# South Africa

# South Africa

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Commission for Conciliation, Mediation and Arbitration ("CCMA") deals with most employment disputes that relate to unfair dismissal (as well as any statutory monies that may be due that are linked to the dismissal) and unfair labour practice complaints. The Labour Court, on the other hand, deals exclusively with specialised labour disputes such as reviews of decisions handed down by the CCMA, interdict applications, collective disputes, mass retrenchments and discrimination disputes. In sectors subject to Bargaining Council regulation the unfair dismissal and unfair labour practice disputes that would conventionally be dealt with by the CCMA are referred to the relevant Bargaining Council for resolution.

### The Main Sources Of Employment Law

The common law, which governs the contract of employment, remains a primary source of employment law. Legislative intervention in the relationship between employer and employee has increased over a period of years in South Africa. This legislation regulates individual employment contracts, the collective bargaining processes, minimum conditions of employment and the protection of employees against unfair discrimination. The main sources of legislation include the Constitution of the Republic of South Africa Act of 1996 which establishes a constitutional right to fair labour practices and entrenches the right of employees to form and associate with trade unions as well as the right of employers, to form employer organisations and associate with those organisations.

The Labour Relations Act 66 of 1995 is probably the most important statute in relation to the regulation of both individual and collective rights. It deals with organisational rights of trade unions, bargaining council collective agreements and the management of unfair dismissal and unfair labour practice disputes.

The Basic Conditions of Employment Act 75 of 1997 is a further significant legislative intervention. It is the "minimum standards legislation" that regulates, inter alia, hours of work, overtime, leave pay, notice provisions, the prohibition of employment of children and forced labour. And it also sets out the method of enforcement that the Department of Labour may pursue in circumstances where employers breach minimum employment standards.



The Employment Equity Act 55 of 1998 is an advanced piece of legislation established to firstly prohibit unfair discrimination and secondly to facilitate the promotion of employment equity (affirmative action) within employers throughout South Africa. South Africa follows a precedent based labour system and as such decisions by the Labour Court form an important source of employment law.

### National Law And Employees Working For Foreign Companies

The statutory and common law rights under national law will apply to all individuals physically working in the Republic of South Africa regardless of their nationality. It is only in instances where employees and employers expressly agree that the law of another country will regulate their contract of employment that such foreign law will apply. Nevertheless where breaches of minimum standards of employment take place the national legislation will take precedence and such disputes will be dealt with under the terms of the Basic Conditions of Employment Act.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The common law and statutory rights of nationals will only apply whilst those nationals are physically working in the Republic of South Africa. Once those employees work in another jurisdiction the general principle is that the law of that jurisdiction will apply unless, there is a specific and express contractual reservation of the domestic laws of South Africa.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract of employment to be in writing between an employer and employee. However, every employer is required to provide each employee with written particulars of employment once the employee commences employment. These particulars include items such as the name and address of the employer, the date when employment began, the ordinary hours of work that the employee is expected to work, the leave to which the employee is entitled and the period of notice that is required to terminate the contract of employment.

## Mandatory Requirements

### Trial Period

There is no legal obligation to provide trial periods (known as "probationary periods") when engaging new employees. It has, however, become common practice to do so and these trial periods tend to range from between three to six months and are capable of being extended for further reasonable periods.

### Hours of Work

The Basic Conditions of Employment Act regulates ordinary hours of work of most employees and limits the number of ordinary hours that an employee may work to 45 hours in a week. Overtime can be worked by agreement but this overtime must not exceed more than 10 hours a week and where such overtime is worked an employee may not be required to work for more than 12 hours on any day. Employees who earn in excess of R193 805.00.00 per annum are not subject to regulation of their working time. This figure is usually adjusted upwards on an annual basis. A similar exclusion applies to senior managerial employees and employees engaged as sale staff who travel to the premises of customers and who regulate their own hours of work.

### Earnings

There is for the most part no regulation of earnings within South Africa except, inter alia, in the case of domestic and agricultural workers where there are sectoral determinations which establish minimum wages for these employees. There are also Bargaining Council agreements in various sectors where minimum wages will apply in respect of scheduled job functions.

### Holidays/Rest Periods

All employees are entitled to a statutory minimum of 21 consecutive days (15 working days) paid leave per annum. There are also compulsory daily and weekly rest periods that are regulated. Employees are entitled to at least 12 consecutive hours daily rest between an employee ending and recommencing work. In respect of a weekly rest period there must be at least a 36 consecutive hours rest between the end of one week and the commencement of another week. This must include a Sunday unless otherwise agreed.

### Minimum/Maximum Age

The minimum age is 15 years to which there are no exceptions. There is no fixed statutory maximum age but most employers regulate the maximum age in the terms of contract or by way of practice or an industry norm. If this is not regulated, then the employer may only resort to the termination of the employee on one of the recognised grounds.

### Illness/Disability

There are no mandatory requirements relating to illness and disability. Generally employers procure ill health and income disability insurance through registered insurers and this conventionally forms part of the pension and provident fund arrangements for employees.

### Location of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. Employers may include mobility clauses in the contract of employment but an employer may not enforce mobility clauses unreasonably.

### Pension Plans

An employer is under no obligation to provide an employee with access to a pension. Where an employer does provide a pension fund for its employees, employees must be provided with information relating to the pension scheme as well as the contribution requirements relative to such a scheme. The Pension Fund Act of 1956 regulates employee's rights and obligations as members of Pension/Provident Funds.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

In terms of the Basic Conditions of Employment Act employees are entitled to various forms of leave. Employees are entitled to at least 4 consecutive months maternity leave which must commence at least 4 weeks before the expected date of birth. An employer is prohibited from permitting an employee to return to work during the first 6 weeks after the birth of the child.

Family responsibility leave entitles an employee to 3 days paid leave per annum which the employee may take when the employee's child is born (paternity leave), when the employee's child is sick or in the event of death of the employee's spouse or life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.



The Labour Relations Act entrenches the right of employees who take maternity leave. These employees must be allowed to return to their employment after the birth of the child and if an employer refuses to do so this amounts to unfair dismissal. There is no statutory obligation to pay an employee while on maternity leave.

### Compulsory Terms

The Basic Conditions of Employment Act requires certain written particulars of employment to be inserted into the contract of employment and these include the following:-

- the full name and address of the employer;
- the name and occupation of the employee;
- the place/s of work;
- an indication of the date on which the employment began;
- the employee's ordinary hours of work and days of work;
- the employee's wage or the rate and method of calculating wages;
- the rate of pay for overtime work;
- other cash payments that the employee is entitled to;
- any payments in kind the employee is entitled to and the value;
- how frequently remuneration will be paid;
- any deductions to be made from the employee's remuneration;
- the leave entitlement of the employee;
- the notice required to terminate employment, or if the employment is for a specified period, the date when the employment is to terminate;
- the council or sectoral determination covering the employer's business;
- any period of employment with a previous employer that counts towards the employee's period of employment; and
- a list of any other documents that form part of the contract of employment and an indication of where a copy may be obtained.

### Non-Compulsory Terms

The employer and employee are free to agree to any other terms in addition to the compulsory terms provided that these terms are not less favourable than statutory rights entrenched in the Basic Conditions of Employment Act. There is also a prohibition on including illegal clauses in an employment contract.

## Types Of Agreement

All employment relationships are primarily contractual in nature, whether or not the terms have been reduced to writing. Contracts of employment can take on different forms namely:-

- fixed term contracts of employment; or
- full time contracts of employment.

The compulsory terms alluded to above apply regardless of the type of contract contemplated. The minimum conditions which are contained in the Basic Conditions of Employment Act have to be observed regardless of the nature of the employment agreement.[Note: Amendments are expected to be passed in 2014 limiting the use of fixed term contracts and labour brokers (temporary employment services).

### Secrecy/Confidentiality

The Employment Equity Act specifically imposes a responsibility upon an employer to maintain the secrecy/confidentiality of an employee's personal information particularly as far as items such as the employee's HIV status is concerned. The Employee is under an implied duty to treat any information that comes to his knowledge during the employment relationship as confidential and secret. Generally employers will ask Senior Employees to enter into a restraint of trade agreement to guard against the utilisation of confidential information or trade secrets or the erosion of its client base after termination of the employment relationship.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms there are statutory provisions which would have application in determining the ownership of intellectual property rights. The general position is that any information authored or created by an employee who is being paid for that information will fall for the benefit of the employer.

### Hiring Non-Nationals

The employment of non-nationals is regulated by the Immigration Act of 2002. An employer is obliged to ensure that all employees are entitled to work in South Africa. All non-nationals must be in possession of a permanent or temporary residence permit and must also obtain a work permit. The Act imposes a penalty upon employers who "knowingly assist a foreigner to enter into the Republic of South Africa without a requisite temporary permit or to work in the country." Generally a work permit will not be issued unless an employer can demonstrate that it has attempted to procure the necessary skills/services locally and has been unable to do so. Despite these legislative obligations that are imposed upon employers, the Labour Court has sought to protect the rights of illegally employed non-nationals by providing them with access to the same unfair dismissal, unfair discrimination and unfair labour practice rights that nationals would have.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities. Restrictions also apply to vulnerable groups such as pregnant women who may not be required to perform work hazardous to themselves or their unborn child. In terms of the Employment Equity Act the preferential employment of South African Black persons, women and disabled persons is permitted to promote affirmative action and Black Economic Empowerment.



### Outsourcing And/Or Sub-Contracting

The Labour Relations Act regulates transfers of business (including the whole or part of a business, trade, undertaking or service) as a going concern including outsourcing and in-sourcing or where there is a change in the identity of the outsourced service provider. Where there is an outsourcing of a business or an aspect of a business, the employees remain on similar terms and conditions of employment as those that applied prior to the outsourcing (with the exception of pension arrangements where there are special rules which apply depending on the nature of the previous pension provisions). Employees may not be retrenched prior to the outsourcing of a business as this constitutes an automatically unfair dismissal. Changes may only be made to employee's conditions of service subsequent to the outsourcing and any such changes need to be preceded by a consultation process between the new employer and these employees.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with common law contractual principles, an employer may not change any term of an employee's contract of employment unless the employee expressly consents to this. There are situations, however, where this consent may be implied. Where an employer has sought to advise employees of its intentions to make changes and has given them the opportunity to protest to such changes consent may be implied. Employers often contractually reserve the right to change employee's conditions where operational reasons dictate the need for this. Even in such situations where an employer seeks to make such changes he must act reasonably. In situations where the change anticipated is not material to the contract of employment the employer may generally make that change without first consulting and obtaining the permission of the affected employees. Any unreasonable or material change to the terms and conditions of the employees contract can result in constructive dismissal. In this situation an employee would be entitled to seek damages against the employer. Where an employee wishes to obtain restitution he/she may approach the Labour Court for specific performance and restitution to the status quo ante.

If an employer can demonstrate that certain changes to the conditions of employment are for operational reasons, i.e. financial, technological or structural reasons, the employer may retrench employees who unreasonably refuse to accept the proposed changes.

### Change In Ownership Of The Business

Where there is a change in ownership of a business (except a change merely in the shareholding arrangements) all employees are automatically transferred to the new employer on the same terms and conditions. These rules apply also when there is a transfer of ownership or part of a business as a going concern. The Labour Relations Act specifically requires the old employer and new employer to ensure that employee benefits are appropriately valued prior to the transfer. It also requires the old employer and new employer to make specific arrangements for the payment of these benefits. And for employees to be notified of the arrangements that have been made regarding the honouring of their benefits in terms of the employment contract. Employees are not allowed to refuse to transfer to the new employer. However, provision is made for tripartite agreements between the old employer and the new employer and the specifically affected employee to agree to vary the terms of the transfer. This can include an agreement where an employee is specifically excluded from the automatic transfer envisaged by the Labour Relations Act in circumstances where there is a change in ownership of the business.

### Social Security Contributions

Employers and employees are required under the terms of the Unemployment Insurance Fund Act 63 of 2001 to contribute towards an Unemployment Insurance Fund. These rates are determined by law. Where employees are subject to a Bargaining Council arrangement the employer is required to contribute to various levy funds which include sick leave funds, holiday pay funds and in some cases pensions funds.

### Accidents At Work

Employers are required by the Occupational Health and Safety Act 85 of 1993 to ensure the safety of employees at work. In terms of this legislation employers are also responsible for ensuring that employees are adequately provided with training and are made aware of the risks inherent in any activities that they are required to perform as part of their employment duties. There are criminal sanctions that apply in circumstances where an employer fails in his duties to ensure the safety of an employee and accidents result in casualty or injury to employees. In tandem with this there is a statutory compensation fund established under the Compensation for Occupational Injuries and Diseases Act No 130 of 1993. This Act requires employers to contribute annually to this statutory fund which provides insurance to employees who are injured or who die in any accidents or illnesses arising from their employment. Under the terms of this Act an employee may not sue his employer for any accident or illness sustained in the workplace and the employee must have recourse to the Compensation Fund for any compensation.



### Discipline And Grievance

There are no mandatory requirements for discipline or the lodging of a grievance. The Labour Relations Act has, however, established a Code of Good Practice which provides guidelines to employers when dealing with disciplinary offences or misconduct on the part of employees. It also provides guidelines on how to deal with ill health, incapacity and poor work performance in the workplace. The unfair dismissal and unfair labour practice jurisprudence has been developed through the case law and provides a useful guide on how to deal procedurally and substantively with discipline. Grievances are generally dealt with internally and in terms of the employer's policies.

### Harassment/Discrimination/Equal pay

The Employment Equity Act prohibits unfair discrimination on a number of stated grounds which include race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth. Affirmative action is specifically permitted as an exception to these anti-discrimination prohibitions. Harassment is identified as a form of unfair discrimination which is prohibited and an employee may not be harassed on any one of the grounds listed above or on a combination of these grounds.

The discrimination provisions have application not only to employees but also to applicants for employment. Where a complaint of unfair discrimination is made it is referred to the CCMA and then to the Labour Court for adjudication. Compensation is not subject to a cap. There is no separate legislation that deals with equal pay. It is generally dealt with in terms of the general discrimination provisions under the Employment Equity Act. The law relating to equal pay has therefore been developed substantially through case law. (Note: it is anticipated that there will be legislative intervention in 2014 in respect of equal pay for equal work).

### Compulsory Training Obligations

There are no compulsory training obligations for employees, but the employer is obliged to contribute towards a Skills Development Levy Fund set up to provide skills development for employees. At present, employees are required to contribute at least one percent of their payroll towards this fund. Employers may claim refunds from this fund in circumstances where they have engaged in accredited skills development training for their employees.

### Offsetting Earnings

Employers are prohibited from off-setting earnings against employee's debts unless the employee has expressly consented to this in writing under the terms of the Basic Conditions of Employment Act. There are, however, specific statutory instruments which oblige an employer to automatically make deductions from employee's earnings.

### Payments For Maternity And Disability Leave

There is no statutory requirement imposed upon employers to pay employees whilst on maternity leave, save for where family responsibility leave would apply. The Unemployment Insurance Fund provides for maternity benefits to be paid to employees whilst on maternity leave and these payments are determined with reference to the employee's earnings and must be claimed directly from the Unemployment Insurance Fund. Similarly there is no provision for an employer to pay employees who are disabled and have used up their sick leave entitlement. At present employees are entitled to a period of 30 days paid sick leave in every three year cycle, after 6 months of employment. In other words an employee is entitled to an average of at least 10 days paid sick leave from his employer every year but can take up to 30 days from month seven of employment. Where an employee becomes disabled at work the Compensation for Occupational Injuries and Diseases Fund provides for the payment of certain specified amounts depending on the duration of the employee's illness or the extent of his disability. Most employers do procure disability insurances for and on behalf of the employee from private insurance companies. There is no provision in the law for child care payments by an employer.

### Compulsory Insurance

No compulsory insurance is required except for the Compensation for Occupational Injuries and Diseases Fund and the unemployment insurance fund (UIF) which employers are required to subscribe to.

### Absence For Military Or Public Service Duties

There is no specific statutory provision which provides employees with leave for such activities. Such leave would have to be taken as ordinary annual leave.

### Works Councils or Trade Unions

Employers are required to recognise trade unions that represent a sufficient number of Employees (generally approximately 20 % membership) within their workplaces. Employers must give organisational rights to those trade unions that fulfil this requirement. The various types of organisational rights include access to the workplace, deduction of trade union subscriptions or levies, trade union representation, leave by shop stewards for trade union activities and disclosure of information in order for the trade union to effectively perform its functions. There is no duty to bargain with a trade union but trade unions may coerce employers into bargaining with them by prompting their employee members to embark on strike action in support of a demand for recognition by the employer. There is a concept of a workplace forum provided for in the Labour Relations Act which is analogous to a works council. By and large the establishment of these workplace forums has not been successful in South Africa.



### Employees' Right To Strike

Employees enjoy the right to strike under the Labour Relations Act (and in terms of the Constitution of South Africa) over what are termed disputes of interest or what are known as wage/benefit disputes or terms/conditions of employment disputes. There are, however, certain procedural requirements that must be followed in order for the strike to be protected. This includes a requirement that the dispute must be referred to conciliation before employees may embark upon strike action. The employer must be given at least 48 hours notice prior to the commencement of a strike. Employers have the right to lock-out which is subject by and large to the same rules in respect of strikes.

### Employees On Strike

Employees on strike are immune from dismissal provided the strike is protected. Employees may be dismissed for misconduct perpetrated during the strike. Where employees embark on unprotected strike action they may be dismissed for this provided the employer has issued an ultimatum to employees to return to work. If a strike starts impacting upon the operational sustainability of a business an employer may retrench employees on account of this but not before the company is facing virtual economic collapse.

### Employers' Responsibility For Actions Of Their Employees

The principles of vicarious liability have application to certain acts or forms of conduct on the part of employees provided the employee was acting in the course of his/her employment at the time of the wrongdoing. This means that the employer may be held accountable for these wrongs.

## 04. Firing The Employee

### Procedures For Terminating The Agreement

Employee's services may only be terminated for misconduct, incapacity (due to ill health/injury, poor work performance and/or incompatibility) or where an employee is retrenched for operational reasons which are economic, structural or technological in nature.

In the case of a fixed term employee the contract comes to an end on the stipulated date. These employees may in certain circumstances have an expectation of a renewal of that contract on similar terms, which, if established, can constitute grounds for an unfair dismissal.

Prior to any termination taking place, an employee is always entitled to a hearing whether it is a disciplinary hearing for misconduct or an incapacity hearing for ill health/injury or poor work performance. Prior to retrenchments taking place there has to be a consultation process with the employees and their representatives as prescribed in the Labour Relations Act.

### Dismissal

The employer can terminate the contract of employment with, or without notice depending on the basis for the dismissal and usually not before a disciplinary enquiry has been convened. The disciplinary enquiry may be dealt with on an informal basis unless the employer is contractually obliged to hold a formal disciplinary enquiry.

### Employee's Resignation

An employee who resigns is required to comply with the requisite notice period that is contained in the contract with the employer. Resignations must be in writing.

### Notice Periods

There are certain minimum statutory periods of notice which may be overridden by contractual notice arrangements that the parties agree to. Normally notice of 4 weeks is applicable where an employee has been employed for more than a year, two weeks if the employee has been employed for more than six months but not more than one year and one week where the employee has only been employed for six months or less.

### Termination By Reason Of The Employee's Age

Employment can be terminated due to an employee's age but only once the employee reaches the contractually stipulated retirement age or normal retirement age within the Company or that Industry.

### Automatic Termination In Cases Of Force Majeure

Generally contracts of employment are suspended in cases of force majeure but where the business cannot recover from the impact of the force majeure the employment can be justifiably terminated.

### Termination By Parties' Agreement

The parties are entirely free to agree to terminate the employment on any grounds that they desire.

### Directors Or Other Senior Officers

For Directors and other Senior Officers there are no special rules which relate to the termination of their employment, but in the case of a statutory Director termination of employment does not automatically bring to an end the directorship. Separate steps in terms of Company Law procedures are required to be undertaken in order to terminate directorships (generally this is in accordance with the Company's Articles of Association).

### Special Rules For Categories Of Employee

There are no categories of employees to whom special rules apply.



### Specific Rules For Companies in Financial Difficulties

Generally where a businesses runs into financial difficulties, consultations need to take place with the employees prior to their retrenchment or a reduction in staff numbers. If a Company goes into liquidation employee's contracts automatically come to an end. Any claims by the employees against the Company are secured to some extent under the Insolvency Act and employees are required to lodge a claim with the Liquidator of the Company. Under certain circumstances employees may be transferred to a new employer who has acquired the insolvent business as a going concern

### Restricting Future Activities

Generally clauses that attempt to restrict the future activities of an employee have to be expressly set out in a restraint of trade covenant. These restrictions must be designed to protect a legitimate proprietary interest and they should not be wider than is necessary to protect those interests. Further they must be clear and reasonable in time and also in geographical area.

### Severance Payments

In the case of retrenchment or redundancy for operational reasons there is a statutory minimum payment of one week's pay for every completed year of service. Certain employers have more generous severance payment arrangements.

### Special Tax Provisions And Severance Payments

Currently an employee is given a once off tax exemption on the first R315 000.00 of his severance payment but the employer must obtain a tax directive from the Receiver of Revenue prior to making payment of that benefit free of tax.

### Allowances Payable To Employees After Termination

There are no allowances payable to employees after the termination of their employment.

### Time Limits For Claims Following Termination

Where an employee contends that he/she has been unfairly dismissed that claim must be referred to the CCMA within 30 days of the dismissal and must then be referred to arbitration before the CCMA within 90 days. A similar situation applies in circumstances where an employee has been retrenched. Claims for unfair discrimination must be referred within 180 days of the dispute arising.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The treatment of labour brokered employees is complicated in this jurisdiction. Generally a client is jointly and severally liable along with a labour broker who supplies to that client on a contract basis. That liability is restricted however to liability for non-compliance with the Basic Conditions of Employment Act (minimum standards law) and bargaining council collective agreements and minimum payment agreements. Currently the labour broker is statutorily regarded as the employer. (Note – Statutory amendments to this law are anticipated in the first half of 2014)

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# Spain

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are four Labour Courts: First Instance Court, Appeal Court, High Court and Supreme Court.

### The Main Sources Of Employment Law

The basic law is the Worker's Statute Act and subsequently the Collective Agreements, the individual contract, the customs of every specific profession, the local practice, and EU Laws. Additionally, there are Social Security and administrative rules which have to be observed.

### National Law And Employees Working For Foreign Companies

National law will apply when the employee is hired in Spain, regardless of his/her nationality, except when the employee is from an EU country and the employer has posted him/her to Spain, in which case it is necessary to observe EU law.

Employers must guarantee those employees temporarily posted to Spain the minimum working conditions in force in Spain, irrespective of the legislation applicable to the employment contract. The employer has to notify the relevant Spanish Labour Authorities of the transfer, giving them the following information:

- Identification of the employer.
- Personal and professional data of the transferred employee.
- Identification of the company/companies where the posted employee will provide his/her services.
- Initial date and planned duration of the employee's transfer.
- Kind of services to be provided by the employee and type of transfer.



### National Law And Employees Of National Companies Working In Another Jurisdiction

National law will apply and the employer must ensure that the employee posted abroad enjoys the minimum working conditions established by the Spanish legislation. These conditions may be improved by the application of the rules governing the employment contract.

The aforementioned conditions may differ depending on the fact that the employee has been hired in Spain and then posted abroad or the Spanish employer has hired the employee in the country where he/she will develop his/her services.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

The employment contract can be established either in writing or verbally. Employment contracts should be drawn up in writing, when the statutory provisions so require, and always in the following cases: work practice contracts, training contracts, part-time contracts, fixed-discontinuous contracts, senior management contracts, housework contracts, insertion contracts, the new contracts established by the recent modification of some labour Acts, for promoting indefinite contracts and finally, in cases of employees hired in Spain to provide services for Spanish companies abroad

Likewise, contracts for a fixed period with a duration of over four weeks should be drawn up in writing. Should this requirement fail to be complied with, the employment contract shall be presumed full-time and of an indefinite duration, except when evidence is produced to prove the contrary.

In any case, both parties have the right to demand a written contract, throughout the whole duration of the working relationship.

### Mandatory Requirements

#### Trial Period

There is no legal obligation to provide trial periods (known as "probationary periods") when engaging new employees. It has, however, become common practice to do so and these trial periods tend to range from between three to six months and are capable of being extended for further reasonable periods.

#### Hours of Work

The daily hours of work shall be those established by the Collective Agreements, with a weekly limit of 40 hours.

#### Earnings

The government establishes the minimum monthly wage, which is revised annually. The employer may decide the economic terms of the contracts, but must always respect this minimum wage and/or the one fixed by the Collective Agreement.

### Holidays/Rest Periods

The employee has the right to a minimum of 30 calendar days per year. There are also compulsory weekly rest periods.

### Minimum/Maximum Age

The minimum working age is 16. Between the ages of 16 to 18 years old the employer needs authorization from the employee's parents.

As regards to retirement, in general terms, the minimum age is 67.

### Illness/Disability

In cases of ordinary and job-related illness/ disability the employee is covered by the Social Security System for up to 18 months. In addition, there are other specific rules for ordinary illnesses which have to be observed.

### Location of Work/Mobility

The employer shall inform the employee in writing about the workplace where he/she will perform his/her services. With regards mobility, the employee may be posted to another place because of economic, technical, organizational or production grounds. When the work to be performed requires travelling, the employer usually pays or reimburses to the employee for his/her travel expenses.

### Pension Plans

The Social Security System provides a pension scheme for early retirement, retired employees and permanently disabled employees, as well as in case of death. There are particular rules for employees who retire early, such as the requirement to have covered a minimum contribution period. On the other hand, there is no obligation for the employer to supply the employee with a private pension scheme, but some companies offer it as an additional benefit for the employee.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Maternity/adoption: Maternity benefit is paid while the period of leave is enjoyed. In the event of childbirth, the period lasts for 16 weeks up to 18 weeks in cases of multiple childbirth. The period of leave may be distributed before and after childbirth as the employee may elect, provided that at least 6 weeks are taken after childbirth.

Paternity: The employee or self-employed worker may enjoy this benefit, taking a period of leave because of a child's birth, adoption or foster care, provided he meets certain requirements, as to be affiliated to the Social Security System, and provided he has contributed for a minimum period. This benefit can be shared with the mother. The father also has the right to a 15 day permit, which will be extended up to 4 weeks, starting from 1 January 2015.

### Compulsory Terms

The compulsory terms of an employment contract are as follows: i) the names and identification data of any of the parties; ii) the date when the employment contract begins, as well as its duration; iii) the salary; iv) the hours of work; v) the amount of holiday; vi) provisions relating to illnesses; vii) the employee's job title, his/her professional category and group; viii) the place of work; ix) any applicable collective agreement.

### Non-Compulsory Terms

The employer and the employee can negotiate any other terms, provided they are not less favourable than the statutory rights.

## Types Of Agreement

There are different types of employment contracts, such as full-time, part-time, variable, fixed term, senior management contracts and ordinary contracts.

No employee may be discriminated against for working on a part-time or fixed-term basis.



## Secrecy/Confidentiality

During the term of the employment contract the employee must respect the confidentiality of the employer's industrial and commercial information.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

When the invention is created by the employee in the course of his work at the company, the owner will be the company, unless otherwise provided in the contract.

## Hiring Non-Nationals

EU nationals are entitled to work in Spain with no limits. Non-EU nationals need to have a residence-work permit to be entitled to work. The employer is subject to administrative penalties if he employs a non-EU national who does not have the corresponding residence-work permit.

## Hiring Specified Categories Of Individuals

The Workers' Statute Act and some other special rules establish specific requirements and benefits to improve women´s employment, as well as the employment of disabled people and unemployed workers.

## Outsourcing And/Or Sub-Contracting

When an employer contracts an outsourcing service, he/she has to grant to the employees involved the same working conditions enjoyed by the rest of his/her employees.

The employer shall ensure that the outsourcing company is complying with its obligations regarding the Social Security payments. The employees of the outsourcing company have to be informed by their employer about the identity of the new company and the kind of work they are going to be doing.

The hiring of an employee in order to be temporarily transferred to another company has to be compulsory done through an officially registered Temporary Employment Company.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

The employer cannot make unilateral modifications to the employment contract without the employee's prior consent, except in certain circumstances. The employer has to justify and inform the employee of such measures 15 days in advance and the employee has to give his/her consent in writing.

### Change In Ownership Of The Business

A change in ownership of the business does not terminate the employment relationship, as the new employer has to maintain the employees with the same terms and conditions they previously had, including the Social Security rights and obligations.

The employee may refuse to be transferred to the new employer, in which case he/she will receive the corresponding liquidation because of termination of the contract.

### Social Security Contributions

Both employers and employees are obliged to contribute to the Social Security System. This obligation will run throughout the employment contract term.

Employers are required to contribute towards several allowances payable to employees during their employment, including sick pay and maternity pay, which may vary depending on the different collective agreements.

### Accidents At Work

The employee shall be entitled to effective health and safety protection and shall be bound to observe all legal and statutory measures.

Pursuant to Act 31/1995 on Prevention of Risks at Work, the employer has to take a number of steps with regards prevention of risks. A breach of these duties shall constitute a material infringement and will be penalised as provided for in the aforementioned Act.

### Discipline And Grievance

There are several obligations on the employer. Currently, the employer has to notify the employee of the disciplinary or grievance measures and must justify the adoption of such measures, through a signed document.



### Harassment/Discrimination/Equal pay

According to the Workers' Statute Act, any act or decision of an employer which discriminates against the employee, either directly or indirectly, based on age or disability, and in regard to pay, working hours and other employment conditions, on grounds of sex, origin, marital status, social status, language, religion, political ideas, sexual orientation and trade union membership, shall be deemed null and void.

Any actions declared discriminatory may result in a serious administrative penalty and may allow the employee to bring a claim for court protection, including, the special process of fundamental rights protection, which may result in a court judgment with an indemnity for damages and the ordinary process asking to resolve the employment contract and to receive the corresponding indemnity.

### Compulsory Training Obligations

In general, there is no obligation on an employer to train his/her employees, except in cases of training contracts or when the employee needs to have an specific knowledge of a particular aspect of his/her work.

The only compulsory training that the employer must provide to the employee relates to the prevention of risk at work.

### Offsetting Earnings

It is possible for the employer to offset earnings against an employee´s debts. Nevertheless, the employer may only deduct a certain percentage of the employee's salary if it is so requested by the Court or by mutual agreement between the parties.

### Payments For Maternity And Disability Leave

The protection provided by the Spanish Social Security System consists of financial support during periods of maternity leave. The employee must have been registered at the Social Security System; and have contributed at least 180 days within the five years immediately preceding the date of childbirth. Maternity financial support consists of a benefit equivalent to 100% of the assessment basis. It is managed directly by the management entity and there can be no contribution from the employer. Maternity benefit is paid while the period of leave is enjoyed.

With regards disability leave the employee shall be entitled to receive, up to 18 months, a sick pay benefit equivalent to 60% of the monthly base salary, from the 4th to the 20th day of the sick leave and increased to 75% from the 21st day onwards. It is paid by the employer from the 4th to the 15th day of sick leave, and by the Social Security System from the 16th day onwards. The first 3 days are unremunerated.

### Compulsory Insurance

The employer is not required to subscribe to any insurance in favour of the employee, but it may be offered as an additional benefit in kind.

### Absence For Military Or Public Service Duties

The employer is obliged to authorise the employees' leave for public service duties, but not for military service, as it has not been compulsory in Spain since 2001.

### Works Councils or Trade Unions

With regards works councils, the Workers' Statute Act establishes that a works council shall be set up at every workplace with a workforce of fifty or more workers. The employer has to notify the works council of various decisions (such as working hour reductions, restructurings and relocations). When the workforce is between 10 and 50 employees, they may elect a delegate. Every works council member or delegate is entitled to "credit hours", being an allowance of a number of hours per month to enable him/her to discharge his/her representative duty.

The Organic Trade Union Freedom Act grants employees the right to freely join a trade union recognised in the Spanish Constitution and it applies to all employees, civil servants or otherwise. The Act establishes the procedure for organisations to acquire legal personality and provides for court control in the event of potential unlawfulness in the organisation's articles. There are few formal requirements and they are internationally accepted; the only administrative control is purely formal.

### Employees' Right To Strike

Any employee has the right to strike, but during the strike period the employment contract will be suspended (not terminated) and the employee will not receive his/her salary. Moreover, the employee will remain in a special situation within the Social Security System.

Despite the existence of the right to strike, in certain industrial sectors it is compulsory for a number of employees to perform their services in order to cover the minimum services needed for the safety and maintenance of the company, or when the company has to perform an essential service required by the Community.

### Employees On Strike

According to the Spanish labour rules, for the participation by an employee in a non- authorised strike cannot be considered as a cause disciplinary dismissal. Employers can only dismiss employees who have gone on strike when their attitudes can be considered as a cause of disciplinary dismissal (such as offences against employer, indiscipline, etc.)



### Employers' Responsibility For Actions Of Their Employees

There are two main categories of employers' responsibility derived from the actions of their employees:

1. Civil extra-contractual responsibility of the employer, as a consequence of damage caused by his employee within the performance of his/her work, being considered the direct responsibility of the employer.
2. Civil responsibility derived from an offence committed by the employee while performing his/her duties that results in damage to the victim. In this case, the responsibility is considered subsidiary and will be activated only when the employee is considered insolvent.

## 04. Firing The Employee

### Procedures For Terminating The Agreement

The procedure for terminating the agreement varies depending on the reason for termination. The employer may terminate the contract on the following grounds: the worker's known incompetence; the failure of the employee to adapt to technical changes at work; where jobs need to be eliminated, in which case the employer shall have to base the decision to terminate on financial, technical, organisational or production grounds; where absences from work, even when they are justified but discontinuous, amount to 20% of the working days over a two consecutive months period, provided that the total index of absenteeism exceeds 5% of the working hours or 25% of four discontinuous months over a twelve months period.

The employer shall give the employee written notice, setting out the ground for dismissal and simultaneously providing a severance pay. The notice period shall be fifteen days and the worker shall be entitled to appeal the decision to terminate as a disciplinary dismissal.

### Instant Dismissal

A contract of employment may be terminated by the employer, by instant dismissal based on the employee's serious breaches and gross misconduct. The employee shall be given written notice of instant dismissal, setting out the grounds on which the dismissal is based and the date on which it shall be effective.

Instant dismissal may be considered to be justified, unjustified or unfair. Dismissal shall be considered justified where there is evidence of the breach argued by the employer in the written notice and this shall validate termination of the employment contract and leaves the employer with no right to compensation. When the instant dismissal is considered unjustified, the employer shall choose between reinstating the employee and making the corresponding severance payments.

It is considered unfair dismissal where the employer fails to satisfy the legal requirements or termination is due to any of the events of discrimination prohibited in the Constitution or in the Workers' Statute Act.

### Employee's Resignation

The employee's decision to terminate the contract must be voluntary and freely made. The employee must notify the employer of his/her unilateral decision to terminate the contract of employment, observing the relevant notice period, and satisfying certain requirements.

The employee is entitled to terminate the contract on the following grounds: substantial changes in the working conditions; failure to pay or continuous delay in payment of the agreed salary and; any other serious breach of obligations by the employer. The Workers' Statute Act provides that where the contract of employment is cancelled based on any of the above grounds, the employee shall be entitled to the severance pays specified in the event of unjustified dismissal.

### Termination on Notice

The employment contract can be terminated in the events provided for in the contract, upon expiry of the agreed term or completion of the contract work, namely in the following kind of contracts: training contracts, part-time, permanent-intermittent and hand-over contracts, fixed-term contracts and work or service specific contracts. There are different notice periods depending on the length of the contract.

### Termination By Reason Of The Employee's Age

The contract can be terminated when the employee reaches the statutory retirement age, which presently is 67.

### Automatic Termination In Cases Of Force Majeure

Employment contracts may be terminated on grounds of Force Majeure, but such termination has to be previously authorised by the corresponding administrative body, after an investigation to confirm that the performance of services by the employee is impossible. The indemnity in such cases will be 20 days salary per year worked.

### Termination By Parties' Agreement

The parties may terminate the contract by mutual agreement. The most common scenario is the employee's request to finish his/her employment relationship with the employer and the acceptance of such decision by the employer. Both parties sign a liquidation agreement by which all pending obligations between the parties are settled. In this case, the employee is not entitled to any severance payment.



### Directors Or Other Senior Officers

There are special rules to terminate a director's or senior officer's employment, established in a specific law (Royal Decree 1382/1985). In case of termination by the senior manager, at least three and not more than six months' notice shall be given, depending on the contract term. The senior manager may terminate the contract and be entitled to the severance pays agreed in his/her employment contract, based on serious breaches of contractual obligations by the employer. The employment contract may be also terminated upon withdrawal by the employer or by dismissal based on a serious breach by the senior manager with the same above mentioned notice period. The senior manager shall be entitled to the severance pays agreed therein.

### Special Rules For Categories Of Employee

There are special rules for some categories of employees, such as professional sportsmen practicing sport as their job, who are sponsored by an organization within an sport entity, and who are being paid for this performance.

Additionally the Workers' Statute Act provides special rules for some other employment categories: i) house work, ii) senior management personnel, iii) disabled people employed in special employment centres, iv) harbour stevedores, etc.

### Specific Rules For Companies in Financial Difficulties

There are specific rules for employees working in a company which is in financial difficulties, namely when the company enters into insolvency or bankruptcy.

According to the Workers' Statute Act, a collective dismissal or redundancy procedure shall be deemed to exist where termination of the contracts of employment is based on financial grounds. Employees whose contracts are terminated as a result of the redundancy procedure, shall be entitled to receive a severance pay of 20 days' pay for each year of service, up to a maximum of 12 months.

### Restricting Future Activities

Generally, the employer may establish an obligation of non-competition, for a period of not more than two years after the termination of the employment agreement the employer has to prove an effective industrial or commercial interest and must offer the employee financial compensation.

### Severance Payments

Severance payments depend on several circumstances, such as the length of the contract, the salary received and the seniority of the employee, as well as the kind of dismissal. When the dismissal is considered unjustified or unfair, the employee shall be entitled to a severance payment of 33 days' salary per year worked and, in some cases, a severance payment of 45 days' salary per year worked, depending on the date of the beginning of the labour contract.

Severance payments for dismissals based on objective and economic grounds are for 20 days' salary per year worked.

### Special Tax Provisions And Severance Payments

Severance payments, up to the established limits, are exempt from Social Security payments and income tax withholding.

### Allowances Payable To Employees After Termination

Following termination, the employer is not required to contribute towards any allowances payable to the employee, apart from the severance payments above indicated.

### Time Limits For Claims Following Termination

In case of unjustified, unfair or dismissal based on objective reasons, the employee has 20 days from the termination notice to present the corresponding claim before Court.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

In any kind of dispute arising from a contract termination or a salary claim, it is compulsory for both parties to attempt a conciliation act, prior to initiating legal proceedings. This conciliation act takes place before an administrative body named "Mediation, Arbitration and Conciliation Service".

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# Sri Lanka

# Sri Lanka

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Adjudicating on or settlement of employment disputes are regulated through legislation as well as by way of voluntary efforts such as collective bargaining, conciliation and arbitration.

An employee could apply to a Labour Tribunal established under the Industrial Disputes Act for adjudication of employment disputes. There is provision in the said Act to refer matters to the Industrial Court.

An employee is entitled to refer an employment dispute to the Commissioner of Labour under the Termination of employment of workmen's Act.

### The Main Sources Of Employment Law

The Employment Law of Sri Lanka could be said to originate from:

- The principles of common law.
- The Statutes.
- Awards, Orders and Judgements of Tribunals & Courts, and the Collective Agreements between trade unions and employers.

### National Law And Employees Working For Foreign Companies

The statutory provisions made under National Laws apply to employees working for Foreign Companies in Sri Lanka whether they are Sri Lanka Nationals or expatriates irrespective of the contractual terms.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The National laws and contractual terms and conditions will apply to employees of National companies working in another jurisdiction.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

A contract of employment can be formed in writing or orally. The terms of the contract can be expressed or implied. Under the Shop & Office Employees (Regulation of Employment & Remuneration) Act, it is a legal requirement that the contract of employment should be reduced to writing and shall include certain information as specified.

### Mandatory Requirements

#### Trial Period

It is a common practice to recruit new employees on a trial or probationary period of 3 to 6 months. It is not a legal requirement. However, if employees covered under the Shop & Office Employees Act are to be placed on a period of probation such requirement shall be expressly stated in the letter of appointment/ contract of employment setting out the period of probation and conditions governing such probation.

#### Hours of Work

Under the Shop & Office Employees Act, the number of working hours constituting a normal working week shall not exceed 45 hours and a normal working day shall not exceed 8 hours, exclusive of an interval for a meal or rest.

The Factories Ordinance includes general conditions as to hours of employment of women and young people, but no specific provisions regarding other workers.

The total hours worked, exclusive of intervals for meals and rest, for women and young people shall not exceed 9 hours in any day nor exceed 48 hours in any week.

The working hours of a person above the minimum age for employment (14 years) but less than 16 years shall not exceed 12 hours per day. Their work shall not commence before 6 a.m. and not continue after 6 p.m. The working hours of those below 18 years, cannot go beyond 8 p.m. and not beyond 1 p.m. on one day of the week.

Both women and young people cannot be employed continuously for a spell of more than four and a half hours without an interval of at least half an hour.

#### Earnings

Earnings are determined by private contracts, decision of employers, collective agreements, decisions of Wages Boards (established under the Wages Boards Ordinance), compulsory determination by Remuneration Tribunals, awards of Industrial Courts or arbitrators or by Acts of Parliament.

#### Holidays/Rest Periods

An employee who works not less than 28 hours a week excluding overtime work if any, shall be allowed one and a half days holiday in respect of that week. The Shop & Office Employees Act provides for 14 days annual leave to be granted from the second year of employment and beyond. 7 out of the 14 days shall be availed of consecutively.

In addition, employees are entitled to 7 days casual leave and 8 days of Statutory Public holidays.

Full moon (Poya) days are non-working days.

Employees are entitled to an interval of half an hour if they are employed continuously for 4 hours.

#### Minimum/Maximum Age

The Shop & Office Employees Act prohibits the employment of any person under 14 years of age. No maximum age limit is fixed. Generally, employees retire at ages ranging from 55 years to 65 years in terms of the contracts of employment or the collective agreements.

#### Illness/Disability

There are no specific provisions relating to illness/disability. There are requirements under the Shop & Office Employees Act, The Factories Ordinance and The Wages Board Ordinance in relation to the health & safety of employees.

### Location of Work/Mobility

Location of work is usually stated in the contract of employment in the event the work has to be carried out outside the reputed premises of the organization. A Mobility clause is included in the contract to facilitate moving employees to different locations.

### Pension Plans

Pension Plans are available for Public (State) sector employees. Employees covered under the Shop & Office Employees Act and other non-public sector employees, a contributory provident fund & a non-contributory trust fund provide retirement benefits.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Under the Shop & Office Employees Act, 84 working days of maternity leave is permitted. Women workers who are not covered under the Shop & Office Employees Act and who are not in casual or seasonal work are entitled to benefits in terms of the Maternity Benefits Ordinance. There is no Paternity leave.

### Compulsory Terms

The compulsory terms under the Shop & Office Employees Act include the name of employee, designation and the nature of the appointment, the date on which the appointment takes effect, the grade to which the person is appointed, basic remuneration & scale of remuneration, whether remuneration is paid weekly fortnightly or monthly, cost of living or other allowances if any, the length of probation or trial period, if any, and the conditions governing such probation or trial period, circumstances under which the appointment may be terminated during such probation or trial period, normal hours of work, number of weekly holidays, annual holidays and casual and privilege leave, if any, overtime rate payable, provision of medical aid, if any, conditions governing provident, pension scheme or gratuity scheme applicable to the employment and prospects of promotion.

### Non-Compulsory Terms

The parties are free to agree to have other terms which are not in conflict with the statutory requirements and/ or public policy.

### Types Of Agreement

The making of an employment contract is the result of an agreement between the employer and employee. The contract envisages reciprocal obligations between the parties. The contract could be oral or in writing and the terms are express or implied. The terms of the contracts vary depending on the type of employment. The types of employment are permanent, temporary, casual, probationary, seasonal, fixed term & apprentices/trainees.

### Secrecy/Confidentiality

It is an implied condition of service that the employee shall be faithful in dealing with the employer's property and in exercising the trust which the employer has placed in him. This duty/obligation is usually expressly provided in the contract. The nature of trade and commercial information that are required to be protected are obvious and usually made known to the employee. The requirement subsists through the period of employment. It is an implied duty to protect trade secrets after leaving one's employment.

To provide protection to sensitive and information of highly confidential nature, after an employee exits his employment, restrictive covenants are incorporated in the contracts.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Unless the contract provides otherwise, ownership of inventions is deemed to accrue to the employer.



### Hiring Non-Nationals

Hiring non-nationals will require prior approval from the respective authorities on recommendations made by the prospective employer.

### Hiring Specified Categories Of Individuals

There is legislation providing for setting up of Wages Boards for particular trades where the majority employed belong to specified categories of individuals. There are special laws applicable to employment of women and children.

Employment of young persons under the age of 18 years in hazardous occupations/activities is prohibited. The types of hazardous occupations/ activities where employment of young persons is prohibited have been listed under the law.

The employment of pregnant women is prohibited in any work that is injurious to the expected child during a period prior to and after her confinement.

### Outsourcing And/Or Sub-Contracting

There is no specific legislation regulating outsourcing/sub-contracting. Independent contractors are not subject to the employment laws.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

Any changes to the contract require agreement of both parties. The contractual terms incorporated can be changed to the extent that the changes would not be in conflict with the provisions of the statues and with consent of the other party.

### Change In Ownership Of The Business

The employees continue to serve the business under the new ownership if the corporate entity remains the same despite the change of ownership. In the case of a sole proprietorship, the change will result in a new owner who would decide to retain the employees under the same or better terms with the consent of the employees, or if the employees do not accept the change, the previous owner is required to comply with the law if he has to terminate the employees.

### Social Security Contributions

The employer and the employee are required to contribute to the Employees Provident Fund which is a contributory fund. The employer contributes 12% and the employee 8% of the total earnings of the employee. In addition, the employer contributes 3% of the total employees' earnings to the Employees Trust Fund.

### Accidents At Work

There is a general duty of care for the safety and welfare of the employees. Important provisions under different legislation have imposed obligations on the employer to address employee health, welfare & safety issues.

### Discipline And Grievance

None of the legislation has laid down any disciplinary procedure or punishment to be imposed on breach of discipline. For the category of employees who are bound by the terms of Collective agreements, the agreement sets out a detailed disciplinary procedure and punishment for breach of discipline.

Although there is no commonly accepted disciplinary procedure, employers adopt procedures to suit their organizations. In the construction of these procedures consideration is given to the rules of natural justice, decisions of courts and tribunals and discipline management practices. Usually the first step in a disciplinary procedure is the issue of a "show cause notice", followed by a disciplinary inquiry. The inquiring officer is obliged to follow rules of natural justice.

Employers set up their own grievance handling methods.

### Harassment/Discrimination/Equal pay

The Penal Code of Sri Lanka has provisions relating to harassment in a work place. The perpetrator of harassment may be punished either with imprisonment up to a term of five years, or a fine, or both. He/she may also be ordered by the court to pay an amount, as determined by the court, to the victim of harassment for injuries

Article 12 of the Constitution of The Republic of Sri Lanka stipulates that, there cannot be any discrimination on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds. However, there is no special provision in the constitution or labour laws to prevent discrimination in employment related matters. There is legislation prohibiting discrimination against workers involved in union activities.

According to Article 12 of the Constitution of Sri Lanka, all persons are equal before the law and entitled to equal protections of the law. It also prohibits discrimination on the ground of sex besides many other grounds. However, no provision requiring equal pay for work of equal value is available.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/expectations.



### Offsetting Earnings

The provisions of the Shop & Office Act provide for permitted deductions from the remuneration of an employee. Any advance on remuneration paid to an employee, contributions to pension funds, private provident funds, insurance or saving schemes or recreation club maintained by the employer (the funds, scheme or club should be approved by the commissioner of labour), any amenities or services provided to the employee, any amount to be furnished as security by the employee, fines imposed by the employee, loans taken by the employee from any fund managed wholly or partly by the employer, price of goods or articles sold to the employee and any payment made out of the employee's remuneration to any other person at the request of the employee are such authorized deductions. The aggregate of deductions however should not exceed 60% of the employee's remuneration. The consent of the employee is required for deductions except with regard to statutory deductions and taxes which an employer is required by law to deduct.

### Payments For Maternity And Disability Leave

There are no special payments for maternity except the remuneration during the maternity leave period. No special leave for disability has been provided. Leave is granted on a case by case basis.

### Compulsory Insurance

There is no compulsion to have insurance to provide general cover for employees. Generally employers do take precautions by obtaining insurance for employees who are engaged in occupations that could expose employees to unexpected situations while in employment.

The Workmen's Compensation Ordinance provides that the employer should pay compensation to employees or their dependants in instances of injury or death of an employee, that arises out of employment and arises in the course of their employment or where an employee contracts an occupational disease due to the nature of their employment.

### Absence For Military Or Public Service Duties

Employees are at liberty to take leave.

### Works Councils or Trade Unions

Trade Unions are common in Sri Lanka. Every Trade Union should be registered under the Trade Unions Ordinance and shall apply for registration within three months of commencement. The participation of employees in trade union activity and obtaining membership has been protected by provisions in the Industrial Disputes Act. The freedom to form and join a trade union is guaranteed as an entitlement of a citizen by the Chapter on Fundamental Rights of the Constitution of Sri Lanka.

The Employees' Councils Act has made provision for the setting up of employees councils in state undertakings.

### Employees' Right To Strike

Strikes are considered as a legitimate trade union action. Strike action is launched as the last resort, subject to certain requirements to be fulfilled.

### Employees On Strike

Employers can take action against unjustifiable strikes and strikers. A strike is considered unjustifiable if the demands of the strikers are unreasonable and/or the strike has been resorted to despite the employer's desire to find solutions to the employees' issues.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for actions of employees only for those actions taken in the course of and within the scope of employment.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

Termination of a contract of employment is subject to the terms of the contract.

Under the provisions of the Termination of Employment of Workmen's Act, which applies to those declared as employed in scheduled employment, termination of an employee on non-disciplinary grounds is conditional to either the prior consent in writing of the employee or prior written approval by the Commissioner of Labour, where the employee has worked under the employer for more than 180 days for a continuous period of 12 months and where the employer has employed 15 or more employees on average during the 6 months preceding the month the termination of service was sought.

In the event of a termination of an employee on disciplinary reasons, an inquiry into the alleged misconduct should be conducted as a preliminary step to justify such termination.

### Instant Dismissal

In instances of gross misconduct or other circumstances, the employers exercise the option of instant dismissal without notice. Even in a situation warranting instant dismissal, it is expected that a hearing is given to the employee to explain why such action should not be taken.

### Employee's Resignation

The employee is free to terminate the contract by resignation subject to the period of notice to be given.



### Termination on Notice

An employee can terminate the contract on notice. For an employer to terminate the contract of a permanent employee, it is necessary to have the written consent of the employee without which there could be claims of unfair dismissal. If an employee's services are terminated on disciplinary grounds, the reasons for termination shall be communicated to the employee by the employer in writing before the expiry of the second day from the date of termination.

### Termination By Reason Of The Employee's Age

There is no age limit for termination of employment in the non-government sector. The contract of employment and the collective agreements provide for the retirement age. In such circumstances the age determines termination.

### Automatic Termination In Cases Of Force Majeure

The law does not provide for automatic termination. Termination in such situations will be subject to the operation of the laws.

### Termination By Parties' Agreement

The parties can agree freely to terminate the contract.

### Directors Or Other Senior Officers

Termination of employment of directors or senior officers can take effect by resignation or by removal in accordance with the laws. In the case of directors. Termination should be in compliance with the Articles of the establishment.

### Special Rules For Categories Of Employee

No special rules apply to any category of employees. Non-disciplinary termination cannot be done by an employer of a scheduled employment without the prior written consent of the employee or the prior written approval of the Commissioner of Labour. In addition the services of a female employee cannot be terminated due to the reason of pregnancy.

### Specific Rules For Companies in Financial Difficulties

There are no specific rules for companies in financial difficulties. It is common for the intervention of the Commissioner of Labour in such situations. In the event of a winding up of the company, the claims for compensation or dues to the employees will be treated as an unsecured credit.

### Restricting Future Activities/ Non-competition agreement

Restricting future activities of an employee will be seen to be in conflict with the fundamental right of a citizen to freely engage in any lawful occupation, profession, trade, business or enterprise. It is common to find contractual clauses aimed at restricting employees. For protection of proprietary rights of the employer such as trade secrets, trade connections and confidentiality, the enabling clauses in the contracts may be provided. If such restraints are reasonable then the agreement to that effect may sometimes be held to be valid. But if the purpose of such clause is to restrain the employee from engaging in employment, utilizing his skills and expertise and prevent legitimate occupation, then the clause in question may not be upheld in a court of law.

### Severance Payments

Generally, severance payments are determined by negotiations carried out by the employer and employee. Under the Termination of Employment of Workmen's Act, the computation of compensation/severance payment is on the basis of a predetermined formula taking into account the number of years in service and the number of months' salary to be paid as compensation for each year of service. The highest amount of payment an employee may receive has been fixed.

### Special Tax Provisions And Severance Payments

There is a special treatment for taxation of compensation/severance payment received by an employee consequent to a voluntary retirement under a scheme which is uniformly applicable to all the employees, or the retrenchment by the employer in accordance with a scheme approved by the Commissioner of Labour.

Under this any amount received by an employee in a sum not exceeding Rs.2,000,000/- is exempt from tax.

### Allowances Payable To Employees After Termination

No contributions to be made by employer to employees after termination.

### Time Limits For Claims Following Termination

If an employer terminates an employee subject to the Termination of Employees Act and no compensation has been paid, the employee has to petition to the Commissioner of Labour before the expiry of 3 months of such termination.

For employees not covered under the Termination of Employment of Workmen's Act, an application to the Labour Tribunal may be made within 6 months of the date of termination.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The forum for labour disputes is governed by the Labour Disputes (Judicial Procedure) Act (Sw. lag (1974:371) om rättegången i arbetstvister). The following general principles apply according to this Act.

The Labour Court, as a court of first instance, determines disputes where the action is brought by an employers' or employees' organisation, or by an employer who has himself concluded a collective bargaining agreement. Other labour disputes are dealt with and determined by District Courts. The Labour Court is the superior court in appeals against cases dealt with by a District Court. No action may be brought against judgments or decision of the Labour Court.

### The Main Sources Of Employment Law

Swedish employment law governs most aspects of the employer – employee relationship. However, the Swedish labour market is to a large extent self regulated by the parties through collective bargaining agreements. The collective bargaining agreements have a large influence on the labour market and it is possible to make deviations from certain statutory employment legislation through such agreements. European legislation and ECJ court decisions are also relevant. For employees of the Swedish Parliament and its authorities, authorities reporting to the government and municipalities, county councils and municipal associations special provisions are found in the Public Employment Act (Sw. lag (1994:260) om offentlig anställning), which is not further dealt with herein.

Legislation regarding individual employment rights include for instance the Employment Protection Act (Sw. lagen (1982:80) om anställningsskydd), the Sick Pay Act (Sw. lagen (1991:1047) om sjuklön), the Working Hours Act (Sw. arbetstidslagen (1982:673)), the Annual Leave Act (Sw. semesterlagen (1977:480)), the Parental Leave Act (Sw. föräldraledighetslagen (1995:584)), the Work Environment Act (Sw. arbetsmiljölagen (1977:1160)), the Act on the Right to Employees' Inventions (Sw. lagen (1949:345) om rätten till arbetstagares uppfinningar) and the Discrimination Act (Sw. diskrimineringslagen (2008:567)).

Legislation regarding the collective side of Swedish employment law includes for example the Co-determination in the Workplace Act (Sw. lagen (1976:580) om medbestämmande i arbetslivet) and the Swedish Board Representation Act (Sw. lagen (1987:1245) om styrelserepresentation för de privatanställda).

### National Law And Employees Working For Foreign Companies

As a starting point, Swedish employment law will govern the employment of employees physically working in Sweden, regardless of their nationality. A choice of law made by the parties to an employment contract is as a starting point valid, but may be set aside according to the provisions of the Convention 80/934/ECC on the law applicable to contractual obligations (the so called Rome Convention).

The Posting of Workers Act (Sw. lagen (1999:678) om utstationering av arbetstagare) applies when an employer that is established in a state other than Sweden posts employees in Sweden under certain circumstances. Employees posted in Sweden are – despite of the law otherwise applicable to the employment relationship – entitled to a certain level of protection set out in Swedish laws regarding, but not limited to, annual leave, parental leave, discrimination, working hours, work environment etc.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The Posting of Workers Act states that when an employer that has its domicile or registered office in Sweden and posts workers to another state within the EEA or Switzerland, the employer shall apply the national provisions by which that state has implemented Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

The Employment Protection Act does not require any particular form for an employment agreement in order to be binding. However, employers shall in general provide written information to the employee of all the terms and conditions that are of material relevance to the employment contract or employment relationship, not later than one month after the commencement of work by the employee.

### Mandatory Requirements

#### Trial Period

There is no legal obligation to provide trial periods, also known as probationary periods. However, contracts for probationary employment of a limited duration may be entered into, provided that the probationary period does not exceed six months. If the employment is not terminated before the end of the probationary period, it will automatically be prolonged for an indefinite term.

#### Hours of Work

According to the Working Hours Act, the principal rule is that regular working hours are limited to a maximum of 40 hours a week, excluding lunch. Under certain circumstances, working hours may instead average 40 hours per week for a period of not more than four weeks. Subject to certain exceptions, overtime must not exceed 48 hours over a period of four weeks, 50 hours per month, or 200 hours per year, unless a collective bargaining agreement provides otherwise.



#### Earnings

Employee's remuneration is not governed by statutory legislation. Collective bargaining agreements do not provide for minimum earning as such. Instead, numerous collective bargaining agreements aim at the lowest level of earnings for employees without qualifications or work experience. The employee's' remuneration is, depending on the situation, decided upon either by way of collective negotiations between the employer and the union or directly between the employer and employee.

#### Holidays/Rest Periods

According to the Annual Leave Act, employees are in general entitled to a minimum of 25 days of paid annual vacation per full year of employment, accruing pro rata. There are also various compulsory daily and weekly rest periods and breaks which have to be observed.

#### Minimum/Maximum Age

According to the Work Environment Act, a minor (i.e. a person who has not attained the age of 18) may not, as an employee or in any other capacity, be engaged for or carry out work before the calendar year in which the minor attains the age of 16 or before the minor has completed his compulsory schooling. However, a minor who has attained the age of 13 may be engaged for, or carry out, light work that will not have a detrimental effect on the minor's health, development or schooling.

There are no maximum age limits but the employment protection is reduced for employees who are 67 years or older.

#### Illness/Disability

Employees are in general entitled to pay during absence due to illness. Employers are obliged to pay sick pay during the first two weeks of each period of sick leave, except for the first day, which is not remunerable. The National Social Insurance Office is responsible for the sick pay after the first two weeks of sick leave.

#### Location of Work/Mobility

The location of work should be specified in the employment agreement. Not later than one month after the commencement of work by the employee, the employer shall provide written information regarding the workplace to the employee. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse certain travel expenses.

#### Pension Plans

Employers are under no legal obligation to contribute towards a pension scheme. Swedish employers are however obliged to pay social security charges on top of any salary or benefit paid to any of the company's employees and these social security charges comprise, inter alia, old age pension provided by the Swedish social welfare system. In addition, it is common that the employers provide their employees with a supplementary pension scheme. Companies bound by collective bargaining agreements are obliged to offer the employees a supplementary pension scheme.

#### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

A range of parental rights exist, including parental leave and pay, both at child birth and adoption and part-time working. The rights include, inter alia, the following.

As a parent, an employee is entitled to leave of absence during the time he/she receives parental allowance according to the Social Insurance Code (Sw. socialförsäkringsbalken (2010:110). Such allowance is paid for a period of 480 days in total for both parents, which must be used before the child reaches the age of eight years. Out of the 480 days, one parent can use 420. Irrespective of the right to parental allowance, the employee is entitled to be on leave for childcare until the child is 18 months old.

A pregnant employee is always entitled to a leave of seven weeks before the estimated date of birth and seven weeks after the delivery. Two of these weeks are compulsory.

An employee is also entitled to temporary leave for childcare during the time he/she receives temporary parental allowance.

On return to work, parents are generally entitled to reassume their employment on the same conditions as before the parental leave. Unfavourable treatment of employees relating to parental leave is prohibited under the Parental Leave Act.

In addition to the statutory rights, certain collective bargaining agreements contain provisions relating to parental rights, such as for instance a right to parental pay.

### Compulsory Terms

The terms that must be provided to the employee by means of written information, no later than one month after the commencement of work by the employee, shall include the following:

1) the names and addresses of the employer and employee, the commencement date of the employment and the workplace;

2) a short specification or description of the employee's duties, occupational designation or title;

3) whether the employment is for a fixed or indefinite term or whether it is probationary; and

   a) with respect to indefinite-term employment: the periods of notice are applicable,

   b) with respect to fixed-term employment: the final date of employment or the conditions governing its termination, and what form of fixed-term employment the employment refers to;

   c) with respect to probationary employment: the length of the probationary period.

4) The starting rate of pay, other employment benefits and the intervals at which the pay is to be paid;

5) The length of the employee's paid annual leave and the length of the employee's normal working day or working week;

6) The collective bargaining agreement applicable, where relevant.

As to employees stationed abroad, the employer shall provide additional written information prior to the departure.

### Non-Compulsory Terms

The employer and the employee are free to include other terms in the employment agreement other than the compulsory terms mentioned above, provided that these terms are not less favourable than statutory rights.

## Types Of Agreement

The main rule is that an employment agreement is entered into for an indefinite term. There are other types of employment such as general fixed-term employment, temporary substitute employment, seasonal employment and probationary employment. Specific rules apply for employment agreements entered into for a fixed term.

Certain employees, such as for instance employees holding a managerial positions and employees who are members of the employer's family, may be excluded from the application of the Employment Protection Act. The terms for these employees are mainly governed by the individual employment agreement.

The Prohibition of Discrimination of Employees Working Part Time and Employees with Fixed Term Employment Act (Sw. lagen (2002:293) om förbud mot diskriminering av deltidsarbetande arbetstagare och arbetstagare med tidsbegränsad anställning) prevents employees from being treated less favourably than other employees because of working part time or working on a fixed term contract.



## Secrecy/Confidentiality

A duty of loyalty, including a duty of secrecy and confidentiality, are implied into the employment relationship. Furthermore, certain Swedish collective bargaining agreements may include obligations for the employee to observe confidentiality. Such undertaking of confidentiality expires at the end of the employment, with the exception of trade secrets, which remain under such duty under the circumstances set out in the Trade Secrets Act (Sw. lagen (1990:409) om skydd för företagshemligheter).

A duty of secrecy and confidentiality is furthermore expressed in certain legislation, for instance regarding employees of certain public authorities.

It is also common that employers in employment agreements include an undertaking of specifying the secrecy and confidentiality valid both during the employment and thereafter.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

The Act on the Right to Employees' Inventions provides for general rules determining who is entitled to inventions made by an employee during the employment. The act applies only to inventions that can be protected by patent in Sweden. There are other statutory provisions that will apply to determine the ownership of certain intellectual property rights.

The right to intellectual property rights in an employment relationship may also be governed by collective bargaining agreements.

It is furthermore common to include provisions regarding intellectual property rights into the individual employment agreement. Such provisions may however not be less favourable than statutory rights.

## Hiring Non-Nationals

An employee of a EU member state is entitled to work in Sweden without a special permission or registration. However, if the employee is working in Sweden for more than three months, the right of residence should be registered at the Swedish Immigration Authority (sv. Migrationsverket).

An employee of another country shall in general have a work permit in order to work in Sweden. However, there are some exceptions where specific rules may apply, i.e. in relation to certain professions. The work permit shall be issued before the employee arrives in Sweden. Employers usually demand information regarding the scope of work permits.

According to the Aliens Act (Sw. utlänningslagen (2005:716)) a person who intentionally or through negligence has an alien in his/her employment may be sentenced to a fine or, in aggravating circumstances, to imprisonment, provided that the alien does not have the right to reside in Sweden or that the alien has such right but does not have the prescribed work permit. Additionally, the employer may have to pay a special charge. The Act on the Right to Salary and Other Remuneration for Work Performed by an Alien Without Right to Reside in Sweden (Sw. lagen (2013:644) om rätt till lön och annan ersättning för arbete utfört av en utlänning som inte har rätt att vistas i Sverige) should also be mentioned.

### Hiring Specified Categories Of Individuals

Different labour market policies may provide for specific employment forms, in which the whole, or part of, the employee's salary may be paid by a governmental agency and where the employment protection rights for the employee may be limited. The provisions of the Work Environment Act contain restrictions on the tasks that may be performed by minors. The provisions of the Act, and regulations adopted by the Swedish work environment agency may furthermore result in obligations for the employer as against certain groups, such as for instance pregnant women.

### Outsourcing And/Or Sub-Contracting

Provided that an outsourcing or sub-contracting is considered as a transfer a business, or part of a business, specific provisions in the Employment Protection Act, based on the Council Directive 2001/23/EC relating to transfer of undertakings, apply. According to these provisions, the employment of employees carrying out work within the business that is transferred is automatically transferred to the acquirer of the business. The employees are generally entitled to exactly the same terms of employment as they enjoyed prior to the transfer (with certain exceptions).

The transfer of an undertaking, a business or a part of a business does not constitute objective grounds for giving notice of termination of employment. An exception is however made if an employer gives notice of termination of employment as a consequence of economic, technical or organisational reasons that include changes to the workforce.

Employers are obliged to negotiate with affected employees' organisations when an undertaking, a business or a part of a business is transferred.

Employees are allowed to refuse a transfer to the acquirer of the business.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with contractual principles, an employer may in general not change any terms of the employee's contract without the employee's consent. Should the employee not agree to such changes, the employer will have to terminate the employment agreement and offer a new contract with new terms to the employee, in order to make changes to the contract. A termination of the employment agreement must be done in accordance with the rules described below ("Firing the employee").

However, collective bargaining agreements or individual employment agreements may provide for a right for the employer to change certain terms of employment without the consent of the employee. For instance, an employer may in general transfer an employee to another position with the employer, if the new position is within the scope of the agreed duties of the employees.



### Change In Ownership Of The Business

When an undertaking, a business or a part of a business is transferred from one employer to another, the rights and obligations under employment agreements and employment relationships that existed at the time of the transfer are, under the circumstances described in the Employment Protection Act, automatically transferred to the new employer.

Collective bargaining agreements that the transferring employer is bound by are in general also transferred and remain applicable in relation to the transferee employer, provided that the latter is not bound by another applicable collective bargaining agreement at the time of the transfer.

Employers are obliged to negotiate with all affected employees' organisations when an undertaking, a business or a part of a business is transferred.

Employees are allowed to refuse to transfer to the transferee employer.

At share transfers, the employer is in general not obliged to negotiate with the trade unions, if the change in ownership does not in any way affect the employment of the employees.

### Social Security Contributions

Employers are required to make social security contributions which for 2014 amounts to 31.42 percent of the employee's gross salary. Employers are also required to pay sick pay, as further described above.

### Accidents At Work

The Work Environment Act obliges the employer to, in co-operation with employees and safety representative(s), continuously investigate, carry out and follow up the company's activities in such a way that ill-health and accidents at work are prevented and a satisfactory working environment is achieved. The systematic work environment management shall be included as a natural part of the day-to-day activities. It shall comprise all physical, psychological and social conditions of importance for the work environment.

According to the Work Environment Act every workplace with five or more employees regularly employed shall have one or more of the employees appointed as safety representative.

In addition to applicable legislation, the Swedish Work Environment Authority issues regulations regarding work environment issues.

A breach of the employer's duties regarding work environment may give rise to both civil and criminal liability.

### Discipline And Grievance

There are no statutory discipline and grievance procedures. Where damages may be payable by an employee under the Co-Determination in the Workplace Act, no sanctions may, according to the Act be invoked against such employee unless provided for by statute or by a collective bargaining agreement. It may be noted that an admonition to the employee, stating that certain behaviour is not acceptable and that it may lead to consequences if it does not come to an end, is not considered a "sanction" under the Act and is therefore, in general, permissible.

### Harassment/Discrimination/Equal pay

The Discrimination Act prohibits discrimination on seven grounds: gender, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. The Prohibition of Discrimination of Employees Working Part Time and Employees with Fixed Term Employment Act should also be mentioned.

An employer may, according to the Discrimination Act, not discriminate against a person who, with respect to the employer, is an employee, enquiring about or applying for work, applying for or carrying out a traineeship, or is available to perform work or is performing work as temporary or borrowed labour. An employer may furthermore not subject an employee to reprisals because the employee has reported or called attention to the fact that the employer has acted contrary to the Discrimination Act, participated in an investigation under the Discrimination Act, or rejected or given in to harassment or sexual harassment on the part of the employer.

Discrimination may be direct (for example by refusing to employ a man or woman) or indirect (for example by imposing a condition which puts a particular group at a disadvantage and which cannot be justified). Harassment, sexual harassment and instructions to discriminate also fall within the scope of discrimination.

According to the Discrimination Act, the employer and employees are to cooperate on active measures to bring about equal rights and opportunities in working life regardless of sex, ethnicity, religion or other belief, and in particular to prevent discrimination in working life on such grounds. The Discrimination Act sets out certain requirements regarding active measures of the employer, such as the obligation to draw up a gender equality plan.

A woman employed at an establishment in Sweden is entitled to enjoy contractual terms that are as favourable as those of a male comparator in the same employment, provided that the woman and the man are employed on equal work. Employers and employees shall strive to reduce and eliminate differences in wages and other conditions of employment between women and men performing work that is considered to be equal or equivalent.

An employer who violates the prohibitions of discrimination reprisals or who fails to fulfil its obligations to investigate and take measures against harassment or sexual harassment under the Discrimination Act shall pay compensation for discrimination for the offence resulting from the infringement. The compensation shall be paid to the person who has been offended by the infringement.



According to the Prohibition of Discrimination of Employees Working Part Time and Employees with Fixed Term Employment Act, an employer may not discriminate against those employees by offering less favourable terms, such as remuneration and other benefits, than those the employer offer employees in similar positions who are employed on a full-time basis or for an indefinite term.

The Equality Ombudsman (Sw. Diskrimineringsombudsmannen, DO) is a government agency that works against discrimination and for equal rights and opportunities for everyone. Persons who have been discriminated may turn to DO regardless of the reasons why they have been discriminated against.

### Compulsory Training Obligations

There are no compulsory training obligations for employees in general. However, some professions will obviously impose their own standards/ expectations. Collective bargaining agreements may furthermore include provisions on skills development or education.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's certain debts. However, according to the Act on Employers Right to Set-off (Sw. lagen (1970:215) om arbetsgivares kvittningsrätt), an employer may only make a deduction from the employee´s wages if the employee has given his prior consent to the deduction (voluntary set-off) or if the employer has a clear counterclaim which has fallen due and is related to the employment in question or if the claim is a compensation for damages caused by the employee within the employment (non-voluntary set-off). Furthermore, set-off may be allowed according to collective bargaining agreements.

### Payments For Maternity And Disability Leave

Payment during parental leave, both maternity and paternity, is financed by the state. During the first 390 days, the parental pay generally amounts to almost 80 per cent of the salary for the parent that takes the leave. Certain rules apply in regard to the first 180 days of payment during parental leave. For pregnant women it is possible to take maternity leave and obtain payment 60 days before the estimated date of birth.

The parental pay is capped at a certain amount, and it is not uncommon that the employer pays certain additional compensation to cover the gap between the actual salary and the compensation from the social insurance. Such additional compensation follows from a collective bargaining agreement or the individual employment agreement.

### Compulsory Insurance

Swedish employers are obliged to pay social security charges. These social security charges comprise health insurance provided by the Swedish social welfare system. Employees are generally entitled to remuneration for occupational injuries from the statutory health insurance. In addition to the statutory insurance, it is common that the employers provide their employees with a supplementary occupational group life insurance and insurance for occupational injuries.

If an employee must be absent due to illness after an injury the rules regarding sick pay apply with some minor differences.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

The Co-Determination in the Workplace Act statutes that employers and employees are entitled to belong to an employers' organisation or an employees' organisation, to exercise the rights of membership in such organisation and to participate in such organisation or the establishment thereof. The right of association may not be infringed. Infringement of the right of association shall be deemed to have occurred where an employer or employee, or the representative of either, takes action that is detrimental to the other party as a consequence of such party's exercise of its/her/his right of association or where an employer or employee, or the representative of either, takes action directed at the other party for the purpose of inducing that party not to exercise its/her/his right of association.

A collective bargaining agreement that has been concluded by an employers' organisation shall be binding, within its area of applicability, upon a member of such organisation.

Employees have certain rights in relation to their employers especially when bound by collective bargaining agreements, but also in certain other situations. The employer is obliged to negotiate and/or to consult with concerned trade unions before making certain decisions with respect to the business and/or employees of the company. In situations where there is a duty to negotiate with a trade union, such negotiations must be conducted and concluded before any decision is taken by the employer. Such negotiations do not have to lead to an agreement, i.e. the employer is free to make any decision (subject to mandatory law) after having fulfilled his obligation to negotiate. An employee who has been appointed to represent his organisation at negotiations may not be refused reasonable leave of absence in order to take part in those negotiations.

In a dispute relating to a collective bargaining agreement, the trade union by which the agreement was concluded may institute and conduct proceedings before the Labour Court on behalf of any employee who is or has been a member of such trade union.



According to the Swedish Board Representation Act, a local trade union that is party to and bound by a collective bargaining agreement with a company, may under certain conditions appoint employee's representatives to the company's board of directors, as well as to the board of any Swedish parent company. The European Works Councils Act (Sw. lagen (2011:427) om europeiska företagsråd) should also be mentioned.

### Employees' Right To Strike

According to Swedish law trade unions, i.e. employees´ organisations, are entitled to take industrial action, such as strikes, blockades, boycotts and lockouts, unless otherwise is provided in an act of law or under an agreement. Actions can furthermore be taken to support i.e. a strike initiated by another party, provided that the primary strike is permitted.

When a trade union intends to implement industrial action or to extend pending industrial action, it shall give written notice to the other party and the Mediator Office (Sw. Medlingsinstitutet) at least seven working days in advance.

The Co-Determination in the Workplace Act provides that when a collective bargaining agreement has been entered into, a peace obligation for the parties immediately takes effect. The peace obligation prohibits any use of industrial action. Breaking the peace obligation may result in a liability to pay damages to the other party.

### Employees On Strike

An infringement of the right of association shall be deemed to have occurred where an employer takes action that is detrimental to an employee as a consequence of the employee´s exercise of his/her right of association, or where an employer takes actions directed at an employee for the purpose of inducing that employee not to exercise such right. Accordingly, an employer may not dismiss an employee as an act of revenge after the employee has been on strike.

Employees on strike are not entitled to salary or other employment benefits. However, an employer may not withhold pay or other remuneration for work that has been performed and which is due and payable as a consequence of employee participation in a strike or other industrial action.

### Employers' Responsibility For Actions Of Their Employees

Employers can be deemed to be responsible and liable for damages caused by fault or negligence of their employees, provided that the employees act within the course of their employment.

# 04. Firing The Employee

### Procedures For Terminating The Agreement

An employer's termination of employment is regulated by detailed laws, both as regards the right to terminate the employment and the procedure for termination. Non-observance of these provisions may lead to an obligation to pay punitive damages to the employee and/or trade union concerned as well as material and economical damages to the employee.

A notice of termination of employment given by the employer must be based on objective grounds, as defined in the Employment Protection Act. These grounds are economic, technical or organisational reasons, i.e. redundancies, or personal reasons, for example serious misconduct or disloyalty. Objective grounds for notice of termination do not exist where it is reasonable to require the employer to provide other work in his service for the employee.

In general, the economical, technical or organisational reasons given for a dismissal may not be challenged in a court of law. On the other hand, the employer is not free to choose which employee that is to be made redundant. The principal rule is that the employee with the longest period of employment shall be entitled to continued employment, meaning that a last in–first out rule applies. A prerequisite for application of this principle is that such employee has satisfactory qualifications for the remaining assignments. Employers are obliged to enter into negotiations with trade unions before deciding on termination of employment on the grounds of redundancies.

In order to have objective grounds for dismissal due to personal reasons, the employer must be able to prove that the reason for the notice is a distinct lack of capability and/or negligence in the performance of the duties of the employee, serious misconduct, theft, disloyalty or other aggravating circumstances relating to the employee and his/her individual performance. It should be noted that to demonstrate objective grounds, the employer is required to have performed substantial effort to help the employee to improve. In addition, a dismissal due to personal reasons must be made within certain time limits.

An employer, who wishes to give notice of employment for reasons relating to the employee personally, shall inform the employee of this in advance. Information concerning termination shall be given at least two weeks in advance. If the employee is a union member, the employer shall notify the local organisation of employees to which the employee belongs at the same time as notice is given to the employee.



### Instant Dismissal

Instant dismissal is only possible when the employee has grossly neglected his or her duties towards the employer. In relation to an instant dismissal, employers are not required to provide other work in his service for the employee. An instant dismissal must be made within certain time limits.

An employer, who wishes to summarily dismiss an employee, shall inform the employee of this in advance. Information concerning summary dismissal shall be given at least one week in advance. If the employee is a union member, the employer shall notify the local organisation of employees to which the employee belongs at the same time as notice is given to the employee.

### Employee's Resignation

Notice terminating a contract of indefinite term may be given by the employer or employee with effect following a certain period of notice. An employee may resign from his employment with immediate effect where the employer has in a fundamental respect failed to fulfil his obligations to the employee.

### Termination on Notice

Both employer and employee can terminate the employment contract on notice. However, a notice of termination given by the employer must be based on objective grounds. There are statutory minimum periods of notice, which will override the contractual notice period. The minimum period of notice is dependent on the period of continuous employment and varies between one and six months. A longer termination period may also be provided for in the individual employment contract. Deviations from the statutory periods of notice may also be made through collective bargaining agreements.

### Termination By Reason Of The Employee's Age

Employees are generally entitled to remain in the employment up to the end of the month when they attain the age of 67. An employer may terminate an employment agreement at the end of the month when the employee in question attains the age of 67. The employer shall in such situations give the employee at least one month´s written notice.

Prior to the point where the employee attains the age of 67, he/she is entitled to full employment protection regarding dismissal etc as described above.

After an employee has reached the age of 67, he/she is not entitled to more than one month's notice of termination and does not have rights of priority in connection with termination of employment on the grounds of redundancies and re-employment.

### Automatic Termination In Cases Of Force Majeure

Employment agreements can be automatically terminated in cases of force majeure.

### Termination By Parties' Agreement

An employment may be terminated through an agreement between employer and employee. Such an agreement is in general legally binding and not prohibited by the Employment Protection Act.

### Directors Or Other Senior Officers

The Employment Protection Act does not apply to employees whose duties and conditions of employment are such that they may be deemed to occupy a managerial or comparable position. Instead, the general principles of contract law apply and the employment contract governs the relationship between employer and director/senior officer. It is important that a director contract governs all the conditions of the employment, particularly in relation to termination of employment.

Different rules apply to directors and senior officers employed by the state.

### Special Rules For Categories Of Employee

There are different categories of employees, to which special rules apply. The rules in the Employment Protection Act apply to a wide range of employees. However, it contains slightly different rules depending on if the employee is employed for an indefinite term or a fixed term, if the employee is 67 years old or not, if the first period of an employment shall be probationary, etc.

Employees who occupy managerial positions as well as members of the employer´s family do not fall within the scope of the Employment Protection Act. For them, the employment contract essentially will govern the relationship to the employer.

The Public Employment Act contains special rules for persons employed by authorities in Sweden, which apply in addition to other employment law.

### Specific Rules For Companies in Financial Difficulties

Companies in financial difficulties, i.e. bankruptcy or company reconstruction, have to respect the rules in the Employment Protection Act regarding termination of employment contracts. Thus, termination can only be made on objective grounds. However, economical reasons for dismissal, such as financial difficulties, are in general considered to be objective grounds.

According to the Wage Guarantee Act (Sw. lönegarantilagen (1992:497)) the Swedish state is under certain conditions liable for the payment of an employee´s claim against an employer who has been put into bankruptcy, is subject of company reconstruction, or is subject to certain other insolvency proceedings. Wage guarantee cannot be paid for wage claims that accrued earlier than three months prior to the bankruptcy petition was submitted. For claims on pay or other remuneration the guarantee applies for an aggregate employment period of at most eight months. There is further a maximum compensation that can be paid to each employee.



### Restricting Future Activities

Clauses restricting future activities, such as competition clauses, are always considered in relation to the circumstances in each specific case. Competition clauses are only enforceable as long as they are not drafted beyond what can be considered reasonable in order to protect a legitimate interest of the employer. An example of such legitimate interest may be to preclude the employee from taking the employer´s customers. On the other hand, a clause that aims to retain an employee with special knowledge is not normally accepted.

### Severance Payments

In accordance with the Employment Protection Act, the employer must pay salary and other employment benefits during the notice period. No additional severance pay is required. Employees, especially if holding managerial positions, may however be entitled to severance pay according to their employment contracts. Such a right may furthermore be agreed upon in an agreement whereby an employment is terminated. Payment of severance pay in lieu of notice is not possible without the employee's consent.

### Special Tax Provisions And Severance Payments

Severance payment is equated with salary and therefore in general subject to tax in the normal way.

### Allowances Payable To Employees After Termination

Disregarding salary during the period of notice and possible severance pay, employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

An employee who intends to initiate proceedings to have a termination or instant dismissal declared invalid shall notify the employer of such intention not later than two weeks after notice of termination or instant dismissal was given.

Any person who wishes to claim damages or advance other claims based upon the provisions of the Employment Protection Act shall notify the other party to this effect not more than four months after the date on which the action giving rise to the damages was taken or the claim became payable.

Other time limits apply in certain situations, for instance where negotiations have been demanded in accordance with the Co-Determination in the Workplace Act or collective bargaining agreements, and when the termination has not been effected properly.

# 05. General

## Specific Matters Which Are Important Or Unique To This Jurisdiction

N/A

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# Switzerland

# Switzerland

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## 01. General Principles

The following chapter only deals with employment agreements in the private sector. It does not include employment relationships of public servants whose employment relationships are governed by the respective public law and are subject to administrative jurisdiction.

### Forums For Adjudicating Employment Disputes

Actions concerning employment disputes are generally to be heard by the civil courts of the defendant's domicile or seat or at the place the employee habitually performs his work. The employee cannot validly waive the right to sue the employer in these forums in advance, except in a few international situations.

A simplified and expeditious procedure is guaranteed for claims with a value of no more than CHF 30'000 arising from the employment relationship. In such a procedure the court shall determine the relevant facts ex officio and none of the parties shall be charged with the costs of the court, except for a party bringing a frivolous action. The prevailing party is nevertheless entitled to adequate compensation of the attorney's fees.

### The Main Sources Of Employment Law

The sources of employment law are constitutional provisions, several statutes and ordinances, collective employment agreements, state provided standard employment contracts, individual agreements, local customs and practice, work rules of enterprises and case law.

Two statutes are of particular importance. The federal Code of Obligations (civil law) contains rules concerning employment agreements as well as general provisions concerning contracts. The Labour Act concerning work in industry, commerce and trade and the respective ordinances (public law) are concerned with the protection of labour, in particular with occupational health and safety.



Collective employment agreements agreed between trade unions and associations of employers or individual employers are defining provisions or minimal standards concerning the conclusion, content and termination of individual employment agreements. Since collective employment agreements are contractual in nature, they are applicable if (i) the employee is a member to the trade union being a party to the respective collective employment agreement and (ii) the employer is a member of an association being a party to the respective collective employment agreement or is a party to the respective collective employment agreement itself. Some employers extend the application of a collective employment agreement to all their employees. Furthermore, the scope of application of collective employment agreements can be extended to all employers and employees of a certain industry or region by governmental decision. Collective employment agreements are widespread in Switzerland.

Standard employment contracts contain provisions regarding the conclusion, content and termination of employment relationships in specific industries. Except for certain standard employment contracts setting forth mandatory minimum wages, standard employment contracts apply unless otherwise agreed between employer and employee. The standard employment contract can determine that agreements superseding its provisions must be in writing.

### National Law And Employees Working For Foreign Companies

Essentially, individual employment agreements between a foreign company and an employee habitually working in Switzerland are generally governed by Swiss law. Should the employee of a foreign company habitually perform his work in several countries, Swiss law is applicable according to Swiss conflict of laws provisions if either the employer has a business establishment in Switzerland or, in the absence of such a business establishment in Switzerland, the employer is domiciled or habitually resident in Switzerland. Swiss courts respect a choice of law, provided that the law chosen is the law of the country in which the employer has its registered seat or a business establishment, or the law of the country in which either the employer or the employee have their habitual residence. An employee working in Switzerland is subject to prevailing Swiss mandatory law.

### National Law And Employees Of National Companies Working In Another Jurisdiction

If an employee is habitually working outside Switzerland, the law of the place where the employee habitually performs his work is decisive according to Swiss rules concerning the conflict of laws. If the employee of a Swiss employer habitually works in several countries, Swiss law is applicable, assuming that a Swiss employer has either a business establishment or, in the absence of a business establishment in Switzerland, its seat (or habitual residence) in Switzerland.

A choice of Swiss law is possible if the employee is working for a Swiss company, i.e. if the company has its seat or at least a business establishment in Switzerland.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

Individual agreements can be entered into in any form (e.g. tacitly, orally, in writing), except for particular types of agreements (e.g. apprenticeship, temporary work, travelling salesman) and certain non-mandatory provisions of the Code of Obligations (or an applicable standard employment contract) which are valid only if agreed in writing.

When the duration of the employment relationship is unlimited or of more than one month, the employer must confirm to the employee in writing the names of the contractual parties, date of the beginning of the employment relationship, job, wages and weekly number of working hours. Should these elements of the employment agreement change, the employer has to confirm the change in writing. Violation of the information requirement is a breach of contract, but does not invalidate the employment agreement.

## Mandatory Requirements

### Trial Period

Any probationary period shall not exceed three months.

### Hours of Work

The hours of work per week are usually fixed in the individual employment agreement or in a collective employment agreement. If overtime work becomes necessary, the employee shall be obliged to work extra hours to the extent he can reasonably be expected to do so.

In principle, an employee shall not work more than 45 hours per week, or, depending upon the type of work, 50 hours per week. Work in excess of these limits (meeting certain thresholds) shall be compensated with 125% of the wages calculated on the agreed or otherwise determined working time, or by time off in lieu, provided that the employee agrees to compensation by time off in lieu. The Labour Act contains detailed provisions regarding hours of work and corresponding limits, exceptions, compensation etc.

Work at night or on Sundays and public holidays is restricted and subject to governmental approval. If work at night or work on Sundays is performed temporarily, an extra compensation is due. The detailed provisions can be found in the Labour Act and the corresponding ordinance.

Documentation concerning the hours worked and the compliance with the Labour Act in general needs to be kept for five years for inspection purposes.

### Earnings

In principle, earnings are subject to agreement. Collective labour agreements contain binding minimum wages. In addition, authorities can fix minimum wages for certain industries in order to protect domestic workers. Compensation of the top management and the board of listed companies is subject to special mandatory provisions.

If the employee is on a stand-by duty, the employer has to pay a reduced compensation for the time the employee is on stand-by.

### Holidays/Rest Periods

Employees enjoy at least four weeks paid vacation per year. A fifth week of paid vacation is mandatory for employees under the age of 20 years and is also required under some collective labour agreements for employees above a certain age. Vacation cannot be compensated by payments or other benefits during the employment agreement. During vacation the full wages are due. If the employee violates legitimate interests of the employer by working for a third party for compensation during his vacation, the employer may refuse to pay vacation wages and may claim a refund of already paid vacation wages.



### Minimum/Maximum Age

Employment of children under the age of 15 is prohibited.

With regard to the employment relationship, retirement is subject to agreement. Statutory provisions define the retirement age which allows employees to benefit from Old Age and Survivors Insurance and Occupational Pension Plans. The standard retirement age is currently 64 for women and 65 for men. Earlier or later retirement is possible.

### Illness/Disability

The consequences of disability due to illness and accident are widely covered by social security.

After the probationary period the employer shall not terminate the employment during the period the employee is prevented from performing his work fully or partially due to illness or accident, for periods between 30 and 180 days depending on the number of years the employee has worked for the same employer.

With regard to financial protection of employees see below under "Payments for Maternity and Disability Leaves".

### Location of Work/Mobility

Except as agreed otherwise, the employer can ask the employee to work anywhere within his organization as long as this is just and reasonable. Often employment agreements define the place or region of work. Some employers allow home offices. Clauses requiring employees to follow the employer, should he decide to move premises, are not common.

Non-nationals are subject to restrictions on mobility depending upon their nationality.

### Pension Plans

Mandatory law requires pension plans in addition to the existing social security system, in particular in addition to the Old Age and Survivors Insurance. Only a few types of employees are exempt. The law provides for minimum standards and allows the parties involved to agree on a better protection.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

The health of the mother and her baby is protected by several special mandatory provisions.

In particular, a female employee is entitled to maternity leave of at least 14 weeks. Maternity insurance steps in for the payment of 80% of the wages up to a cap during 14 weeks subject to statutory conditions. There is no paternity leave or adoption leave.

During pregnancy and within 16 weeks after the birth of the child the employer cannot terminate the employment.

Parents who must take care of their ill children are entitled to leave of up to three days. Parents also enjoy further privileges.

### Compulsory Terms

The Code of Obligations protects employees by mandatory provisions and minimum standards.

Collective employment agreements (see above), if applicable, have to be observed by the parties.

Standard employment contracts may provide for mandatory minimum wages.

A variety of public laws concerning labour and professional education impose obligations on the employer or the employee, e.g. the Labour Act (see above). If public law imposes such an obligation on either the employer or the employee, the other party to the individual employment agreement has automatically – irrespective of the sanctions according to public law – a corresponding compulsory civil law claim, provided that such a public law obligation could be included in an individual employment agreement.

### Non-Compulsory Terms

Subject to mandatory provisions, minimum standards and collective employment agreements (see above), private parties are free to define the terms of their employment relationship. However, they should pay close attention to the fact that some legal provisions can be altered in writing only.

In the absence of different, validly established contractual provisions, the statutory (non-mandatory) provisions of the Code of Obligations or, to the extent existing, applicable standard employment contracts determine the content of the employment agreement.

### Types Of Agreement

Employment relationships are contractual in nature. An employee who worked for an employer in good faith without a contractual employment agreement enjoys nevertheless the benefits of an employment agreement by operation of law.

The statutory law provides for specific rules for homework, travelling salesmen and apprenticeship agreements in addition to the general rules for employment agreements. Furthermore, statutory law distinguishes between agreements for a fixed term and agreements for an unlimited period of time.

According to the contractual nature of the employment relationship factual needs have lead to a number of different types of employment agreements, e.g. part time agreements, occasional employment, work on demand etc.

### Secrecy/Confidentiality

Employees shall keep manufacturing and business secrets confidential during employment. The statutory confidentiality obligation survives termination of the employment agreement, to the extent necessary to safeguard legitimate interests of the employer. By agreement the confidentiality obligation can be waived, limited or extended.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Subject to another agreement between the parties, inventions, irrespective whether protectable or not, belong to the employer if the employee invents them or participates in their invention while performing his employment activities and contractual duties. By written agreement the employer may reserve the right to acquire inventions which the employee invented while performing his employment activities but outside his contractual duties. Should the employer acquire the invention, he has to pay a special and adequate compensation to the employee. Similar statutory provisions apply to industrial design, topographies (chips) and software. It is recommended to cover these issues in the individual employment agreement, in particular with regard to copyrights for which at least a corresponding statutory provision is missing.

### Hiring Non-Nationals

Employment in Switzerland generally requires a work and residence permit, except for Swiss nationals. In essence, nationals of the EU/EFTA member states (with some exceptions) have a legal right to receive a work permit. A quota system limits employment of nationals of other countries within Switzerland.

The employer is well advised to conclude an individual employment agreement with a non-national only under the prerequisite that a work permit is available. In the absence of such a condition the employer might have to pay wages although he is not allowed to have the employee working in Switzerland.



### Hiring Specified Categories Of Individuals

Young workers and, in some instances, female employees enjoy special protection.

### Outsourcing And/Or Sub-Contracting

Employment agreements, in general, follow the business, should ownership of a business change (see below). Unless outsourcing or sub-contracting results in a transfer of business, employment relationships remain with the same parties.

In the construction industry and ancillary industry the contractor shall in principle be liable jointly and severally with all his direct and indirect subcontractors if the subcontractor does not comply with compulsory minimum wages according to Swiss law with effect from May 2013.

Placement services and temporary work are governed by mandatory provisions.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

Subject to mandatory rules, minimum standards and collective labour agreements, the parties of an individual employment agreement can amend the employment agreement by mutual consent in the legally or contractually required form (see above).

It is permissible to terminate an employment agreement by notice of termination while simultaneously offering a new employment agreement with altered terms for legitimate reasons. Without legitimate reasons, such a termination is abusive and gives rise to penalty payments. Notice periods shall be respected.

During the employment and thereafter for one month, the employee cannot waive claims resulting from mandatory provisions of law.

### Change In Ownership Of The Business

Should the employer transfer his business or a specific part thereof, all employment agreements related to the business or the specific part thereof are transferred together with the business to the acquirer by operation of law, unless the employee declines the transfer. An exception to this rule shall facilitate restructuring in cases of insolvencies. During a debt restructuring moratorium, in the course of bankruptcy proceedings or under a composition agreement with assignment of assets the transfer of the employment agreements takes place only if agreed so with the acquirer of the business and if the employee does not decline the transfer.

If the employee declines the transfer, the employment agreement ends with the statutory term of notice, even if the employment agreement stipulates a fixed term or a notice period which differs from the non-mandatory legal notice period (see below).

The party acquiring the business and the transferring party are jointly and severally liable for all claims of any employee of the business transferred which have become due prior to the transfer of the business. The joint and several liability of acquirer and transferor extends also to employee claims becoming due afterwards until the date upon which the corresponding employment relationship can validly be terminated by the acquirer for the first time or is indeed terminated because the employee declined the transfer of the employment relationship.

If a collective employment agreement applies to the employment relationships transferred, the party acquiring the business has to comply with the respective collective employment agreement for at least one year. This will not be the case if the collective employment agreement expires or is terminated otherwise earlier.

The employer has to inform the employees' representative body (works council) or, in the absence of such a body, all employees in due time prior to the transfer of business. Should the transfer lead to measures affecting the employees, the employees or their representative body have to be consulted before any decision is taken.

### Social Security Contributions

Employer and employee have to contribute to the Old Age and Survivors Insurance, Disability Insurance, Unemployment Insurance, Income Compensation Insurance and Accident & Occupational Disease Insurance as well as to a compulsory Occupational Benefit Plan. Contributions to be made by the employee and the employer are defined by law and, in case of the Occupational Benefit Plans, additionally by the regulation of the respective institution. Usually, the employer deducts the employee's contributions from the wages and pays all the contributions to the respective social security institution.

In addition, employers have to pay contributions to a family allowance system.

### Accidents At Work

Employers are under a duty to protect employee's life, health and personal integrity. The employer must comply with all legal requirements regarding work place safety and hygiene that are defined in different statutes and ordinances. In particular, the employer has to take protective measures in order to reduce the danger of an accident to a minimum when an employee has contact with machines or other equipment. Protection against second hand smoking is mandatory. Violation of legal provisions regarding safety gives rise to civil and criminal liability.

The employee is obliged to respect the work place safety measures and to comply with the respective safety procedures.



After the probationary period the employer shall not terminate the employment when the employee, without actual fault, is prevented from performing his work (fully or partially) due to an accident. This protection lasts for 30, 90 or 180 days depending on the number of years the employee worked for the same employer.

With regard to financial protection of employees see below under "Payments for Maternity and Disability Leaves".

### Discipline And Grievance

Disciplinary sanctions such as penalties, reductions of wages, transfer, suspension, career stop etc. are allowed if specified clearly in work rules of the respective enterprise which have been agreed between the employer and a representative body of the employees.

Grievance procedures in cases of sexual harassment are part of the protective measures the Equal Treatment Act (see below) implicitly requires.

### Harassment/Discrimination/Equal pay

Gender discrimination and sexual harassment are prohibited under the Equal Treatment Act. Employers should be able to prove that sufficient protective measures have been taken in order to avoid liability. Equal pay for equal work is required.

The employer has to respect and protect the individuality of the employees, and the employer has to take necessary protective measures in this respect, to the extent reasonable. Discrimination may qualify as a breach of this duty.

Equal treatment of disabled job applicants is not guaranteed in the private sector.

### Compulsory Training Obligations

There are no general compulsory training obligations. Training may, however, be required by safety standards or professional education requirements. Collective labour agreements may oblige the employer to give the employees the possibility to use a specified number of days for training.

### Offsetting Earnings

The employer may set off his counterclaims against wage claims if the employee still takes home the minimum living wage. Claims for wilful damages may be set off without limit.

Contractual clauses to the use of wages in the employer's interest are void. In particular, the employee shall not be obliged to purchase goods or services from the employer with his wages.

### Payments For Maternity And Disability Leave

Maternity Insurance covers 80% of the wages during maternity leave for up to 14 weeks.

If the employee is unable to work due to illness, the employer shall pay the respective wages during a limited period. Except for the first three months of an employment, wages shall be paid for a minimum of three weeks during the first year of employment and afterwards for a longer period depending on the duration of the employment relationship. If agreed upon in writing (or in a collective employment agreement or in a standard employment contract), the employer can alternatively provide private insurance cover for daily allowances, provided that the insurance solution is at least equally beneficial to the employee.

With regard to accidents and occupational diseases, most employees are insured by a mandatory Accident & Occupational Disease Insurance, or, in some particular cases, by other social security programs. The compulsory Accident & Occupational Disease Insurance pays daily allowances during the period the employee is prevented from working (for up to two years). The insurance covers 80% of the employee's wages up to a statutory cap. If the mandatory insurance covers at least 80% of the wages, the employer has no further obligation to pay the wages. Otherwise the employer has to make up the difference for a limited period of time. In the absence of coverage by the Accident & Occupational Disease Insurance, the rules regarding an ill employee apply (see above).

Employees who are unable to work because of a physical or mental impairment for a long time or forever may benefit from the Disability Insurance and from mandatory Occupational Benefit Plans.

### Compulsory Insurance

Mandatory insurances are the Old Age and Survivors Insurance, Disability Insurance, Unemployment Insurance, Income Compensation Insurance, Accident & Occupational Disease Insurance and the Occupational Benefit Plans.

In addition, employees living in Switzerland are obliged by law to insure themselves against illness and, if not covered by the Accident & Occupational Disease Insurance, against accidents.

### Absence For Military Or Public Service Duties

During the other party's performance of mandatory military or protection service or civil service and, if such service lasts for at least eleven days, during the four weeks prior to and after the service neither the employer nor the employee (in case the employer is an individual) may terminate the employment.



If the employee is prevented from performing his work because of public service duties (e.g. mandatory military service), the employer shall pay the wages during a limited period, except for the first three months of an employment. Unless otherwise provided the wages shall be paid for up to three weeks during the first year of employment and afterwards for a longer period depending on the duration of the employment relationship. Provided that the Income Compensation Insurance covers at least 80% of the wages, the employer is free from his obligation to continue to pay the employee's wages.

### Works Councils or Trade Unions

Trade unions are constitutionally protected. Everybody has the right to participate in a trade union, but nobody can be forced to participate in trade union activities. The most important instruments of a trade union are collective labour agreements (see above) and strike (see below).

Employees who participate in works councils enjoy special protection. A statutory right to establish a works council only exists in companies with at least 50 employees.

### Employees' Right To Strike

Strikes are allowed if certain restricting criteria established by the courts are met (support by trade unions, relation to the employment relationship, no secondary strikes, no strike concerning matters addressed in collective employment agreements, no violation of obligations to keep peace, strike only as a mean of last resort, no legal prohibition should the employee belong to certain categories of people). Employers may lock out employees under similar conditions.

### Employees On Strike

A legal strike does not terminate the employment agreement, but only suspends it with respect to the essential reciprocal obligations of the parties (performance of work, wage payment). Termination of employment during a legal strike might be abusive, and termination of an employment agreement with immediate effect by reason of a legal strike is deemed to be unjustified.

An illegal strike constitutes a breach of contract.

### Employers' Responsibility For Actions Of Their Employees

Employers are liable for damage caused by their employees in the course of their employment. An employer will not be liable if he proves that all appropriate precautions to prevent damage of that kind had been taken, or that the damage would have occurred in spite of the application of such precautions.

In addition, employers are liable for loss or damage caused by their employees while performing a contractual obligation or exercising a contractual right. This secondary liability can in principle be limited or excluded by prior mutual agreement within certain limits.

# 04. Firing The Employee

### Procedures For Terminating The Agreement

An employment agreement for a fixed term ends with the expiration of the agreed term, unless otherwise agreed by the parties.

Termination of an employment agreement for an unlimited period does not require a specific procedure, except for mass dismissals. In cases of mass dismissals of solvent employers, the employees or the works council must be informed or consulted in advance and notifications to the labour market authority are required. Employers who usually employ more than 250 employees have to negotiate a social compensation plan under certain conditions, essentially if the employer decides to dismiss at least 30 employees. No social compensation plan is required for mass dismissals during insolvency proceedings resulting in a composition agreement.

Upon expiration of the probationary period, the employer shall not terminate the employment if the employee is prevented from working (fully or partially) due to e.g. pregnancy or compulsory military services. With regard to illness, accident and maternity the same rule applies for limited periods of time. A notice of termination given within such a period is deemed to be void. If the notice is given prior to such a period, the expiration of the notice period shall be suspended accordingly.

A notice of termination is abusive if given for certain reasons (e.g. a quality inherent in the personality of the other party, the exercise of a constitutional right or good faith claims of the other party). Therefore, the party terminating the employment agreement must state the reasons for the termination in writing upon request.

Illegal terminations (abusive termination and termination with immediate effect without valid reasons) give rise to liability and penalty payments. If an employee wishes to assert claims based on an abusive termination, he has to object against the termination in writing before the employment ends. In the absence of an agreement between the parties he shall file a lawsuit. His claims are forfeited if no legal action is taken within 180 days after the employment relationship ended. Courts cannot annul a notice of termination, except for a termination after an employee raised gender claims.

### Instant Dismissal

An employment agreement may be terminated with immediate effect for valid reasons. Any circumstance under which the terminating party, being in good faith, cannot be expected to continue the employment relationship is considered to be a valid reason. A termination without a valid reason is illegal (see above).

### Employee's Resignation

An employee shall give notice of termination if he wishes to resign.
An employee terminating the employment suffers a reduction in benefits of the Unemployment Insurance.



### Termination on Notice

Statutory standard notice periods after the probationary period are one, two or three months depending on the number of years the employment relationship already exists. A notice period of at least one month is mandatory for an employment relationship already existing for more than one year. Contractual notice periods generally need to be the same for the employer and the employee.

Usually it is permissible to suspend the employee from work during the notice period if the wages are paid (garden leave).

### Termination By Reason Of The Employee's Age

In general, the termination of an employment agreement by reason of the employee's age is possible, but may be abusive. Termination is not abusive if the employee reaches the agreed or customary retirement age (see above).

### Automatic Termination In Cases Of Force Majeure

Except for the employee's death, the agreement will not automatically be terminated if the performance of the agreement becomes impossible. Most cases which are generally referred to as force majeure are deemed to be in the risk sphere of the employer. Death of the employer (except if the employment agreement was entered into for reasons of personal consideration of the employer) or bankruptcy does not automatically terminate an employment agreement.

### Termination By Parties' Agreement

Agreements to terminate the individual employment agreement are permissible. The contractual requirements concerning amendments shall be complied with. As already mentioned, the employee cannot validly waive claims resulting from mandatory provisions of law during the course of the employment for one month after its termination. A circumvention of mandatory provisions by termination agreements is not allowed. The employee should have sufficient time to consider the consequences of an offered termination agreement before signing it.

### Directors Or Other Senior Officers

There are in principle no special rules regarding the dismissal of directors and other senior officers. However, corporate functions of company officers need to be terminated separately.

### Special Rules For Categories Of Employee

Members of a works council are protected by the rules against abusive dismissal. The same is true for minority groups, should the termination be justified with reasons inherent in the personality of the dismissed party.

### Specific Rules For Companies in Financial Difficulties

Employees have the right to terminate the employment with immediate effect due to the employer's insolvency unless the employer provides security. Certain claims of employees are privileged in bankruptcy proceedings against the employer.

### Restricting Future Activities

Limited non-competition agreements for a period of time after termination of the employment relationship are admissible, but need to be agreed upon in writing. Non-competition agreements can be combined with a penalty in case of non-compliance. During the employment, the employee is under a duty of care and loyalty.

### Severance Payments

A severance payment of at least two months wages is due at the end of an employment relationship if the employment lasted for 20 years or more and the employee is at least 50 years in age. Certain welfare payments or contributions to personnel welfare institutions the employer has made shall be deducted from the severance payment. Severance payments may be reduced for a couple of further reasons.

Statutory severance payments have a limited importance because of mandatory Occupational Benefit Plans.

### Special Tax Provisions And Severance Payments

Taxation depends upon the purpose of the severance payment. In general, severance payments are taxed as income, unless deemed to be a tax-exempt contribution to a restricted pension plan.

### Allowances Payable To Employees After Termination

Subject to other agreements, the employer's obligations to contribute towards any allowances or pay allowances end with the termination of the employment, except in the case of death of an employee. If the employee leaves a spouse or minor children, or, in the absence of these heirs, other dependents, the employer shall pay wages for one further month, or, after five years of employment, for two further months.

### Time Limits For Claims Following Termination

Claims for wages and vacation become time-barred after five years, while most other claims resulting from employment are prescribed after 10 years. The time limits usually run from the moment a claim is payable. Upon termination all claims arising out of the employment agreement become due.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Federal laws are published in German, French and Italian; all three being official and coequal languages.

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# Taiwan

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are specialized labour courts or judges in the District Courts for employment disputes. Local labour authorities can also mediate employment disputes. In practice, the labour court will not normally hear an employment dispute until mediation by the local labour authority has been concluded without success.

### The Main Sources Of Employment Law

The main sources of employment law in Taiwan are legislation, individual contracts, local practice/custom and court decisions. The Labour Standards Law ("LSL") covers nearly all non-government industries. The main private sector industries not covered by the LSL are the professions, e.g. doctors, lawyers, accountants, architects, etc, which are therefore outside the scope of this chapter. This chapter is confined to a summary of the law relating to industries covered by the LSL.

### National Law And Employees Working For Foreign Companies

National law will apply to all employees working for national companies and foreign companies in Taiwan, regardless of their nationality.

### National Law and Employees from National Companies Working in Another Jurisdiction

National law will apply to national employees of national companies in another jurisdiction. If they work for a related company in the other jurisdiction, national law may be adopted (e.g. for pension entitlements), but does not automatically apply.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The employment agreement can be oral or in the written form of an individual contract and, where the company has more than 30 employees, work rules must be provided which apply to the employees as a whole.

## Mandatory Requirements:

### Trial Period

There is no legal obligation to provide a new employee with trial periods, but it is common practice to do so.

### Hours Of Work

Maximum working hours are imposed by law. An employee must not work more than 8 hours per day and 84 hours every two weeks (for regular working time). If working overtime, the employee is restricted to no more than a further 4 hours per day and 46 hours per month. There are special regulations for certain specific employees (such as children and female workers).

### Earnings

The employee should receive no less than the basic wage prescribed by the central labour authority (Committee of Labour Affairs) which is currently NT$19,273, has taken effective 1 July 2014 per month.

### Holidays/Rest Periods

Public holidays are prescribed by the competent authority and employees are entitled to at least one regular day off in every 7 days. Employees are normally permitted to have a break for at least thirty minutes after having worked for four continuous hours.

### Minimum/Maximum Age

The minimum age is 15. While there is no maximum age, the employee may be required to retire on attaining 65 years of age.

### Illness/Disability

All employees are entitled to up to 30 days absence within one year for an illness which does not require hospitalisation. During absence because of illness, employees are entitled to half of their salary to be paid by their employers. If hospitalisation is required, then employees are entitled to unpaid absence for up to one year within two years. The employer must keep the employees job open for their return. The employer may pay a lump sum by way of disability compensation to an employee who is disabled due to an occupational accident.

### Location Of Work/Mobility

It is common practice to include a mobility clause in the employment contract, but normally consent of the employee in advance is still required for a change of location of work. Where travel expenses will be incurred due to change of location of work, the employee is entitled to be reimbursed accordingly.

### Pension Plans

An employee who has worked for 15 years is entitled to a pension at the age of 55. An employee who has worked for 10 years is entitled to a pension at the age of 60. Employees having worked for more than 25 years for the same business entity, are entitled to a pension whenever they retire.

The Labour Pension Act, which came into force from 1 July 2005, provides the employee with a choice of two pension plans; the "old pension plan" and the "new pension plan".

For employees choosing the "old pension plan", the LSL requires the employer to deposit an amount equivalent to between 2%-15% of the employee's total monthly salary in a special account as a retirement reserve fund for them. In this system, there is no need for the employee to contribute to the retirement reserve fund.

For employees choosing the "new pension plan", the employer is required to deposit no less than 6% of the employee's monthly salary into the employee's personal pension account or into an annuity insurance. The employee may voluntarily contribute up to 6% of their monthly salary to his/her pension account. This will, in effect, make pension entitlements portable, instead of being tied to service with the same entity.



### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

A female employee will be granted paid maternity leave before and after childbirth for a combined period of 8 weeks. In the event of a miscarriage during pregnancy, the female employee will be entitled to time off work and granted paid maternity leave for a period of between 5 days and 4 weeks.

A male employee whose spouse is in labour will be granted paid paternity leave for 3 days. In addition, an employee who has been in service for more than 1 year may apply for up to 2 years of unpaid parental leave at any time before his or her child reaches 3 years old. There are no parental rights for adoption.

### Compulsory Terms

The compulsory terms which must be included in an agreement include: the period of employment; notice provisions and/or nature of term (e.g. fixed term or part time); retirement provisions; salary, severance pay, retirement and other allowances and bonuses; board and lodging and expenses for work tools for which the employee is responsible; health and safety; education and training; welfare; rules of conduct and work discipline; merits and demerits; and other matters concerning the rights and obligations of employees and management.

### Non-Compulsory Terms

The employer and the employee are free to agree any other non-compulsory terms, provided that these terms are no less favourable than the statutory rights under the LSL.

## Types Of Agreement

There are different rules for different types of agreements.

Apart from different terms and termination requirements, the main difference is that an employee engaged on a fixed term, part time, or agency basis is not entitled to severance pay and pension benefits.

## Secrecy/Confidentiality

Employees are prohibited from disclosing trade secrets or certain other confidential information. Often, a confidentiality provision containing a pre-set monetary penalty for breach is included in the employment agreement.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally, IP rights belong to the employer unless they are vested in the employee under the employment agreement.

## Hiring Non-Nationals

Hiring non-nationals is permissible but they are required to obtain a work permit. In the case of management or technical staff, the education background and working experience of the non-nationals are key features. Blue-collar non-national workers may be hired for certain specific industries or types of work, within certain quotas.

## Hiring Specified Categories Of Individuals

A business entity with over 67 employees must employ at least one disabled person. The number of disabled employee(s) shall be no less than 1% of the total number of the employees. Individuals between the ages of 15 and 16 can be employed as child employees. Unless otherwise approved by the authority, a child employee cannot do heavy or hazardous work.

### Outsourcing And/Or Sub-Contracting

Generally there are no specific rules about outsourcing and/or sub-contracting. However, there may be restrictions on outsourcing and/or sub-contracting in certain specific industries (e.g. finance), for government tenders/contracts, or in certain other specific situations.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers are allowed to change the contract only with the consent of the employee. Any changes made cannot be contrary to the LSL or other compulsory regulations.

### Change In Ownership Of The Business

Where the change is a transfer of shares, there are no specific rules and in principle all employment agreements remain unchanged. Where the change is an assignment of the business or a merger into another legal entity, unless the new employer retains and recognizes the service years of the employee, the old employer is required to give advance termination notice and pay a severance pay to the employee at the time of a change in the ownership of the business. Moreover, employees are not allowed to refuse such a change, but they can obtain severance pay if they are not retained by, or are unwilling to work for, the new employer.

### Social Security Contributions

There are two main compulsory social security contributions: labour insurance and national health insurance. Labour insurance is mainly for occupational injuries, but also covers certain other injuries or illnesses. Labour insurance contributions are split; 20% to be contributed by the employee, 70% by the employer and 10% by the competent authority. National health insurance covers non-work related injuries and illnesses. National health insurance contributions are also split between the various parties; 30% to be contributed by the employee, 60% by the employer and 10% by the competent authority. In addition, the employer is required to contribute towards other allowances payable to employees during their employment. The main one is the retirement/pension fund. There is also a welfare fund to which contributions must be made by business entities with over 50 employees. The welfare fund is used for employees' recreational and similar activities.

### Accidents At Work

An employer shall take precautions to protect their employees against occupational hazards, provide proper working conditions and welfare facilities. Employers are also responsible for accidents caused by the acts of their employees where the employees were acting in the course of their employment.



### Discipline And Grievance

There are no relevant rules relating to discipline and grievance. Such rules are usually stipulated in the employment agreement.

### Harassment/Discrimination/Equal pay

The Gender Equality in Employment Act ("GEEA") covers sexual harassment, sexual discrimination, equal pay and gender equality in the employment. Pursuant to GEEA, the employer shall take precautions against sexual harassment. Especially, employers hiring over thirty employees shall establish precaution mechanism against sexual harassment, including related complaint procedures and punishments for sexual harassment. Such precaution mechanism should openly display in the workplace.

Sexual discrimination in any forms (such as different job appointment, evaluation and promotion) is not allowed unless otherwise the nature of work only suits a special sex. Salary payment should be equal pay for equal work unless such a difference is due to justifiable reasons of non-sexual or non-sexual-orientation factors.

Most importantly, any prescription or arrangement (work rules, labour contracts or collective bargaining agreements) that shows discrimination of sex or sexual orientation in the case of retirement, severance, job leaving and termination of the employment will be deemed as null and void.

### Compulsory Training Obligations

There are rules relating to compulsory training obligations for some specialized employees. For example, the Attorney Regulation Act provides that a lawyer must receive 6 months training before being qualifying to practise law.

### Offsetting Earnings

The employer may offset an employee's debts to the employer when salary is due, but cannot make an advance deduction of wages.

### Payments For Maternity And Disability Leave

A female employee who has been in service for more than 6 months will be paid full salary during her maternity leave. However, if her period of service is less than 6 months, only half salary will be payable. Where an employee takes disability leave, the employer is responsible for payments of full salary and the necessary medical expenses.

### Compulsory Insurance

Employers are required to take out labour insurance, national health insurance, occupational hazard insurance and unemployment insurance for their employees.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

Work councils/trade unions by company, industry or occupation can be organized in accordance with the Labour Union Law ("LUL"). Pursuant to the LUL, it requires at least 30 labourers acting as promoters for the purpose of organising a labour union which shall then be registered with the local labour authority. There are various rules relating to works councils and trade unions which vary depending on the industry.

### Employees' Right To Strike

Although the role of unions is limited and there have been few large-scaled employment conflicts, employees may strike where the mediation procedure has failed and a majority of the entire membership of the labour union votes by secret ballot in favour of a strike at a general meeting of the union.

### Employees on Strike

The employer cannot fire employees who are legally on strike (as defined in "Employees' Right To Strike"). However, a strike will be illegal in the case of a labour dispute relating to rights and obligations under the laws, regulations or employment agreement or where a labour dispute is during conciliation, arbitration or decision-making process.

### Employers' Responsibility for Actions of their Employees

The employer is jointly and severally liable for any damages caused by the employee in the course of performance of his/her duties pursuant to the employment agreement.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

On terminating the employment contract, the employer must give the employee advance notice (or payment in lieu of notice) and severance pay and ask the employee to sign an acknowledgement where it terminates the agreement for certain specified reasons.

### Instant Dismissal

The employer can terminate an agreement by instant dismissal for a number of specified reasons relating to the actions of the employee, such as for violent behaviour, gross misconduct or imprisonment.

### Employee's Resignation

The employee can terminate an agreement by resignation. However, in that case the employee is not entitled to severance pay.



### Termination On Notice

The employer may terminate the agreement on notice (and with severance pay) in certain circumstances.

The minimum notice period for the employer to terminate the employment on specified grounds is:

1. 10 days for an employee who has worked for more than 3 months but less than one year;
2. 20 days for an employee who has worked for more than one year but less than 3 years; and
3. 30 days for an employee who has worked for more than 3 years.

The above notice period also applies to termination by the employee of a non-fixed term contract. However, for a fixed term contract of more than 3 years, the employee may give 30 days advance notice after the third year of the agreement.

### Termination By Reason Of The Employee's Age

The employer may require the employee to retire when the employee reaches 65 years of age.

### Termination In Cases Of Force Majeure

The employment could be terminated in cases of force majeure if the force majeure necessitates business suspension for more than one month.

### Termination By Parties' Agreement

Employment can be terminated by the parties' mutual agreement. The employer may only dismiss the employee on specified grounds (as set out in "Instant Dismissal" and "Termination on Notice" above) and is required to justify the reasons for termination.

### Directors Or Other Senior Officers

There are separate rules for firing directors or other senior officers. Directors may be discharged at any time by a shareholder's resolution.

A distinction is made between an employment contract and a contract of mandate (the LSL does not apply to the latter). The general manager/president and other senior managers with certain authority to make decisions on behalf of the employer may be on a contract of mandate. Unless otherwise agreed, a contract of mandate may generally be terminated by either party at any time on reasonable notice.

### Special Rules For Categories Of Employee

There are no other categories of employees, other than the ones already mentioned above, for whom special rules apply on termination.

### Specific Rules For Companies in Financial Difficulties

The LSL provides that if the financial difficulties of a business entity is causing the business to operate at a loss or the business is to be suspended, the employer may terminate the employment by giving a termination notice (or pay in lieu of notice) and paying severance pay. In the case of the employer winding up or liquidating his business or being adjudicated bankrupt, employees will be deemed secured creditors and have a preferred right to payment of wages which are payable under the labour contracts and which have been overdue for a period not exceeding six months.

### Restricting Future Activities

According to the Company Law and Civil Code, non-competition provisions are allowed for the general manager/president and other senior managers (who have certain authority within the business) provided they meet certain principles. A non-competition provision must be reasonable in scope and must contain measures to cover circumstances where the employee suffers losses as a result of the clause.

### Severance Payments

On termination, employees (regardless of sex) who have continuously worked in the business entity will receive either one month or half-month a month's average earnings for each full year of service.

### Special Tax Provisions And Severance Payments

Special tax provisions apply to separation payments are as follows:

1. If received in one lump sum: Exempted from tax: up to NT$175,000 multiplied by the number of service years at the time of separation

   50% exempted from tax: between NT$175,000 and NT$351,000 multiplied by the number of service years at the time of separation

   Fully taxable: annual salary over NT$351,001 multiplied by the number of service years at the time of separation

2. If received by instalments: Income taxable shall be the balance of the total amount of all instalments received in one year with the deduction of NT$758,000.

3. If portion of payment is received in one lump sum and portion by instalments: The deductable amount mentioned in the two items above shall be calculated in proportion to the amount received in one lump sum and by instalments respectively.

### Allowances Payable To Employees After Termination

Normally there should not be any such allowances, but the employer would be required to pay the allowance if it is specified in the employment agreement.



### Time Limits For Claims Following Termination

Employees have a period of 5 years from the date of leaving to claim severance payment. In the case of unfair dismissal or discrimination, employees can claim damage suffered therefrom against the employer within two years from the date of such dismissal or within 10 years from the date when the discrimination becomes known to the employee.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Annual bonuses are paid to employees at Chinese New Year and sometimes on traditional holidays during the year. Such bonus may be based on various factors, such as years of service, monthly salary, performance, etc. and is decided by the employer. Annual bonuses can represent a very significant part of the employee's annual income.

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# Thailand

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employees may bring employment disputes before Labor Officials at the Ministry of Labor. In addition, Thai Labor Courts have exclusive jurisdiction for labor claims brought within their territorial jurisdictions. The Central Labor Court has jurisdiction with respect to labor claims brought within Bangkok and the surrounding provinces. Appeals from Labor Courts go directly to the Supreme Court, bypassing the appellate level. If the place of work is not located within the territorial jurisdiction of a Labor Court, the claim may be brought in a Court of First Instance.

### The Main Sources Of Employment Law

Labor matters are generally governed by the Labor Protection Act B.E. 2541 (A.D. 1998) (as amended) and the Civil and Commercial Code. Other Laws include the Labor Relations Act, the Act Establishing the Labor Court and Labor Court Procedure, the Provident Fund Act, the Social Security Act, the Employment and Job Seeker Protection Act, the Skill Development Promotion Act, the State Enterprise Labor Relations Act, the Workmen's Compensation Act, and the Foreign Employment Act. The Thai labor force is largely non-unionized, so collective agreements do not play a large role in regulating working conditions, except in those workplaces which are unionized or which otherwise have collective bargaining agreements. The Ministry of Labor, including its various subunits, is the primary authority responsible for setting and enforcing minimum employment standards.

### National Law And Employees Working For Foreign Companies

Thai labor law provides a minimum level of protection for all employees working in Thailand regardless of nationality, origin, or the law purportedly governing their employment contracts.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Except in certain limited circumstances, Thai law does not apply to employees of Thai companies working in another jurisdiction.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

Thai law categorizes employment agreements as contracts for the hire of service.The law does not require a contract of employment to be made in writing. Where the contract of employment is in writing, the employer should provide a copy to the employee immediately after it has been signed. Thai law requires companies having ten or more employees to publish written work rules and file them with the District Labor Office.

## Mandatory Requirements:

### Trial Period

Thai law does not specifically address trial or probationary periods in employment relationships. However, under Thai law, only employees who have worked for 120 days or more are entitled to severance pay if they are terminated without cause. An employee who has worked for less than 120 days can be terminated without receiving severance pay. For this reason, many employers set probation periods of up to 119 days.

### Hours Of Work

The law provides maximum working hours based on the type of work. In general, normal working hours cannot exceed eight hours per day and 48 hours per week – or lesser hours if agreed upon by an employer and an employee. In cases of hazardous work, normal working hours may not exceed seven hours per day and 42 hours per week.

### Earnings

Employees may not be paid less than the minimum wage. From 1 January 2013, the minimum wage is THB 300, nationwide. Note that other minimum wage rates are established for certain skilled occupations.

### Holidays/Rest Periods

Employees are entitled to at least one rest day per week and one rest hour per day. In addition, they are entitled to a minimum of 13 public holidays per year, one of which must be the National Labor Day. After one year of service, employees are entitled to a minimum of six working days' paid annual leave.

### Minimum/Maximum Age

Employees must be 15 years of age or older. For those over age 15 but under age 18, additional restrictions apply, such as with respect to permissible types of work and a requirement to inform the applicable Labor inspector.

There is no maximum age of employment in the private sector. Note, however, that public sector employees are typically subject to maximum age restrictions depending on their positions.

### Illness/Disability

An employee is entitled to sick leave for such days as the employee is actually ill, but is only entitled to receive pay for 30 such days per year. When an employee cannot work because of a work-related injury or illness, this is not regarded as sick leave, and is handled separately.

When an employee takes sick leave for three or more days consecutively, the employer can request the employee to produce a medical certificate issued by a first class physician or a government clinic. If the employee cannot produce such a medical certificate, the employee must give an explanation to the employer.

### Location Of Work/Mobility

Under the Labor Protection Act, if an employer plans to relocate its place of business such that this would materially impact the employee's life or that of his/her family, the employer must notify the employees at least 30 days before the date of the relocation. Should shorter or no notice be given, the employer is obligated to pay special severance in lieu thereof, equal to 30 days' wages. Following such notice, should an employee wish to terminate the employment, normal severance obligations would apply.



### Pension Plans

A compulsory old age pension scheme for private sector employees is administered by the Social Security Office. In addition, the law has described a scheme called the Employee Welfare Fund ("EWF") which is to be established and managed by the Employee Welfare Fund Committee upon enactment of a Royal Decree.

The Royal Decree has not yet been issued, and thus the EWF is not yet in existence. Under the Labor Protection Act, employers with ten or more employees would have to be members of the EWF. The EWF is to have the same objectives as a provident fund, i.e. is to provide financial security for employees, should they resign or retire from work, and for their beneficiaries in case they die, and/or in other cases as prescribed by the Employee Welfare Fund Committee.

A provident fund may be jointly set up by the employer and the employees. Establishing such a fund is an additional benefit for employees and is not mandatory under Thai law. Contributions by the employer and the employees are based on a specified percentage of the employee's wages, in accordance with the fund's regulations. Provident funds must be managed by a professional manager licensed for this purpose. Upon termination of membership in the fund, employees are to receive their contributions and the employer's contributions which have vested, according to the relevant fund's regulations. The law provides that if an employer has already registered a provident fund and provides welfare for the employees in case of their resignation or death in accordance with the rules and procedures prescribed in Ministerial Regulations, the employer is not required by law to register its employees with the EWF.

Note that other arrangements exist for public sector employees, such as the Government Pension Fund.

### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

A pregnant employee is entitled to a maximum maternity leave of 90 days per pregnancy, including holidays, and is entitled to receive pay for up to 45 of those days. Employers are not allowed to terminate a female employee because of pregnancy. Under the Labor Protection Act, there are no other parental rights.

### Compulsory Terms

The law requires employers to provide working conditions that, at the very least, meet the minimum standards set by law, such as paying at least the minimum wage. Employers with ten or more employees must submit their written work rules to the District Labor Office and must post a copy thereof in a prominent location at the place of work. Work rules must cover such matters as working days, regular hours and rest periods; holidays and rules for taking holiday, rules on overtime and holiday work; date and place of wage payment, overtime pay and holiday pay, leave and rules for taking leave; disciplinary measures and punishment; procedures for submission of grievances; and procedures for termination of employment including severance pay and special severance pay.

Employees' records must contain the employee's name and surname; sex; nationality; date of birth or age; present address; date of commencement of employment; position or duties; rate of wages and other benefits as agreed between employee and employer; and date of termination of employment.

Documents relating to the payment of wages, overtime pay, holiday pay and holiday overtime pay must contain at least the particulars of the working day and working hours; work done by employees who receive wages on a piece-rate basis; and rate and amount of wages, overtime pay, holiday pay and holiday overtime pay. The particulars may be contained in one or more separate documents, each of which must be signed by the employee as evidence of payment. Where an employer pays an employee by transfer of money into the deposit account of the employee, evidence of the transfer is deemed as the document relating to such payment.

An employer must keep the employees' records and documents relating to payment of wages, overtime pay, holiday pay, and holiday overtime pay for a minimum of 2 years from the date of termination of employment of each employee or from the date of such payment.

### Non-Compulsory Terms

The employer and the employee are free to agree on any other terms in addition to the compulsory provisions, provided that the agreed terms are no less favorable than rights provided by statute. Agreed terms will only be enforced to if they are not contrary to public order or good morals and to the extent such terms are fair and reasonable.

### Types Of Agreement

Employment relationships are contractual in nature, whether or not the terms are reduced to writing. Contracts of employment (whether express or implied) may provide for different employment arrangements, such as fixed term, full-time, or part-time. Compulsory terms, as provided in law, are applicable regardless of the type of contract contemplated.

### Secrecy/Confidentiality

Thai law sets out provisions for protecting the employer's information, such as those in the Trade Secrets Act and the Penal Code. To prevent future disclosure and ensure protection, employers often include express terms within employment agreements that specify the types of information considered to be trade secrets or otherwise confidential. They may also include restrictive covenants as a means of protecting future confidentiality. In addition, if an employee causes damage to the employer, e.g., by releasing confidential information such that the employer suffers damages, the employer may claim for damages.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions that determine the ownership of IP rights, under the Copyright Act and the Patent Act. With respect to Copyright, copyright in work created by an author in the course of employment vests in the author, unless otherwise agreed in writing, provided that the employer is entitled to communicate such work to the public in accordance with the purpose of the employment. In a hire of work, copyright in the resulting work shall vest in the in the hirer, unless the creator and the hirer have agreed otherwise. As for patents, in the Patent Act, the right to apply for a patent for an invention made in the execution of an employment contract or a contract for performing certain work shall belong to the employer or the person having commissioned the work, unless otherwise provided in the contract. However, this does not apply where an employee does not exercise any inventive activity, but the employee has made an invention using any means, data, or report that the employee's employment has put at the employee's disposal. Moreover, the Patent Act provides that employers must provide additional remuneration to employees who develop inventions that benefit their employers.

### Hiring Non-Nationals

Employers are obliged to ensure that their employees are authorized to work in Thailand. Different requirements apply depending on the nationality/status of the individual concerned. Specific rules and exceptions for non-nationals are provided by the Foreign Employment Act and related regulations and decrees. In most cases, foreign workers must have valid work permits and visas in order to lawfully engage in work.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities, as well as restrictions on the types of work that vulnerable groups (e.g., children, pregnant women) can be required to undertake. In addition, special requirements apply to the employment of persons under age 18, as mentioned above.



### Outsourcing And/Or Sub-Contracting

Employees in subcontracting arrangements can look to any entity along the subcontracting chain for payment of sums to which the employee is entitled under the Labor Protection Act, if the direct employer does not make the required payments. Moreover, an employer who engages a person or an outsourcing company to arrange for outsourced workers to work for the employer is obligated to ensure that such workers who work in the same manner as its direct employees, receive fair rights, benefits, and welfare, without discrimination.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

An employer may only change the terms of an employment agreement with the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for a reasonable period of time after being made aware of the change).

Any change of terms to which the employee does not consent would constitute a breach of contract.

### Change In Ownership Of The Business

When there is a change in ownership of a business by share purchase, the original employer remains intact and each employee continues with the ame employer on the same terms and conditions. However, in the case of a purchase of assets, a transfer of employees from the original employer to the new employer would be contemplated. In such a situation, each employee's consent would be required. The new employer would have to accept all rights, duties, and obligations in connection with transferred employees. An employee could refuse to transfer to the new employer. In the case of such a refusal, the employee would continue to be employed by the original employer. If the original employer terminates the employee without cause, the employee would be entitled to severance pay.

### Social Security Contributions

Pursuant to the Social Security Act, B.E. 2533 (A.D. 1990), all employers are required to register for and contribute to the Social Security Fund. Both employees and the government are also required to make contributions to the Social Security Fund. Generally, employers and employees each make monthly contributions at a rate of 5% of an employee's wage (up to a maximum of THB 750 per month). If an employer fails to make the required contributions to the Social Security Fund within the specified time, the employer would be required to pay an additional 2% of the outstanding contribution which has not been made, per month of the deficiency.

As a recovery measure following the large scale flooding in 2011, the Government reduced social security contributions payable by employers and employees. Contributions were reduced from the normal 5% per month (maximum THB 750 from employer and THB 750 from employee), to 3% per month (maximum THB 450 from each), from January to June 2012. From July to December 2012, the contribution rate increased to 4% (maximum THB 600 from each). From January 2013 to December 2013, the contribution rate remained at 4%, due to the impact of the minimum wage increasing. From January 2014, the contribution rate returned to 5%.

The Social Security Fund provides seven types of benefits to employees, including sickness or injury not suffered in the course of employment, maternity, disability not suffered in the course of employment, death not occurring in course of employment, child welfare, unemployment, and old age pension.

The Social Security Act does not cover certain employees, including government officials, employees of foreign governments or international organizations, employees working in foreign countries for Thai firms, teachers at private schools, students who work for schools, universities, and hospitals, and other types of employees according to Royal Decree. Contributions paid to the Social Security Fund by employers and employees are tax deductible and the benefits payable are tax exempt.

### Accidents At Work

An employee who suffers an injury or illness due to employment is entitled to medical treatment and other compensation; in the case of death, the employee's heirs are entitled to funeral expenses and other compensation.

Under the Workmen's Compensation Fund Act, employers are required to register all their employees with the Workmen's Compensation Fund. In addition, employers are required to contribute to the fund annually (by January 31 of each year) at the rate the Labor Minister sets for the business. Applicable rates depend on the type of business and nature of the work. Contribution rates range between 0.2% and 1% of the total payroll, up to a prescribed maximum. If an employer fails to pay, the employer is required to pay an additional 3% of the outstanding contribution for each month of the delinquency. The fund provides compensation in the event of injury, illness, disappearance, or death, related to work.

The employer is not obliged to pay compensation to employees who intentionally inflict injury upon themselves or others, or who allow another person to inflict injury upon them, or if such employee was injured as a result of the employee's own intoxication beyond limits of self-control.

### Discipline And Grievance

Procedures regarding discipline and grievances are to be described in the work rules, which must be submitted to the District Labor Office. In addition, an employee may bring grievances to a Labor Official or a court.



### Harassment/Discrimination/Equal pay

The Labor Protection Act requires equal pay for men and women who perform equal work. It also provides that employers must treat male and female employees equally in their employment, unless the nature or conditions of the work does not allow the employer to do so. The law also forbids termination on the grounds of pregnancy. It forbids sexual harassment by management and inspectors.

### Compulsory Training Obligations

A business operator with 100 or more employees is required to arrange yearly labor skill training for at least 50% of its employees. If the employer fails to arrange such training, the employer is required to make a contribution to the Labor Skill Development Fund before February of the following year. Currently, the amount of the contribution is 1% of the minimum daily wage for the previous year x 30 days x 12 months x the number of employees who should have undergone training but did not. If the employer fails to make such a contribution per the above guidelines, then the employer is required to make an additional payment of 1.5% of the outstanding contribution per month, until payment is made in full.

Some professions are also subject to specific educational and training requirements.

### Offsetting Earnings

It is possible for employers to offset earnings only in certain situations. The employer may only make deductions from employees' wages for: income tax; contributions to a labor union; payment of debts to a savings co-operative or debts which have been incurred for the purpose of the employee welfare for the sole benefit of the employee (but only with the consent of the employee); security deposits or compensation for damages incurred by the employer due to willful act or gross negligence of the employee; and for contributions to provident or similar funds. Some of these deductions are limited to 10 per cent and may not, in the aggregate, exceed one-fifth of the employee's wages, unless the employer has the employee's consent. When documenting consent, it is recommended that the employer should prepare a written document and have the employee sign it.

### Payments For Maternity And Disability Leave

A pregnant employee is entitled to 90 days' maternity leave per pregnancy, inclusive of holidays, and is entitled to receive pay for up to 45 of those days.

Generally, employers would handle disability leave in a manner similar to sick leave or as an injury at work (depending on the circumstances), both discussed above. Depending on the specifics of the disability and how it was incurred, payments may be made by the Social Security Fund and/or the Workman's Compensation Fund.

### Compulsory Insurance

Please refer to "Social Security Contributions" and "Accidents at work", each above.

### Absence For Military Or Public Service Duties

Employees are entitled to military service leave for mobilization exercises for inspection, military training, or testing of combat readiness, in accordance with laws governing military service, with pay for the entire duration of leave, but not exceeding 60 days per year.

The law does not provide a category of leave for public service.

### Works Councils Or Trade Unions

Employees working for the same employer or doing the same type of work may establish a trade union for the purpose of protecting the employees' conditions of employment and promoting better relationships between employers and employees and among employees themselves. Trade unions must be registered with the registrar of the Ministry of Labor and may only operate after issuance of a license. Licenses are issued after the trade union has been investigated by the registrar to confirm that the regulations of the union are not contrary to law and public order and that it does not constitute a threat to national security or the economy.

Initially, a trade union must have at least ten members. Supervisory employees with responsibility for recruitment, promotion, sanctions, and termination of employment cannot become members of a trade union established by other types of employees, or in which such other employees are members. Supervisory employees can establish their own trade unions, but only supervisory employees can be members thereof. Trade unions registered under the law can submit demands for better conditions of employment and carry out other activities for the benefit of their members.

### Employees' Right To Strike

Employees who intend to strike must submit a demand to strike and can only do so after negotiation or reconciliation has failed. Under no circumstances may the employees strike without providing a written notice to both the Labor Dispute Conciliator and the other party. Such notice must be given at least 24 hours in advance. Even then, the right to strike may still be limited by the Ministry of Labor, if the strike would pose a threat to the economy, national security, or the public, or would be contrary to public order.

### Employees On Strike

Employers may not dismiss employees on strike simply due to their union activities. However, termination could take place for other reasons, such as dishonest performance of duties, if applicable.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except to the extent their employees act outside the scope of their employment.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases, the termination of an employment agreement must conform to the terms of the agreement, applicable work rules, and applicable law.

Under the Labor Protection Act, fixed term employment agreements will automatically terminate at the end of the fixed period, without the need to give prior notice.

If an employee is employed under an indefinite employment agreement, the employee is entitled to notice of at least one full payment cycle in advance of the effective date of termination, or payment of wages in lieu thereof. The termination notice must be on the employee's payday or in advance thereof, such that the effective date of termination would be the following payday. An employer can immediately terminate the services of an employee by making a payment of wages in lieu of notice, equal to the number of days by which the notice is deficient.

Following termination, employees may bring claims for unfair/wrongful termination. In such cases, if the labor court is of the opinion that termination was unfair/wrongful, the court may order the employer to reinstate the employee at the employee's wage rate at the time of termination. If the labor court finds that the employer and the employee cannot work together any more, the Labor Court may award monetary damages to be paid by the employer, taking account of the employee's age and tenure, employee hardship, the cause of termination, and the compensation to which the employee might be entitled. Compensation for unfair/wrongful termination is not fixed by statute, but the Labor Court is generally consistent in its calculation of damages. In successful claims, the typical award is equal to one to two months of compensation for the first year of service and one month of compensation for each subsequent year.

### Instant Dismissal

An employer may instantly terminate an employee, without notice or severance pay, if the employee dishonestly performs his/her duty or intentionally commits a criminal act against the employer; intentionally causes the employer to suffer losses; performs an act of gross negligence which causes the employer to suffer severe losses; violates the lawful and just work rules or regulations or orders of an employer after having received written warning within one year (for serious situations, a warning is not required); is absent from work without a justifiable reason for three consecutive working days, regardless of whether there is holiday in between; or is imprisoned by a final judgment (if it is an offense committed through negligence or a petty offense, it must be one that caused the employer to suffer damages).

In other cases, if the employer requires the employee to leave his/her job immediately, the employer will be required to pay wages in lieu of the advance notice required.

### Employee's Resignation

The law is written to require the employee to give at least one pay period advance notice, prior to resignation, and contracts are sometimes drafted to provide for longer notice periods (up to three months). However, from a practical standpoint, an employee may resign at any time, given the difficulty of proving damages in connection with insufficient notice.

### Termination On Notice

In case an employment agreement between an employer and an employee is indefinite, the employer is required to serve a notice of termination to the employee of at least one full payment cycle in advance of the effective date of termination, unless the period for serving such notice is stated to be longer in the employment agreement, or payment of wages in lieu thereof is made. For more information, please also see the third paragraph of item 4 above: "Firing The Employee." There are certain circumstances where employment may be terminated on notice with immediate effect (see "Instant Dismissal," above).

### Termination By Reason Of The Employee's Age

As mentioned above, Thai law does not provide a maximum age of employment in the private sector. In the private sector, retirement age depends on the employer's policy. Even if the retirement age and policy are "fair", termination by reason of the employee's age would be considered termination without cause, thereby entitling the employee to the usual severance and other payments, as well as notice requirements, etc.

### Automatic Termination In Cases Of Force Majeure

If situations arise that make it impossible for an employment contract to be performed, the parties may be excused from performance. If an agreement provides that the employment shall terminate in a case of force majeure, the employer would still have to fulfill statutory obligations toward the employee, as described herein, such as payment of severance, etc.

### Termination By Parties' Agreement

The parties are free to agree to terminate the employment agreement. However, the parties cannot contract out of the minimum requirements set forth under Thai law, such as the employer's obligations with respect to severance, notice of termination, payment for annual vacation from the current year and past years, etc.

### Directors Or Other Senior Officers

If a director is an employee, the normal requirements of the Labor Protection Act would apply, such as severance and notice of termination, with respect to the termination of employment of such person. We would offer the same comment with respect to "Senior Officers". In addition, there are specific requirements applicable to removing and appointing directors and the procedures associated therewith, as contained the Civil and Commercial Code, other related laws, and the company's Articles of Association.



### Special Rules For Categories Of Employee

There are special requirements applicable to the employment of women, pregnant women, and children, some examples of which are described elsewhere in this document.

### Specific Rules For Companies in Financial Difficulties

The Labor Protection Act provides no specific rules for companies facing financial difficulties.

### Restricting Future Activities

Generally, non-competition provisions are enforceable under Thai law, so long as they are not contrary to public order and good morals and are not unfair pursuant to the Unfair Contract Terms Act and the Labor Protection Act. In analyzing the fairness of the clause, the court is to take into account the length of time and geographic scope of the restriction; the remaining opportunity and ability of the employee to practice his/her occupation; and the lawful interests of the parties.

### Severance Payments

Statutory severance pay ranges from 30 days (1 month) to 300 days (10 months), depending on the length of the employee's service with the employer, as follows:

| Length of service | Severance payment |
|---|---|
| 120 days but less than 1 year | 30 days at the last wage rate or the last 30 days' wages for the work unit performed |
| 1 year but less than 3 years | 90 days at the last wage rate or the last 90 days' wages for the work unit performed |
| 3 years but less than 6 years | 180 days at the last wage rate or the last 180 days' wages for the work unit performed |
| 6 years but less than 10 years | 240 days at the last wage rate or the last 240 days' wages for the work unit performed |
| 10 or more years | 300 days at the last wage rate or the last 300 days' wages for the work unit performed |

An employer need not pay severance if an employee has been terminated for cause, as described above. In such cases, the employer should indicate a reason supporting such termination for cause, in the termination notice.

If an employee's employment agreement or applicable work rules and regulations provide better severance than that provided in law, the law will give effect to such superior terms. Moreover, depending on how such terms are written, it is possible that they may provide for the employee to receive statutory severance plus additional termination benefits.

### Special Tax Provisions And Severance Payments

Subject to certain conditions, a severance payment to a terminated employee is exempt from tax up to THB 300,000. In addition, for employees who have been employed at least five years, the Revenue Code provides for special tax computation.

### Allowances Payable To Employees After Termination

The Labor Protection Act does not require employers to pay any allowances to employees after termination, unless otherwise provided in the employment agreement or applicable work rules.

### Time Limits For Claims Following Termination

An employee's claim for wages or other remuneration, including disbursements, or an employer's claim for advances must be issued within two years following termination. The statute of limitations on claims for severance and unfair termination is ten years.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The Unfair Contract Terms Act empowers courts to rule on whether particular terms contained in contracts are "unfair" as defined under said Act. We have mentioned the application of this law to specific aspects of employment agreements elsewhere in this chapter. However, we should point out the general applicability of this law, given that employment agreements are typically form contracts. Thus, an employee, as the weaker party, can challenge virtually any terms of an employment agreement by alleging that they are unfair. For this reason, it would be expected that a court would interpret the terms of an employment agreement in favor of the employee and against the employer. It is also important to note that the Labor Protection Act takes a similar approach; if a court finds that an employment agreement, work rules, regulations, and/or orders give an employer improper advantage over an employee, the court would be empowered to order that such shall be applicable only to the extent they are fair and appropriate in the circumstances.

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# Turkey

# Turkey

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Disputes arising out of or in connection with employment agreements or the Labour Code must be brought before an Is Mahkemesi (IM) (Labour Court). If no IM is established in the relevant place, then the Asliye Hukuk Mahkemesi (Civil Court of First Instance) in the capacity of IM reviews such disputes.

### The Main Sources Of Employment Law

The Labour Code dated 2003 and numbered 4857, the Press Employment Code dated 1952 and numbered 5953, the Maritime Employment Code dated 1967 and numbered 854, statutes and regulations issued in relation with these Codes, Court of Appeal decisions, collective bargaining agreements and international multi or bilateral treaties and agreements are the main sources of employment law.

### National Law And Employees Working For Foreign Companies

National law will apply to Turkish citizens working for a non-Turkish company conducting business in Turkey. However, for its non-nationals, parties' individual contract terms will apply. In terms of cases regarding public policy, Turkish law will apply.

### National Law And Employees Of National Companies Working In Another Jurisdiction

National law will apply to employees of national companies working in another jurisdiction.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Unless otherwise provided in the Labour Code, employment agreements are not subject to any special form. If their duration is for a minimum one year, they must be in writing.



### Mandatory Requirements:

#### Trial Period

Trial period regulations have been amended with the Law dated 2011 and numbered 6111. In accordance with the new regulations, in the event that the parties agree, a maximum period of two months may be determined as a trial period under the employment agreement. If the employee is younger than 25 years of age, the trial period may be determined for a maximum of four months. During the trial period, any party may terminate the employment agreement without giving reason and without giving any notice.

#### Hours Of Work

Subject to a few exceptions, employees may work a maximum 45 hours per week. If the employee works more than 45 hours per week (overtime), for each hour of overtime his/her salary is multiplied by 1.5. In cases where the weekly working time has been set by contract as less than 45 hours, work that exceeds the stated weekly working time, but only up to the maximum of 45 hours per week, is deemed to be work at extra hours. Each extra hour shall be remunerated at 1.25 times the normal rate. If the employee who has worked overtime or extra hours so wishes, rather than receiving overtime pay he/she may use, as free time, one hour and thirty minutes for each hour of overtime and one hour and fifteen minutes for each extra hour worked. The employee shall use the free time to which he is entitled within 6 months, within his working time and without any deduction in his wages.

The employee's consent shall be required for overtime work. Total overtime work shall not be more than two hundred seventy hours in a year.

#### Earnings

There are mandatory requirements in terms of minimum wages (which are reviewed every six months), payment times, payment procedures and overtime payments. In general wages are paid in cash and in Turkish Liras but it may be decided among the employee and the employer that the wage shall be paid in foreign currency. Wage should be paid once a month at the least but the payment period can be decreased to one week through labour contracts.

#### Holidays / Rest Periods

The holidays and rest periods have been determined in the Labour Code as follows:

1. minimum 14 days' paid holiday for those employees whose employment agreement lasted one year to five years;
2. minimum 20 days' paid holiday, for those whose employment agreement lasted 5 to 15 years; and
3. minimum 26 days' paid holiday, for those whose employment agreement lasted more than 15 years.

For employees below the age of eighteen and above the age of fifty, the length of annual leave with pay must not be less than twenty days. The length of annual leave with pay may be increased by employment contracts and collective agreements.

#### Minimum/Maximum Age

Generally children younger than 15 years old cannot be employed, (but other rules apply in certain cases). There is no maximum age limit.

#### Illness/Disability

There are some mandatory requirements regarding illness and disability of the employee. If an employee can not work due to his/her illness or disability, he/she receives temporary incapacity benefit for the days he/she can not go to work; such situation should be determined by a report received from the authorized hospitals. If the employee can not work anymore due to a labour accident or a labour illness, he/she may be retired and have an indemnification.

#### Location Of Work/Mobility

There are no mandatory requirements in this respect but there are definitions of location of work in terms of private and col¬lective labour law. Places where the employees work are deemed as work places. Related places to the work place in respect of the quality and the conduct of the work and other auxiliaries like places to rest, brass feed, eat, sleep, have a bath, be consulted by a doctor, physical or professional training centres, courtyards and offices and the vehicles are deemed as work places. For example, if an employee works as a driver, the vehicle, which he/she drives, is accepted as the work place under the Labour Code and any accident, which happens in the vehicle, is accepted as a labour accident.

#### Pension Plans

There are some mandatory requirements regarding pension plans. Each month, a premium of "old age insurance" is cut from the salary of the employee, and when the retirement age arrives, the employee is entitled to have a retirement pension from the government.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The regulations regarding pregnant employees and maternity were also amended by the Law dated 2011 and numbered 6111. Under the new regulations, pregnant employees are entitled to have a leave of sixteen weeks; eight weeks before the birth, eight weeks after the birth. Moreover, with consent from her doctor, the employee can continue working until three weeks prior to the birth. The remaining time from the pre-birth leave shall be added to the after birth leave. In the event that the employee goes into premature birth, the remaining time from her eight weeks pre-birth leave shall be added to the after birth leave.

Also, pregnant employees may have an unpaid leave up to six months. Further, female employees shall be allowed a total of one and a half hours nursing leave per day, in order to enable them to feed their children below the age of one.

### Compulsory Terms

There are no other compulsory terms.

### Non-Compulsory Terms

Parties are free to agree to non-compulsory terms if these provisions are no less favourable to the employee than the Labour Code or the relevant collective bargaining agreement.

### Types Of Agreement

There are several types of employment agreements under the Labour Code. Main types are employment agreement without duration, employment agreement with determined duration, employment agreement with partial duration (part-time, upon calling). Agreements having a duration determined should be in writing.

### Secrecy/Confidentiality

Whereas no specific rule is imposed under employment law legislation, the general principles of the Law of Obligations will apply to maintain the confidentiality of trade secrets. Parties may have a written confidentiality agreement, and in the event that the employee violates the agreement, he/she should pay an indemnification to the employer.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

There are regulations under Turkish IP legislation. In the event that the employer claims for a full or partial right for the service invention of the employee, the employee has the right to demand the payment of a reasonable fee for such invention; however it must be kept in mind that such situation may vary depending on the circumstances. Additionally, intellectual property rights other than inventions belong to the employer in principle.

### Hiring Non-Nationals

Non-nationals may work in Turkey only with a work permit received from the Ministry of Labour and Social Security. In the event that it is determined that a non-national is working in Turkey without a work permit, such employee will be deported and the work place, which has employed such person, should receive an administrative fine.

### Hiring Specified Categories Of Individuals

Companies with over 50 employees must employ a certain number of disabled people and former criminals, the precise percentage of which is determined by the Council of Ministers each year; people younger than 18 years old cannot be employed for certain jobs, or at night; and women cannot work underwater or underground.



### Outsourcing And/Or Sub-Contracting

Under the Turkish Labour Code, in certain type of works, employees may be outsourced. In the event that a part of the work is sub-contracted to a sub-contractor, the sub-contractor is jointly liable with the chief contractor towards the employees. It has been regulated under the Turkish Labour Code that the connection between the subcontractor who undertakes to carry out work in auxiliary tasks related to the production of goods and services or in a certain section of the main activity due to operational requirements or for reasons of technological expertise in the establishment of the main employer (the principal employer) and who engages employees recruited for this purpose exclusively in the establishment of the main employer is called “the principal employer-subcontractor relationship”. The principal employer shall be jointly liable with the subcontractor for the obligations ensuing from Turkish Labour Code, from employment contracts of subcontractor’s employees or from the collective agreement to which the subcontractor has been signatory.

It must be kept in mind that the rights of the principal employer’s employees shall not be restricted by way of their engagement by the subcontractor, and no principal employer – subcontractor relationship may be established between an employer and his ex- employee. Otherwise, based on the notion that the principal employer- subcontractor relationship was fraught with a simulated act, the employees of the subcontractor shall be treated as employees of the principal employer. The main activity shall not be divided and assigned to subcontractors, except for operational and work- related requirements or in jobs requiring expertise for technological reasons.

## 03. Maintaining The Employment Relationship

### Changes To The Contract

Provided that the requested change is accepted by the employee, employers are allowed to make changes to the contract.

Substantial amendments to be made in the employment agreement should be notified to the employee in writing and such amendment is effective only if the employee accepts such amendment in writing within six business days after the receipt of the letter of the employer.

### Change In Ownership Of The Business

If ownership of the business changes, the employment contract is directly transferred to the new employer without prejudice to all rights and obligations of employees. In such case, the new employer must inform and register the transfer with the District Working Directorate and the Social Insurance Institution. Transfer of ownership does not grant a justifiable reason to the employee, unless there is a major change in working conditions.

### Social Security Contributions

Both the employer and the employee must pay in the compulsory social security contributions.

### Accidents At Work

There are rules to protect employees from the accidents at work. Employers should take all the necessary measures to protect employees against any possible accidents under the related legislation and inform the employees about the labour health and security. If the employer does not comply with such liability, Social Securities Institution requests the payment owed to the employee due to the labour accident from the employer. In the event that a salary is given to the employee, some part of such salary shall be paid by the employer. The employee or the relatives of the employee shall initiate a lawsuit claiming for material and moral indemnification. In addition, if the employee receives a report more than ten days after a labour accident, a criminal law suit will be initiated against the employer. Employers may take out comprehensive liability insurance for the payments to be made due to labour accidents.

Any labour accident should be notified to the District Directorate of the Ministry of Labour and Social Securities within 48 hours.

### Discipline And Grievance

There are no rules relating to discipline and grievance.

### Harassment/Discrimination/Equal pay

The Labour Code forbids discrimination on grounds of language, race, gender, political and philosophical beliefs, religion and sex. Part-time employees cannot be treated differently from full-time employees. Employees are protected from sexual and moral harassment. The concept of equal pay also exists.

If the employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up to his/her four months' wages plus other claims of which he/she has been deprived.

### Compulsory Training Obligations

There are no rules relating to compulsory training obligations.

### Offsetting Earnings

The employer can not exercise wage deduction penalties for the employees for reasons other than those specified in the employment contract.

Deductions to be made from employee's wages such as penalties should be forthwith notified to the employee along with the reasons thereof. Such deductions can not exceed two days wages in a month or two days' earning of the employee in wages paid against piece or amount of work performed.

Such deductions are deposited with the account of the Ministry of Labour and Social Securities within one month from deduction for utilization for the training and social services of the employees, in a bank established in Turkey. Every employer is obliged to keep a separate account of such deductions.



Also the employer may deduct the wages of the employees in the rate of ¼ only if the employer receives a resolution from the court or the enforcement office regarding the deduction. Such deducted amount of the wages shall be paid by the employer to the court or the enforcement office, who has sent such resolution.

### Payments For Maternity And Disability Leave

Pregnant women and employees who cannot work due to accidents at work or who suffer illness are entitled to payment for certain working days upon the report received from the authorized hospitals. If an employee cannot work anymore after a labour accident, he/she shall be entitled to a certain indemnification and shall be deemed retired.

### Compulsory Insurance

In case of an employer's insolvency, bankruptcy or winding-up, in order to protect the employees' last three months' salary, employers must establish a salary guarantee fund. An employer must also register its employees with the Social Securities Institution as of the date the employee starts working.

### Absence For Military Or Public Service Duties

In the event that the employee is absent for military service duties, the employment contract is terminated and severance allowance is paid to the employee, provided that the employee is entitled thereto.

### Works Councils or Trade Unions

There is a different code regarding the unions, which is the Unions and Collective Bargaining Agreement Code dated 2012, numbered 6356. Under the Unions and Collective Bargaining Agreement Code, collective bargaining agreements, types of unions, rights of the employees, who are a member of a union, are regulated. It has been determined under the Turkish Labour Code that becoming a member of a union or participating in union activities outside working hours or with the consent of the employer within the working hours and acting or acting in the capacity of or seeking office as a union representative shall not constitute a valid reason for termination of the agreement. In the event that an agreement of an employee is terminated for these reasons then the security compensation for such a dismissed employee may be determined as a maximum of 12-months of salary instead of a compensation of 8-months salary which is the regular compensation for employees dismissed for reasons other than the aforementioned ones.

### Employees' Right To Strike

The Unions and Collective Bargaining Agreement Code allows a 'legal strike'. Accordingly, if conflicts arise during the negotiation of a collective bargaining agreement, in order to protect employees' economic, social and working conditions, employees may go on strike.

**Employees On Strike**

Going on 'legal strike' in itself does not grant the employer the right to fire employees.

Employers' Responsibility for Actions of Their Employees

In principle employers are responsible for the actions of their employees.
Although the employer's responsibility for actions of their employees is not regulated under the Turkish Labour Code, such responsibility is subject to the general principles of the Turkish Code of Obligations which states that the employer is responsible for the damages caused by its employees during the performing of their obligations.

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# 04. Firing The Employee

**Procedures For Terminating the Agreement**

If there are more than 30 employees working, the employer can only dismiss an employee with more than six months service, in writing, and on justifiable grounds arising out of or in connection with the capability or behaviour of the employee or requirements of the job or working site.
There are certain time limits to be followed in termination:

1. two weeks, for those whose employment agreement lasted less than 6 months;
2. four weeks, for those whose employment agreement lasted 6 months to 1.5 years;
3. six weeks, for those whose employment agreement lasted 1.5 to 3 years; and
4. eight weeks, for those whose employment agreement lasted more than 3 years.

During the term of notice the employer must grant the employee the permission to seek new employment within working hours without any deduction from his/her wage. The time devoted to this purpose should not be less than two hours daily and if the employee so requests such hours may be added together and taken at one time. But if the employee wishes to take these hours at one time, he must do so on the days immediately preceding the day on which his employment ceases and must inform the employer in advance.

**Instant Dismissal**

An employer can terminate the agreement by instant dismissal on the following grounds:

1. health reasons
   a. if the employee has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month.
   b. if the Health Committee has determined that the suffering is incurable and incompatible with the performance of the employee's duties.
2. circumstances against morals and goodwill;
   a. if, when the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or by giving false information or making false statements;
   b. if the employee is guilty of any speech or action constituting an offence against the honour or dignity of the employer or a member of his family, or levels groundless accusations against the employer in matters affecting the latter's honour or dignity;
   c. if the employee sexually harasses another employee of the employer;
   d. if the employee assaults or threatens the employer, a member of his family or a fellow employee, or the employee arrives at the work place with alcohol and drinks alcohol in the work place,
   e. if the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets;
   f. if the employee commits an offence on the premises of the undertaking which is punishable with seven days' or more imprisonment without probation;
   g. if, without the employer's permission or a good reason, the employee is absent from work for two consecutive days, or twice in one month on the working day following a rest day or on three working days in any month;
   h. if the employee refuses, after being warned, to perform his duties;
   i. if either wilfully or through gross negligence the employee imperils safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer's property or not, and the damage cannot be offset by his thirty days' pay.
   j. if the employee refuses, after being warned, to perform his duties;
   k. if the employee refuses, after being warned, to perform his duties.

An employee can also terminate the agreement by instant dismissal on the first three of the above grounds. In addition the employee has the right to terminate his/her employment agreement if his/her salary or other rights are not calculated or paid properly.

The right to break the employment contract for the immoral, dishonourable or malicious behaviour of the other party may not be exercised after six working days of knowing the facts, and in any event after one year following the commission of the act, has elapsed. The "one year" statutory limitation shall not be applicable, however, if the employee has extracted material gains from the act concerned.

### Employee's Resignation

An agreement can be terminated by the employee's resignation. In such case, the employee can not receive any severance payment.

### Termination On Notice

The employer and the employee can terminate the employment agreement on notice. The minimum period of notice varies between two weeks and eight weeks depending on the length of service. (Please see the "Procedures For Terminating The Agreement" section).

### Termination By Reason Of The Employee's Age

Employment agreements may not be terminated by reason of the employee's age. Although the employee is entitled to be retired, he/she may continue to work upon his/her choice.

### Automatic Termination In Cases Of Force Majeure

Pursuant to the general principles of the Law of Obligation, in case of force majeure, contracts can be terminated, provided that certain requirements are met.

### Termination By Parties' Agreement

Employment agreement can be terminated by the parties if the termination ground is also accepted by the employee. Any such termination must be on justifiable reasons.

One month after the employee's final day of employment (the termination date), the employer and employee may choose to sign a document which states that there are no outstanding debts between them. In order for this to be valid, the statement must (i) be in writing, (ii) be signed after a minimum period of one month after the termination date, (iii) specify the type and amount of receivable which existed between them. Payment made to the ex-employee must be made in full.

### Directors Or Other Senior Officers

There are not any separate rules to fire the directors or other senior officers but simply terminating the agreement does not bring the directorship to an end. In order to do that, certain requirements of commercial law, in particular relating to articles of association of the company must be met.

### Special Rules For Categories Of Employee

There are no special rules for any other categories of employee.

### Specific Rules For Companies in Financial Difficulties

If the creditors come to the company for attachment, adequate assets of the employer, which cover a certain amount of the employees' salaries, must be separated and they cannot be touched for attachment.



### Restricting Future Activities

There are some rules relating to restriction of future activities for example non-competition provisions. Moreover in order for such non competition provisions to be valid, the place, subject and time limit of such non-competition must be specified and determined. However, in any case such restrictions cannot hinder freedom of working. Non-competition provisions are only applicable and valid when the employment relationship provides the employee with client portfolios, information on production secrets, or the employer's operations, and usage of this information would damage the employer.

### Severance Payments

Employees are entitled to severance after one year of working. If the employee resigns, severance payment will not apply. However, in the event that the employee terminates his/her employment agreement with a just cause, his/her severance payment should be made. In the event of resignation due to military service and retirement, and resignation of the women employees within one year after getting married, severance payment shall be paid. If the employee dies, the severance payment shall be paid to the heritor of the employee.

Severance payment is regulated on the grounds of public order, thus reasons entailing severance payment cannot be changed by the parties even in favour of the employee. There is a certain statutory cap on severance payments, which is updated each year.

### Special Tax Provisions And Severance Payments

No taxes will be levied on the statutory cap of severance payments. If the severance payment exceeds the legal cap, then it will not be deemed severance and thus tax will be levied thereon.

### Allowances Payable To Employees After Termination

Employers are not required to contribute towards any allowances payable to employees after termination. However, in case of change of ownership of business, a former employer's lia¬bility towards its employees continues jointly with the new employer for an additional two years.

### Time Limits For Claims Following Termination

If during termination no reason is mentioned or if the employee claims that the mentioned reason is not justifiable, these claims must be issued within one month of termination. No specific time limits for severance payment and notification compensation are envisaged in the Labour Code. Hence, as per the general statute of limitation provided in the Law of Obligations, severance payment and notification compensation claims must be issued within ten years of termination. However salary claims must be issued within five years of the date on which payment was/should have been made.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

Within one month of the termination of employment agreement by the employer, the employee may initiate a lawsuit for re-employment claiming that no reason is identified by the employer on termination or the employer's reason is not justifiable. The burden of proving that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if he claims that the termination was based on a reason different from the one presented by the employer.

In the event that the court does not accept the arguments of the employer, the termination will be deemed invalid. In such case, the employee shall request from the employee his/her re-employment. Upon such request, the employer must re-employ the employee, and if not, the employer must pay compensation to the employee, ranging from four to eight months of the employee's salary as labour security indemnification and four months of the employee's salary as the salary for the time passed during the trial. Such lawsuit may be initiated by the employees having an employment period more than six months and who have worked in work places, which employ more than thirty employees.

Employer's representatives who manages the complete enterprise and his/her assistants and the employer's representatives who manage the complete enterprise and are authorized for employees' admission and dismissal may not initiate such lawsuit.

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# United Kingdom - England & Wales

# United Kingdom - England & Wales

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Employment Tribunal ("ET") has exclusive jurisdiction for most claims, but contractual claims can be brought either in the civil court (High Court or County Court) or, up to certain limits, in the Employment Tribunal, at the choice of the claimant. There are different rules which apply depending on the jurisdiction chosen.

There is now a fee structure for bringing claims in the ET (and a remission scheme for claimants with income/capital below certain thresholds)

### The Main Sources Of Employment Law

The UK is a common law jurisdiction. All employment arrangements are governed by general common law principles of contract law, but there are various national legislative requirements which over-ride those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements and common practice all form part of the contractual relationship. The main sources of legislation include the Employment Rights Act 1996 and the Equality Act 2010, which brings together previous discrimination legislation including the Sex Discrimination Act 1975, the Disability Discrimination Act 1995 and the Equal Pay Act 1970. A significant amount of regulation is introduced by secondary legislation. Non-binding Codes of Practice are taken into consideration by the ET when judging best practice; European legislation and ECJ court decisions are also relevant.

### National Law And Employees Working For Foreign Companies

The statutory rights under national law will apply to all individuals physically working in the UK, regardless of their nationality, and regardless of the law governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under national law will usually apply only when the employee is physically working within the jurisdiction of the ET. However, contractual law may still apply in appropriate cases.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract to be in writing. However, every employer is required to provide each employee with a written statement of particulars of certain terms of the agreement, not later than two months after the beginning of the employee's employment (see "compulsory terms" below).

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide trial periods, otherwise known as 'probationary periods', when engaging new employees, but it is common in practice to do so.

#### Hours Of Work

Subject to certain exceptions, there is a requirement that unless an employee opts out, he/she may only work 48 hours per week (averaged out over a 17 week period). The opt-out must comply with certain statutory requirements.

#### Earnings

There is a restriction prohibiting employees from earning below a minimum hourly wage (which is reviewed annually). The current rate (since 1 October 2013) for employees aged 21+ is £6.31 per hour, but there are different (lower) rates for other employees, depending on their age.

#### Holidays / Rest Periods

There is a requirement that employees must take a minimum of 5.6 weeks paid holiday per year (pro rata for part-time employees). There are also various compulsory daily and weekly rest periods and breaks which have to be observed.

#### Minimum/Maximum Age

There is a normal minimum age of 14 (which can be varied in certain cases), below which employees cannot work. Different rules (e.g. on working time) apply to children or young workers. There are no maximum age limits.

#### Illness/Disability

There are no mandatory requirements relating to illness and disability. However see 'Harassment/Disability/Equal Pay' below.

#### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

#### Pension Plans

Employers are required to provide employees with information relating to pensions and pension schemes.

On 1 October 2012, a new pensions auto-enrolment regime came into effect. UK employers are now required to automatically enrol certain eligible workers, "jobholders", into a pension scheme and to pay a minimum level of contributions to the scheme. Following the implementation of the new regime, each employer has been given its own "staging date" from when it must comply with the regime. The staging date depends on the size of the employer's PAYE scheme, with the largest PAYE schemes being required to comply first.

#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

A range of "family-friendly" rights exist, including maternity leave and pay, paternity leave and pay, adoption leave and pay, parental leave and pay, time off for dependants and part-time working. Employees who can satisfy the appropriate qualifying conditions for the right in question can enjoy, or can apply for, their statutory rights in this regard. Different rules apply to different rights, and it is not possible to summarise all the details (most of which are set out in various Regulations) within the scope of this book.

### Compulsory Terms

The terms that must be provided to the employee no later than two months after the beginning of the employee's employment includes the following: the names of the parties; the date when employment begins and when continuous employment began; the scales and intervals of pay; the hours of work; holiday entitlement; provisions relating to sickness or injury; provisions relating to pension and pension schemes; place of work; length of notice or anticipated fixed term; job title/job description; any collective agreements which apply; certain information regarding grievance and disciplinary procedures. For employees posted abroad for more than one month, additional information is required (the currency in which remuneration is to be paid, any additional remuneration or benefits to be provided and the terms and conditions relating to return to the UK).

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights.

## Types Of Agreement

All employment relationships are contractual in nature, whether or not the terms have ever been reduced to writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term, variable, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated.

There are discrimination laws which prevent employees from being treated less favourably than other employees because of working part-time or working on a fixed term contract.

## Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied into the employment relationship.

During the employment relationship an employee is under an implied duty to respect the confidentiality of the employer's commercial and business information. Therefore, information that an employee is expressly told is confidential, and obviously is confidential, is protected (without express covenant) during employment.

After employment, only trade secrets are protected by the implied duty of confidentiality. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment.

In addition to the implied duties, employers will often include in the employment contract an express term specifying the type of information that is a trade secret, and therefore protected, to prevent future disclosure. They may also include restrictive covenants as a means of protecting future confidentiality (see below).

## Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights.



## Hiring Non-Nationals

Employers are obliged to ensure that all employees are entitled to work in the UK. Different requirements apply depending on the nationality/status of the individual concerned. In broad terms, EEA nationals (subject to certain exceptions) have an automatic entitlement to work in the UK. The requirements for other nationalities have undergone a massive and dramatic change as from November 2008, when the former multiple entry routes were condensed into 5 "tiers" (of which only 4 remain in use today), and a points-based approach to entry entitlement was adopted.

An employer will be liable to a civil penalty if he negligently employs someone who is not entitled to work in the UK and will commit a criminal offence if he knowingly employs such a person.

Employers will often include a warranty in the employee's employment contract that the employee is entitled to work in the UK. Although the warranty will not prevent the employer from liability, it will put some of the burden on to the employee, as the employee will be in breach of contract if he is not entitled to work in the UK.

## Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

## Outsourcing And/Or Sub-Contracting

There are specific rules relating to outsourcing, insourcing and where there is a change of outsourced service provider. All of these scenarios are regulated by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), although it should be noted that during the course of 2014 certain amendments to the TUPE regulations will be brought into force by virtue of the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014. In situations where TUPE applies, employees carrying out the work in question automatically transfer with the work and thereby become employees of the new entity carrying out the work. The employees must generally remain on exactly the same terms of employment as they enjoyed prior to the transfer (with the exception of pension arrangements, where there are special rules which apply depending on the nature of the previous pension provisions). The one exception is where the new employer can demonstrate that there are economic, technical or organisational reasons which require changes to the workforce to be made. Currently, even changes which have been "agreed" by the employee will be voidable if they are changes which are "connected" to the transfer, but this will change during the course of 2014.

There are obligations imposed on both the old and the new employers to consult with the affected employees through elected representatives, or a recognised Trade Union, prior to the transfer taking place (and financial penalties for failure to do so). At some point during 2014, the rules will be relaxed for micro-businesses, to allow them to consult with employees direct.

Any dismissal held to be "connected with the transfer" is automatically unfair unless it can be proved that it was for economic, technical or organisational reasons entailing a change in the workforce.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with common law contractual principles, an employer may not change any terms of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change).

Any change of terms to which the employee does not consent will amount to a breach of contract. If the change is a significant one which goes to the root of the contract, the employee is entitled to resign and treat the contract as at an end. In so doing, the employee may also claim that he has been constructively dismissed (and seek damages accordingly). However, depending on the change in question, the wording of the contract, the reasons for the change and the consultation carried out before the change, the employer may have a defence to a breach of contract or constructive dismissal claim.

### Change In Ownership Of The Business

When there is a change in ownership of a business (except a change merely in the shareholding ownership), under the TUPE rules (see above) all employees are automatically transferred to the new employer on the same terms and conditions. These rules apply also where only a specific part of a business changes ownership.

There are obligations imposed on both the old and the new employers to consult with the affected employees though elected representatives, or a recognised Trade Union, prior to the transfer taking place (and financial penalties for failure to do so). At some point during 2014, the rules will be relaxed for micro-businesses, to allow them to consult with employees direct.

Employees are allowed to refuse to transfer to the new employer. However, if they do they will be deemed to have resigned and will not be entitled to any compensation (unless the refusal relates to a failure to maintain the same terms and conditions after the transfer).

### Social Security Contributions

Employers and employees are required to make social security contributions (rates are determined annually). Employers are also required to contribute towards allowances payable to employees during their employment. These allowances include sick pay, maternity pay and paternity pay.

### Accidents At Work

Employers have a common law duty to have regard to the safety of their employees. Employers are also responsible under common law for accidents caused by the acts of their employees where the employees were acting in the course of their employment. It is compulsory for the employer to take out insurance to cover potential claims by employees in this regard.



In addition to common law duties, a number of obligations are imposed on employers through legislation (most significantly the Health and Safety at Work Act 1974). The employer also owes specific statutory duties to members of the public who are affected by the activities of the employer, and other people's employees working on their premises. In some instances, a breach of the employer's statutory duties may give rise to criminal and civil liability.

### Discipline And Grievance

In 2004 a statutory discipline and grievance procedure was introduced, but faced universal criticism, and it was repealed wholesale with effect from April 2009. In its place there is now a "voluntary" code of practice, known as the ACAS Discipline and Grievance Code of Practice. Although employers are not obliged to follow its guidelines when dealing with disciplinary or grievance matters, a failure on the part of either party to follow the Code of Practice can affect the level of unfair dismissal compensation awarded (the Employment Tribunal is given a power to vary the award, at its discretion, by up to 25%).

The Code of Practice requires the employer to properly investigate the matter, to notify in writing the findings to the employee, to hold a disciplinary hearing or meeting, to notify in writing the decision of the employer following that hearing to the employee, and to give the employee a right of appeal against the decision.

### Harassment/Discrimination/Equal pay

Under the Equality Act 2010, employees are protected from discrimination because of sex, age, sexual orientation, pregnancy and maternity, marital status, race, religion or belief, disability and gender reassignment (the "protected characteristics"). Employees are also protected from discrimination on grounds of part-time status and fixed-term status.

Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), on termination or even after the employment has ended (for example in writing the reference).

In the case of discrimination because of a protected characteristic(s) the discrimination may be direct (for example refusing to employ a man or woman), perceived (for example where an employee is wrongly perceived to have a protected characteristic and suffers discrimination), associative (for example where an employee receives less favourable treatment because of an employee's association with someone who has a protected characteristic) or indirect (for example by imposing a condition which puts a particular group at a particular disadvantage and which cannot be justified). However, in the case of discrimination because of pregnancy or maternity there are still no provisions for dealing with indirect discrimination.

Whilst the Equality Act 2010 sought to introduce a new concept of combined discrimination, the Government has not, as yet, introduced this concept. Whilst combined discrimination shows no signs of coming into force, the Government has not repealed this section of the Equality Act 2013 yet.

There is no qualifying period of employment for protection from discrimination. Discrimination can lead to a claim in the Employment Tribunal and there is no limit to the damages which can be awarded. Damages are calculated so as to put the claimant in the position they would have been in if the unlawful discrimination had not taken place, plus an element for injury to feelings (which generally ranges from £600 to £30,000 depending on the severity of the discriminatory behaviour). Compensation may be awarded for personal injury if the employee can show that the discrimination caused the harm. The tribunal will not normally award punitive damages, but in rare cases, aggravated damages may be awarded to an employee if a tribunal finds that the respondent was malicious, insulting or particularly heavy handed.

Harassment is a separate type of claim, but is linked with discrimination. It involves unwanted conduct that has the purpose or effect of violating a person's dignity or creating an offensive, intimidating or hostile environment. It is unlawful if it is related to any of the protected characteristics listed above.

Victimisation is also a form of discrimination that involves treating a person less favourably because (s)he has complained (or intend to complain) about discrimination, or because (s)he has given evidence in relation to another person's complaint. An employee must not be disciplined or dismissed, or suffer reprisals from colleagues, for complaining about discrimination or harassment at work.

The concept of equal pay, previously set out in the Equal Pay Act 1970, has been incorporated into the Equality Act 2010. It provides that a woman employed at an establishment in Great Britain is entitled to enjoy contractual terms that are as favourable as those of a male comparator in the same employment, provided the woman and the man are employed on equal work.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/expectations. However, employees working for employers with 250 or more employees are entitled to request time off work to undertake study or training. The right was going to be extended to all employees from 6 April 2011. However, the plans were shelved, and there are currently no proposals to extend it further.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts. However, the employer may only make a deduction from the employee's wages if it is required or permitted by a statutory or contractual provision; or the employee has given his prior written consent to the deduction.

### Payments For Maternity And Disability Leave

Employees will benefit from certain payments subject to satisfying the relevant necessary requirements. To trigger statutory maternity pay entitlement, a woman must have earned a minimum amount (reviewed annually) prior to going on maternity leave, must have accrued at least 26 weeks' continuous employment as at the end of the "qualifying week" (the 15th week before the expected week of childbirth) and must still be employed during that week.



With regard to disability leave/sickness absence, an employee will be entitled to receive statutory sick pay (the amount of which is determined by statute, and reviewed annually) from the fourth day of consecutive absence, subject to earning a minimum amount on average beforehand. The maximum entitlement is 28 weeks.

If payments are made in this regard, the employer can, subject to certain conditions, deduct these from the social security contributions that they are otherwise due to pay.

The Government is looking to introduce "shared parental leave" in 2015. This will allow parents to share the 50 weeks of maternity leave usually only granted to the mother (maternity leave is 52 weeks in total, however the mother has to take 2 weeks as compulsory maternity leave), subject to certain procedural requirements.

### Compulsory Insurance

Employers are required to maintain insurance under an approved policy with an authorised insurer, against liability for bodily injury or disease sustained by employees during, and arising out of, their employment. The employer must not be insured for less than £5 million in respect of any one occurrence.

Employers must ensure that they display copies of the insurance certificate at every place where they carry on business so that it can be easily seen and read by employees.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties, but there is no right to be paid during such leave.

### Works Councils or Trade Unions

An employer may voluntarily agree to recognise a Trade Union. By virtue of the Trade Union and Labour Relations (Consolidation Act) 1992 a Trade Union can demand recognition if a sufficient proportion of the workforce desire it. To do so, a Trade Union must firstly make a written request to the employer and if not successful, may make an application to the Central Arbitration Committee. It is important to note that irrespective of the outcome, no further applications may be made by that Trade Union or a substantially similar unit for a period of three years.

An employee who is a member of a Trade Union has certain rights in relation to his employer. For example: dismissal for membership of, or for taking part in the activities of, an independent Trade Union is automatically unfair for the purposes of unfair dismissal and higher awards of compensation may, in some circumstances, be made; action short of dismissal against an employee or subjecting an employee to a detriment for membership of, or for taking part in the activities of, an independent Trade Union gives the employee the right to complain to a tribunal which may award him or her compensation; a Trade Union member has the right to time off work without pay to take part in Trade Union activities. In addition, a Trade Union official has the right to take time off with pay for Trade Union duties.

Under the Trade Union and Labour Relations (Consolidation) Act 1992 an employer has a duty to consult with appropriate representatives of any employees who may be affected where the employer is proposing to dismiss as redundant 20 or more employees within a period of 90 days or less. Although the legislation includes a requirement that the employees be at "one establishment", this requirement has been the subject of significant judicial scrutiny, and in January 2014 the Court of Appeal referred the point to the European Court for a ruling.

### Employees' Right To Strike

There is no general right for employees to strike. However, certain immunities will be granted in respect of industrial action if there is a Trade Union involved, provided the action is conducted strictly in accordance with statutory requirements (e.g. conducting a ballot beforehand).

### Employees On Strike

Employers can still dismiss employees on strike if the strike was not properly authorised. Even if the strike was validly authorised, after a certain period the employer can dismiss employees. Other courses of action may also be open to the employer depending on the circumstances (e.g. withholding pay, seeking an injunction, claiming damages for financial loss).

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract, ie must give the notice required under the contract.

For employees employed before 6 April 2012, if the employee has 12 months continuous service of employment, or is dismissed summarily without notice being given after 51 weeks or more, (s)he has statutory unfair dismissal protection. For employees employed after 6 April 2012, the employee needs 24 months continuous service of employment to be afforded statutory unfair dismissal protection. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair dismissal. An employer must be able to demonstrate a "potentially fair" reason for dismissal. Whether a dismissal for the reason(s) identified is nevertheless unfair depends on the tribunal's view as to the reasonableness of the employers' actions. It is important to note that compliance with the ACAS Code of Practice (see Discipline and Grievance above) of itself is not sufficient to guarantee fairness.



However, the termination of employment will almost always be valid if the employer has given effective notice of termination (even if not for the proper notice period) and even if the employer has not followed the minimum unfair dismissal steps. An employee has the right to be re-engaged or re-instated only in rare cases.

### Instant Dismissal

The employer can terminate an employment contract by instant dismissal if the employee is guilty of gross misconduct and/or has committed a fundamental breach of contract, but even in this instance the employer must still follow the minimum statutory steps for dismissal (see discipline and grievance above) and must still be able to satisfy the test of fairness to avoid liability for unfair dismissal.

### Employee's Resignation

The agreement can generally always be terminated by the employee's resignation. Normally the contract will stipulate the notice period required.

### Termination On Notice

The parties can terminate the employment contract on notice, but there may still be liability for unfair dismissal. There are statutory minimum periods of notice which will override the contractual notice period. The minimum period of notice is dependent on the period of continuous employment. Under the Employment Rights Act 1996, if the period of continuous employment is less than two years, not less than 1 week's notice should be given. If the employee's period of continuous employment is more than two years but less than twelve, the notice should be not less than one week for each year of continuous employment. If the employee's period of continuous employment is twelve years or more, the notice period should not be less than twelve weeks.

### Termination By Reason Of The Employee's Age

Any dismissal based on a person's age amounts to unlawful direct age discrimination under the Equality Act 2010, unless the employer can objectively justify it or can establish that being below that age is an "occupational requirement".

### Automatic Termination In Cases Of Force Majeure

The contract will be deemed "frustrated" where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace are examples.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire.

Where the parties agree to terminate the employment, they are not required to obtain the courts' or regulatory body's approval before the termination is effective, but any termination agreement between the parties in which the employee purports to give up certain statutory legal rights will only be binding if it complies with certain requirements.

By virtue of the Employment Rights Act 1996, the agreement will be void (with regard to giving up the of statutory rights, if not the termination of employment) unless it is in writing, relates to identified claims, and records that the employee has received independent legal advice from a suitably qualified person on the nature
and effect of the agreement. The agreement (which is known as a "settlement agreement") must identify the employee's adviser by name.

**Directors Or Other Senior Officers**

There are no special rules which relate to the termination of a director's or other senior officer's employment, but in the case of a statutory director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association).

**Special Rules For Categories Of Employee**

There are no categories of employee to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous rules for protection from unfair dismissal. Apprentices under common law and under certain statutes have additional protections against redundancy and dismissal.

**Specific Rules For Companies in Financial Difficulties**

There are special rules which apply if a company is in financial difficulty. If a company goes into liquidation, all employees are automatically dismissed. Any claims by the employees against the company are as unsecured creditors - though the debts are viewed as "preferential" up to certain limits. By contrast, if a company goes into administration, the administrator has 14 days to decide whether or not to "adopt" the employees' employment contracts. If the employee works for longer than 14 days, the administrator loses the right to terminate the employment contract. A further factor to consider is when the assets (including employees) of a company in administration are packaged up and are sold to another company. In this situation, the employees will normally be transferred in accordance with the TUPE rules, as described above.

**Restricting Future Activities**

Generally clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable, but the courts will uphold restrictions if they are drafted sufficiently narrowly. Essentially such restrictions must be designed to protect a "legitimate business interest" and they should be no wider than is necessary to protect those interests. Further they must be clear and reasonable in time and area. Typical clauses include those designed to restrict an employee from joining a competitor (or setting up in competition), from soliciting business from/dealing with certain customers or from enticing other employees to leave.

Each case is considered on its own facts, so what might be considered appropriate for one individual may be held by a court to be unreasonable for another – even if the individuals work for the same employer.



**Severance Payments**

Normal contractual principles apply to severance payments included in the contract.

In cases of redundancy and unfair dismissal, there are statutory payments which are calculated by reference to the employee's age, length of service and salary (subject to certain statutory caps, reviewed annually). In cases of unfair dismissal only, the severance payment will include an additional compensatory element (damages) to reflect the losses suffered by the individual, but this is again subject to cap (reviewed annually, but currently one year's salary or £74,200, whichever is the lower). Compensation in discrimination and whistleblowing claims is, however, uncapped.

**Special Tax Provisions And Severance Payments**

Contractual payments are subject to tax in the normal way. The first £30,000 of non-contractual severance payments is generally tax-free subject to certain conditions; there are certain other tax concessions for benefits in kind provided on termination (e.g. provision of outplacement services). All other non-contractual severance payments will be subject to tax.

**Allowances Payable To Employees After Termination**

Employers are not required to contribute to any allowances payable to employees after termination.

**Time Limits For Claims Following Termination**

Most claims to an ET (including contractual claims) must be lodged within 3 months of the event (or the last in a series of linked events). Claims for redundancy payments or claims for equal pay must generally be made within 6 months. However, contractual claims (including a claim for equal pay, as confirmed by the Supreme Court) brought in the civil courts can be issued up to 6 years after the event.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

None.

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# United Kingdom - Northern Ireland

# United Kingdom - Northern Ireland

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Office of Industrial Tribunals and Fair Employment Tribunal ("OITFET") has exclusive jurisdiction for most claims, but contractual claims can be brought either in the civil court (High Court or County Court) or, up to certain limits, in the OITFET, at the choice of the claimant. There are different rules which apply depending on the jurisdiction chosen.

There is no fee for bringing a claim before the OITFET however any proceedings issued in the civil courts will be subject to a court fee. The level of fee will be dependant on the quantum of the claim.

### The Main Sources Of Employment Law

The UK is a common law jurisdiction. All employment arrangements are governed by general common law principles of contract law, but there are various national legislative requirements which over-ride those general principles in some instances. The majority of legislation applying in NI reflects that of England and Wales, in particular the Employment Rights (NI) Order 1996 from which many legislative rights and obligations arise. However in NI there is no direct equivalent to the Equality Act 2010. Consequently each form of discrimination is governed by separate legislation, most notably; the Sex Discrimination (NI) Order 1976, the Disability Discrimination Act 1995, the Equal Pay Act (NI) 1970, the Fair Employment and Treatment (NI) Order 1998, the Employment Equality (Age) Regulations (NI) 2006 the Employment Equality (Sexual Orientation) Regulations(NI) 2003 and the Race Relations (NI) Order 1997. A significant amount of regulation is introduced by secondary legislation. Non-binding Codes of Practice are taken into consideration by the ET when judging best practice; European legislation and ECJ court decisions are also relevant. Individual contracts (whether written or oral), collective bargaining agreements and common practice all form part of the contractual relationship.

### National Law And Employees Working For Foreign Companies

The statutory rights under national law will apply to all individuals physically working in the UK, regardless of their nationality, and regardless of the law governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under national law will usually apply only when the employee is physically working within the jurisdiction of the OITFET. However, contractual law may still apply in appropriate cases.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract to be in writing. However, every employer is required to provide each employee with a written statement of particulars of certain terms of the agreement, not later than two months after the beginning of the employee's employment (see "compulsory terms" below).

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide trial periods, otherwise known as 'probationary periods', when engaging new employees, but it is common in practice to do so.

#### Hours Of Work

Subject to certain exceptions, there is a requirement that unless an employee opts out, he/she may only work 48 hours per week (averaged out over a 17 week period). The opt-out must comply with certain statutory requirements.

#### Earnings

There is a restriction prohibiting employees from earning below a minimum hourly wage (which is reviewed annually). There are different rates depending on the age of the employee.

#### Holidays / Rest Periods

There is a requirement that employees must take a minimum of 5.6 weeks paid holiday per year (pro rata for part-time employees). There are also various compulsory daily and weekly rest periods and breaks which have to be observed.

#### Minimum/Maximum Age

There is a normal minimum age of 14 (which can be varied in certain cases), below which employees cannot work. Different rules (e.g. on working time) apply to children or young workers. There are no maximum age limits.

#### Illness/Disability

There are no mandatory requirements relating to illness and disability. However see 'Harassment/Disability/Equal Pay' below.

#### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

#### Pension Plans

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#### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

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The terms that must be provided to the employee no later than two months after the beginning of the employee's employment includes the following: the names of the parties; the date when employment begins and when continuous employment began; the scales and intervals of pay; the hours of work; holiday entitlement; provisions relating to sickness or injury; provisions relating to pension and pension schemes; place of work; length of notice or anticipated fixed term; job title/job description; any collective agreements which apply; certain information regarding grievance and disciplinary procedures. For employees posted abroad for more than one month, additional information is required (the currency in which remuneration is to be paid, any additional remuneration or benefits to be provided and the terms and conditions relating to return to the UK).

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There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

## Outsourcing And/Or Sub-Contracting

There are specific rules relating to outsourcing, insourcing and where there is a change of outsourced service provider. All of these scenarios are regulated by the Service Provision Change (Protection of Employment) Regulations (NI) 2006 ("SPC"). In situations where SPC applies, employees carrying out the work in question automatically transfer with the work and thereby become employees of the new entity carrying out the work. The employees must generally remain on exactly the same terms of employment as they enjoyed prior to the transfer (with the exception of pension arrangements, where there are special rules which apply depending on the nature of the previous pension provisions). The one exception is where the new employer can demonstrate that there are economic, technical or organisational reasons which require changes to the workforce to be made. Perhaps surprisingly, in the absence of this defence, even changes which have been "agreed" by the employee will be voidable if they are changes which are "connected" to the transfer.

There are obligations imposed on both the old and the new employers to consult with the affected employees through elected representatives, or a recognised Trade Union, prior to the transfer taking place (and financial penalties for failure to do so). The old employer is also obliged to provide liability information regarding the employees to the new employer.

Any dismissal held to be "connected with the transfer" is automatically unfair unless it can be proved that it was for economic, technical or organisational reasons entailing a change in the workforce.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with common law contractual principles, an employer may not change any terms of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change).

Any change of terms to which the employee does not consent will amount to a breach of contract. If the change is a significant one which goes to the root of the contract, the employee is entitled to resign and treat the contract as at an end. In so doing, the employee may also claim that he has been constructively dismissed (and seek damages accordingly). However, depending on the change in question, the wording of the contract, the reasons for the change and the consultation carried out before the change, the employer may have a defence to a breach of contract or constructive dismissal claim.

### Change In Ownership Of The Business

When there is a change in ownership of a business (except a change merely in the shareholding ownership), all employees are automatically transferred to the new employer on the same terms and conditions. These rules apply also where only a specific part of a business changes ownership. Such changes are regulated by the Transfer of Undertakings (Protection of Employment) Regulations 2006, as per mainland UK.

There are obligations imposed on both the old and the new employers to consult with the affected employees though elected representatives, or a recognised Trade Union, prior to the transfer taking place (and financial penalties for failure to do so).

Employees are allowed to refuse to transfer to the new employer. However, if they do they will be deemed to have resigned and will not be entitled to any compensation (unless the refusal relates to a failure to maintain the same terms and conditions after the transfer).

### Social Security Contributions

Employers and employees are required to make social security contributions (rates are determined annually). Employers are also required to contribute towards allowances payable to employees during their employment. These allowances include sick pay, maternity pay and paternity pay.

### Accidents At Work

Employers have a common law duty to have regard to the safety of their employees. Employers are also responsible under common law for accidents caused by the acts of their employees where the employees were acting in the course of their employment. It is compulsory for the employer to take out insurance to cover potential claims by employees in this regard.



In addition to common law duties, a number of obligations are imposed on employers through legislation (most significantly the Health and Safety at Work (Northern Ireland) Order 1978). The employer also owes specific statutory duties to members of the public who are affected by the activities of the employer, and other people's employees working on their premises. In some instances, a breach of the employer's statutory duties may give rise to criminal and civil liability.

### Discipline And Grievance

In 2004 a statutory discipline and grievance procedure was introduced across the UK. Whilst it has been repealed in mainland UK the disciplinary procedure still has legislative effect in NI. In simple terms any dismissal in NI must follow the statutory guidelines or else it will be deemed automatically unfair. In place of the statutory grievance procedure there is now a "voluntary" code of practice, known as the Labour Relations Agency Grievance Code of Practice. Although employers are not obliged to follow its guidelines when dealing with grievance matters, a failure on the part of the either party to follow the Code of Practice can affect the level of compensation awarded (the OITFET is given a power to vary the award, at its discretion, by up to 50%).

For both disciplinary and grievance matters the employer must properly investigate the matter, notify in writing the findings to the employee inviting the employee to a hearing/meeting, hold a hearing/meeting, notify in writing the decision of the employer following that hearing to the employee, and give the employee a right of appeal against the decision.

### Harassment/Discrimination/Equal pay

Under the various strands of legislation employees are protected from discrimination because of sex, age, sexual orientation, pregnancy and maternity, marital status, race, religion or belief, disability and gender reassignment (the "protected characteristics"). Employees are also protected from discrimination on grounds of part-time status and fixed-term status.

Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), on termination or even after the employment has ended (for example in writing the reference).

In the case of discrimination because of a protected characteristic(s) the discrimination may be direct (for example refusing to employ a man or woman), perceived (for example where an employee is wrongly perceived to have a protected characteristic and suffers discrimination), associative (for example where an employee receives less favourable treatment because of an employee's association with someone who has a protected characteristic) or indirect (for example by imposing a condition which puts a particular group at a particular disadvantage and which cannot be justified). However, in the case of discrimination because of pregnancy or maternity there are still no provisions for dealing with indirect discrimination.

There is no qualifying period of employment for protection from discrimination. Discrimination can lead to a claim in the Employment Tribunal and there is no limit to the damages which can be awarded. Damages are calculated so as to put the claimant in the position they would have been in if the unlawful discrimination had not taken place, plus an element for injury to feelings (which generally ranges from £600 to £30,000 depending on the severity of the discriminatory behaviour). Compensation may be awarded for personal injury if the employee can show that the discrimination caused the harm. The tribunal will not normally award punitive damages, but in rare cases, aggravated damages may be awarded to an employee if a tribunal finds that the respondent was malicious, insulting or particularly heavy handed.

Harassment is a separate type of claim, but is linked with discrimination. It involves unwanted conduct that has the purpose or effect of violating a person's dignity or creating an offensive, intimidating or hostile environment. It is unlawful if it is related to any of the protected characteristics listed above.

Victimisation is also a form of discrimination that involves treating a person less favourably because (s)he has complained (or intend to complain) about discrimination, or because (s)he has given evidence in relation to another person's complaint. An employee must not be disciplined or dismissed, or suffer reprisals from colleagues, for complaining about discrimination or harassment at work.

The Equal Pay Act (NI) 1970 provides that a woman employed at an establishment in Great Britain is entitled to enjoy contractual terms that are as favourable as those of a male comparator in the same employment, provided the woman and the man are employed on equal work.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/expectations. However, employees working for employers with 250 or more employees are entitled to request time off work to undertake study or training. The right was going to be extended to all employees from 6 April 2011. However, this is now not going ahead.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts. However, the employer may only make a deduction from the employee's wages if it is required or permitted by a statutory or contractual provision; or the employee has given his prior written consent to the deduction.

### Payments For Maternity And Disability Leave

Employees will benefit from certain payments subject to satisfying the relevant necessary requirements. To trigger statutory maternity pay entitlement, a woman must have earned a minimum amount (reviewed annually) prior to going on maternity leave, must have accrued at least 26 weeks' continuous employment as at the end of the "qualifying week" (the 15th week before the expected week of childbirth) and must still be employed during that week.



With regard to disability leave/sickness absence, an employee will be entitled to receive statutory sick pay (the amount of which is determined by statute, and reviewed annually) from the fourth day of consecutive absence, subject to earning a minimum amount on average beforehand. The maximum entitlement is 28 weeks.

If payments are made in this regard, the employer can, subject to certain conditions, deduct these from the social security contributions that they are otherwise due to pay.

The Government is looking to introduce "flexible parental leave" in 2015. This will allow parents to share the 50 weeks of maternity leave usually only granted to the mother (maternity leave is 52 weeks in total, however the mother has to take 2 weeks as compulsory maternity leave).

### Compulsory Insurance

Employers are required to maintain insurance under an approved policy with an authorised insurer, against liability for bodily injury or disease sustained by employees during, and arising out of, their employment. The employer must not be insured for less than £5 million in respect of any one occurrence.

Employers must ensure that they display copies of the insurance certificate at every place where they carry on business so that it can be easily seen and read by employees.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties.

### Works Councils or Trade Unions

An employer may voluntarily agree to recognise a Trade Union. By virtue of the Trade Union and Labour Relations (NI) Order 1995 a Trade Union can demand recognition if a sufficient proportion of the workforce desire it. To do so, a Trade Union must firstly make a written request to the employer and if not successful, may make an application to the Central Arbitration Committee. It is important to note that irrespective of the outcome, no further applications may be made by that Trade Union or a substantially similar unit for a period of three years.

An employee who is a member of a Trade Union has certain rights in relation to his employer. For example: dismissal for membership of, or for taking part in the activities of, an independent Trade Union is automatically unfair for the purposes of unfair dismissal and higher awards of compensation may, in some circumstances, be made; action short of dismissal against an employee or subjecting an employee to a detriment for membership of, or for taking part in the activities of, an independent Trade Union gives the employee the right to complain to a tribunal which may award him or her compensation; a Trade Union member has the right to time off work without pay to take part in Trade Union activities. In addition, a Trade Union official has the right to take time off with pay for Trade Union duties.

Under the Employment Rights (NI) Order 1996 an employer has a duty to consult with appropriate representatives of any employees who may be affected where the employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less.

### Employees' Right To Strike

There is no general right for employees to strike. However, certain immunities will be granted in respect of industrial action if there is a Trade Union involved, provided the action is conducted strictly in accordance with statutory requirements (e.g. conducting a ballot beforehand).

### Employees On Strike

Employers can still dismiss employees on strike if the strike was not properly authorised. Even if the strike was validly authorised, after a certain period the employer can dismiss employees. Other courses of action may also be open to the employer depending on the circumstances (e.g. withholding pay, seeking an injunction, claiming damages for financial loss).

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

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# 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract, ie must give the notice required under the contract. If the employee has 12 months continuous service of employment, or is dismissed summarily without notice being given after 51 weeks or more, (s)he has statutory unfair dismissal protection. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair dismissal. An employer must be able to demonstrate a "potentially fair" reason for dismissal. Whether a dismissal for the reason(s) identified is nevertheless unfair depends on the tribunal's view as to the reasonableness of the employers' actions. The statutory dismissal procedure must be followed or else the dismissal will be deemed automatically unfair. An employee has the right to be re-engaged or re-instated only in rare cases.

### Instant Dismissal

The employer can terminate an employment contract by instant dismissal if the employee is guilty of gross misconduct and/or has committed a fundamental breach of contract, but even in this instance the employer must still follow the minimum statutory steps for dismissal (see discipline and grievance above) and must still be able to satisfy the test of fairness to avoid liability for unfair dismissal.

### Employee's Resignation

The agreement can generally always be terminated by the employee's resignation. Normally the contract will stipulate the notice period required.



### Termination On Notice

The parties can terminate the employment contract on notice, but there may still be liability for unfair dismissal. There are statutory minimum periods of notice which will override the contractual notice period. The minimum period of notice is dependent on the period of continuous employment. Under the Employment Rights (NI) Order 1996, if the period of continuous employment is less than one year, not less than 1 week's notice should be given. If the employee's period of continuous employment is more than two years but less than twelve, the notice should be not less than one week for each year of continuous employment. If the employee's period of continuous employment is twelve years or more, the notice period should not be less than twelve weeks.

### Termination By Reason Of The Employee's Age

A person's age now amounts to unlawful direct age discrimination unless the employer can objectively justify it or can establish that being below that age is an "occupational requirement".

### Automatic Termination In Cases Of Force Majeure

The contract will be deemed "frustrated" where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace are examples.

### Termination By Parties' Agreement

The parties are entirely free to agree termination on any grounds they desire.

Where the parties agree to terminate the employment, they are not required to obtain the courts' or regulatory body's approval before the termination is effective, but any termination agreement between the parties in which the employee purports to give up certain statutory legal rights will only be binding if it complies with certain requirements. By virtue of the Employment Rights (NI) Order 1996, the agreement will be void (with regard to giving up the statutory rights, if not the termination of employment) unless it is in writing, relates to identified claims, and records that the employee has received independent legal advice from a suitably qualified person on the nature and effect of the agreement. The agreement must identify the employee's adviser by name.

### Directors Or Other Senior Officers

There are no special rules which relate to the termination of a director's or other senior officer's employment, but in the case of a statutory director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association).

### Special Rules For Categories Of Employee

There are no categories of employee to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous rules for protection from unfair dismissal. Apprentices under common law and under certain statutes have additional protections against redundancy and dismissal.

### Specific Rules For Companies in Financial Difficulties

There are special rules which apply if a company is in financial difficulty. If a company goes into liquidation, all employees are automatically dismissed. Any claims by the employees against the company are as unsecured creditors - though the debts are viewed as 'preferential` up to certain limits. By contrast, if a company goes into administration, the administrator has 14 days to decide whether or not to "adopt" the employees' employment contracts. If the employee works for longer than 14 days, the administrator loses the right to terminate the employment contract. A further factor to consider is when the assets (including employees) of a company in administration are packaged up and are sold to another company. In this situation, the employees will be normally be transferred in accordance with the TUPE rules, as described above.

### Restricting Future Activities

Generally clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable, but the courts will uphold restrictions if they are drafted sufficiently narrowly. Essentially such restrictions must be designed to protect a 'legitimate business interest' and they should be no wider than is necessary to protect those interests. Further they must be clear and reasonable in time and area. Typical clauses include those designed to restrict an employee from joining a competitor (or setting up in competition), from soliciting business from/dealing with certain customers or from enticing other employees to leave.

Each case is considered on its own facts, so what might be considered appropriate for one individual may be held by a court to be unreasonable for another – even if the individuals work for the same employer.

### Severance Payments

Normal contractual principles apply to severance payments included in the contract.

In cases of redundancy and unfair dismissal, there are statutory payments which are calculated by reference to the employee's age, length of service and salary (subject to certain statutory caps, reviewed annually). In cases of unfair dismissal only, the severance payment will include an additional compensatory element (damages) to reflect the losses suffered by the individual, but this is again subject to a cap (currently £74,200, reviewed annually). Compensation in discrimination and whistleblowing claims is, however, uncapped.

### Special Tax Provisions And Severance Payments

Contractual payments are subject to tax in the normal way. The first £30,000 of non-contractual severance payments is generally tax-free subject to certain conditions; there are certain other tax concessions for benefits in kind provided on termination (e.g. provision of outplacement services). All other non-contractual severance payments will be subject to tax.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.



### Time Limits For Claims Following Termination

Most claims to the OITFET (including contractual claims) must be lodged within 3 months of the event or last in a series of linked events. Claims for redundancy payments or claims for equal pay must generally be made within 6 months. However, contractual claims (including a claim for equal pay, as confirmed by the Supreme Court) brought in the civil courts can be issued up to 6 years after the event.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

None.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Employment Tribunal ("ET") has exclusive jurisdiction for most claims, but depending on the amount contractual claims can be brought either in the civil court (Sheriff Court or Court of Session) or, up to certain limits, in the Employment Tribunal, at the choice of the claimant. There are different rules which apply depending on the jurisdiction chosen.

There is now a fee structure for bringing claims in the ET (and a remission scheme for claimants with income/capital below certain thresholds).

From 6th April 2014 ET claims require to be subject to a pre claim conciliation process before proceeding in tribunal.

### The Main Sources Of Employment Law

Scotland is a common law jurisdiction. All employment arrangements are governed by general common law principles of contract law, but there are various national legislative requirements which over-ride those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements and common practice all form part of the contractual relationship. The main sources of legislation include the Employment Rights Act 1996 and the Equality Act 2010, which brings together previous discrimination legislation including the Sex Discrimination Act 1975, the Disability Discrimination Act 1995 and the Equal Pay Act 1970. A significant amount of regulation is introduced by secondary legislation. Non-binding Codes of Practice are taken into consideration by the ET when judging best practice; European legislation and ECJ court decisions are also relevant.

### National Law And Employees Working For Foreign Companies

The statutory rights under national law will apply to all individuals physically working in the UK, regardless of their nationality, and regardless of the law governing their contract of employment. National contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The statutory rights under national law will usually apply only when the employee is physically working within the jurisdiction of the ET. However, contractual law may still apply in appropriate cases.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract to be in writing. However, every employer is required to provide each employee with a written statement of particulars of certain terms of the agreement, not later than two months after the beginning of the employee's employment (see "compulsory terms" below).

## Mandatory Requirements:

### Trial Period

There is no legal obligation to provide trial periods, otherwise known as 'probationary periods', when engaging new employees, but it is common in practice to do so.

### Hours Of Work

Subject to certain exceptions, there is a requirement that unless an employee opts out, he/she may only work 48 hours per week (averaged out over a 17 week period). The opt-out must comply with certain statutory requirements.

### Earnings

There is a restriction prohibiting employees from earning below a minimum hourly wage (which is reviewed annually). The current rate (since 1 October 2013) for employees aged 21+ is £6.31 per hour, but there are different (lower) rates for other employees, depending on their age.

### Holidays / Rest Periods

There is a requirement that employees must take a minimum of 5.6 weeks paid holiday per year (pro rata for part-time employees). There are also various compulsory daily and weekly rest periods and breaks which have to be observed.

### Minimum/Maximum Age

There is a normal minimum age of 14 (which can be varied in certain cases), below which employees cannot work. Different rules (e.g. on working time) apply to children or young workers. There are no maximum age limits.

### Illness/Disability

There are no mandatory requirements relating to illness and disability. However see 'Harassment/Disability/Equal Pay' below.

### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer in writing. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

### Pension Plans

Employers are required to provide employees with information relating to pensions and pension schemes.

On 1 October 2012, a new pensions auto-enrolment regime came into effect. UK employers are now required to automatically enrol certain eligible workers, "jobholders", into a pension scheme and to pay a minimum level of contributions to the scheme. Following the implementation of the new regime, each employer has been given its own "staging date" from when it must comply with the regime. The staging date depends on the size of the employer's PAYE scheme, with the largest PAYE schemes being required to comply first.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

A range of "family-friendly" rights exist, including maternity leave and pay, paternity leave and pay, adoption leave and pay, parental leave and pay, time off for dependants and part-time working. Employees who can satisfy the appropriate qualifying conditions for the right in question can enjoy, or can apply for, their statutory rights in this regard. Different rules apply to different rights, and it is not possible to summarise all the details (most of which are set out in various Regulations) within the scope of this book.



### Compulsory Terms

The terms that must be provided to the employee no later than two months after the beginning of the employee's employment includes the following: the names of the parties; the date when employment begins and when continuous employment began; the scales and intervals of pay; the hours of work; holiday entitlement; provisions relating to sickness or injury; provisions relating to pension and pension schemes; place of work; length of notice or anticipated fixed term; job title/job description; any collective agreements which apply; certain information regarding grievance and disciplinary procedures. For employees posted abroad for more than one month, additional information is required (the currency in which remuneration is to be paid, any additional remuneration or benefits to be provided and the terms and conditions relating to return to the UK).

### Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights.

## Types Of Agreement

All employment relationships are contractual in nature, whether or not the terms have ever been reduced to writing. Contracts of employment (whether express or implied) exist in several different forms: fixed term, variable, full-time or part-time. The compulsory terms apply regardless of the type of contract contemplated.

There are discrimination laws which prevent employees from being treated less favourably than other employees because of working part-time or working on a fixed term contract.

## Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied into the employment relationship.

During the employment relationship an employee is under an implied duty to respect the confidentiality of the employer's commercial and business information. Therefore, information that an employee is expressly told is confidential, and obviously is confidential, is protected (without express covenant) during employment.

After employment, only trade secrets are protected by the implied duty of confidentiality. Trade secrets include information which is of a sufficiently high degree of confidentiality to remain confidential after employment.

In addition to the implied duties, employers will often include in the employment contract an express term specifying the type of information that is a trade secret, and therefore protected, to prevent future disclosure. They may also include restrictive covenants as a means of protecting future confidentiality (see below).

## Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights.

### Hiring Non-Nationals

Employers are obliged to ensure that all employees are entitled to work in the UK. Different requirements apply depending on the nationality/status of the individual concerned. In broad terms, EEA nationals (subject to certain exceptions) have an automatic entitlement to work in the UK. The requirements for other nationalities have undergone a massive and dramatic change as from November 2008, when the former multiple entry routes were condensed into 5 "tiers" (of which only 4 remain in use today), and a points-based approach to entry entitlement was adopted.

An employer will be liable to a civil penalty if he negligently employs someone who is not entitled to work in the UK and will commit a criminal offence if he knowingly employs such a person.

Employers will often include a warranty in the employee's employment contract that the employee is entitled to work in the UK. Although the warranty will not prevent the employer from being liable, the employee will be in breach of contract if he is not entitled to work in the UK.

### Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

### Outsourcing And/Or Sub-Contracting

There are specific rules relating to outsourcing, insourcing and where there is a change of outsourced service provider. All of these scenarios are regulated by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). This has been amended in 2014 by virtue of the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014. In situations where TUPE applies, employees carrying out the work in question automatically transfer with the work and thereby become employees of the new entity carrying out the work. The employees must generally remain on exactly the same terms of employment as they enjoyed prior to the transfer (with the exception of pension arrangements, where there are special rules which apply depending on the nature of the previous pension provisions).

Prior to 2014 even changes which were "agreed" by the employee were voidable if they were changes "connected" to the transfer, but this changed during the course of 2014 and will not apply to terms incorporated from a collective agreement, provided that the variation takes effect more than a year post-transfer and following the variation, the rights and obligations in the employee's contract when considered together, are no less favorable to the employee than those which applied pre variation. Another exception includes where the new employer can demonstrate that the sole or principle reason for the variation is an economic technical or organisational reason entailing changes in the workforce and the employer and employee agree the variation. Another exception is that the terms of the contract permit the employer to make such a variation.



There are obligations imposed on both the old and the new employers to consult with the affected employees through elected representatives, or a recognised Trade Union, prior to the transfer taking place (and financial penalties for failure to do so). In 2014, the rules will be relaxed for micro-businesses, to allow them to consult with employees direct.

Any dismissal held to be "connected with the transfer" is automatically unfair unless it can be proved that it was for economic, technical or organisational reasons entailing a change in the workforce.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with common law contractual principles, an employer may not change any terms of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change).

Any change of terms to which the employee does not consent will amount to a breach of contract. If the change is a significant one which goes to the root of the contract, the employee is entitled to resign and treat the contract as at an end. In so doing, the employee may also claim that he has been constructively dismissed (and seek damages accordingly). However, depending on the change in question, the wording of the contract, the reasons for the change and the consultation carried out before the change, the employer may have a defence to a breach of contract or constructive dismissal claim.

### Change In Ownership Of The Business

When there is a change in ownership of a business (except a change merely in the shareholding ownership), under the TUPE rules (see above) all employees are automatically transferred to the new employer on the same terms and conditions. These rules apply also where only a specific part of a business changes ownership.

There are obligations imposed on both the old and the new employers to consult with the affected employees though elected representatives, or a recognised Trade Union, prior to the transfer taking place (and financial penalties for failure to do so). At some point during 2014, the rules will be relaxed for micro-businesses, to allow them to consult with employees direct.

Employees are allowed to refuse to transfer to the new employer. However, if they do they will be deemed to have resigned and will not be entitled to any compensation (unless the refusal relates to a failure to maintain the same terms and conditions after the transfer).

### Social Security Contributions

Employers and employees are required to make social security contributions (rates are determined annually). Employers are also required to contribute towards allowances payable to employees during their employment. These allowances include sick pay, maternity pay and paternity pay.

### Accidents At Work

Employers have a common law duty to have regard to the safety of their employees. Employers are also responsible under common law for accidents caused by the acts of their employees where the employees were acting in the course of their employment. It is compulsory for the employer to take out insurance to cover potential claims by employees in this regard.

In addition to common law duties, a number of obligations are imposed on employers through legislation (most significantly the Health and Safety at Work Act 1974). The employer also owes specific statutory duties to members of the public who are affected by the activities of the employer, and other people's employees working on their premises. In some instances, a breach of the employer's statutory duties may give rise to criminal and civil liability.

### Discipline And Grievance

In 2004 a statutory discipline and grievance procedure was introduced, but faced universal criticism, and it was repealed wholesale with effect from April 2009. In its place there is now a "voluntary" code of practice, known as the Acas Discipline and Grievance Code of Practice. Although employers are not obliged to follow its guidelines when dealing with disciplinary or grievance matters, a failure on the part of the either party to follow the Code of Practice can affect the level of unfair dismissal compensation awarded (the Employment Tribunal is given a power to vary the award, at its discretion, by up to 25%).

The Code of Practice requires the employer to properly investigate the matter, to notify in writing the findings to the employee, to hold a disciplinary hearing or meeting, to notify in writing the decision of the employer following that hearing to the employee, and to give the employee a right of appeal against the decision.

### Harassment/Discrimination/Equal pay

Under the Equality Act 2010, employees are protected from discrimination because of sex, age, sexual orientation, pregnancy and maternity, marital status, race, religion or belief, disability and gender reassignment (the "protected characteristics"). Employees are also protected from discrimination on grounds of part-time status and fixed-term status.

Discrimination may occur before the employment relationship commences (for example in advertising the job), during the employment (for example in failing to promote), on termination or even after the employment has ended (for example in writing the reference).



In the case of discrimination because of a protected characteristic(s) the discrimination may be direct (for example refusing to employ a man or woman), perceived (for example where an employee is wrongly perceived to have a protected characteristic and suffers discrimination), associative (for example where an employee receives less favourable treatment because of an employee's association with someone who has a protected characteristic) or indirect (for example by imposing a condition which puts a particular group at a particular disadvantage and which cannot be justified). However, in the case of discrimination because of pregnancy or maternity there are still no provisions for dealing with indirect discrimination.

Whilst the Equality Act 2010 sought to introduce a new concept of combined discrimination, the Government has not, as yet, introduced this concept. Whilst combined discrimination shows no signs of coming into force, the Government has not repealed this section of the Equality Act 2013 yet.

There is no qualifying period of employment for protection from discrimination. Discrimination can lead to a claim in the Employment Tribunal and there is no limit to the damages which can be awarded. Damages are calculated so as to put the claimant in the position they would have been in if the unlawful discrimination had not taken place, plus an element for injury to feelings (which generally ranges from £600 to £30,000 depending on the severity of the discriminatory behaviour). Compensation may be awarded for personal injury if the employee can show that the discrimination caused the harm. The tribunal will not normally award punitive damages, but in rare cases, aggravated damages may be awarded to an employee if a tribunal finds that the respondent was malicious, insulting or particularly heavy handed.

Harassment is a separate type of claim, but is linked with discrimination. It involves unwanted conduct that has the purpose or effect of violating a person's dignity or creating an offensive, intimidating or hostile environment. It is unlawful if it is related to any of the protected characteristics listed above.

Victimisation is also a form of discrimination that involves treating a person less favourably because (s)he has complained (or intend to complain) about discrimination, or because (s)he has given evidence in relation to another person's complaint. An employee must not be disciplined or dismissed, or suffer reprisals from colleagues, for complaining about discrimination or harassment at work.

The concept of equal pay, previously set out in the Equal Pay Act 1970, has been incorporated into the Equality Act 2010. It provides that a woman employed at an establishment in Great Britain is entitled to enjoy contractual terms that are as favourable as those of a male comparator in the same employment, provided the woman and the man are employed on equal work.

### Compulsory Training Obligations

There are no compulsory training obligations for employees generally, but obviously some trades/professions will impose their own standards/expectations. However, employees working for employers with 250 or more employees are entitled to request time off work to undertake study or training. The right was going to be extended to all employees from 6 April 2011. However, the plans were shelved, and there are currently no proposals to extend it further.

### Offsetting Earnings

It is possible for employers to offset earnings against employee's debts. However, the employer may only make a deduction from the employee's wages if it is required or permitted by a statutory or contractual provision; or the employee has given his prior written consent to the deduction.

### Payments For Maternity And Disability Leave

Employees will benefit from certain payments subject to satisfying the relevant necessary requirements. To trigger statutory maternity pay entitlement, a woman must have earned a minimum amount (reviewed annually) prior to going on maternity leave, must have accrued at least 26 weeks' continuous employment as at the end of the "qualifying week" (the 15th week before the expected week of childbirth) and must still be employed during that week.

With regard to disability leave/sickness absence, an employee will be entitled to receive statutory sick pay (the amount of which is determined by statute, and reviewed annually) from the fourth day of consecutive absence, subject to earning a minimum amount on average beforehand. The maximum entitlement is 28 weeks.

If payments are made in this regard, the employer can, subject to certain conditions, deduct these from the social security contributions that they are otherwise due to pay.

The Government is looking to introduce "shared parental leave" in 2015. This will allow parents to share the 50 weeks of maternity leave usually only granted to the mother (maternity leave is 52 weeks in total, however the mother has to take 2 weeks as compulsory maternity leave), subject to certain procedural requirements.

### Compulsory Insurance

Employers are required to maintain insurance under an approved policy with an authorised insurer, against liability for bodily injury or disease sustained by employees during, and arising out of, their employment. The employer must not be insured for less than £5 million in respect of any one occurrence.

Employers must ensure that they display copies of the insurance certificate at every place where they carry on business so that it can be easily seen and read by employees.

### Absence For Military Or Public Service Duties

Employees are entitled to take leave for military or public service duties, but there is no right to be paid during such leave.

### Works Councils or Trade Unions

An employer may voluntarily agree to recognise a Trade Union. By virtue of the Trade Union and Labour Relations (Consolidation Act) 1992 a Trade Union can demand recognition if a sufficient proportion of the workforce desire it. To do so, a Trade Union must firstly make a written request to the employer and if not successful, may make an application to the Central Arbitration Committee. It is important to note that irrespective of the outcome, no further applications may be made by that Trade Union or a substantially similar unit for a period of three years.



An employee who is a member of a Trade Union has certain rights in relation to his employer. For example: dismissal for membership of, or for taking part in the activities of, an independent Trade Union is automatically unfair for the purposes of unfair dismissal and higher awards of compensation may, in some circumstances, be made; action short of dismissal against an employee or subjecting an employee to a detriment for membership of, or for taking part in the activities of, an independent Trade Union gives the employee the right to complain to a tribunal which may award him or her compensation; a Trade Union member has the right to time off work without pay to take part in Trade Union activities. In addition, a Trade Union official has the right to take time off with pay for Trade Union duties.

Under the Trade Union and Labour Relations (Consolidation) Act 1992 an employer has a duty to consult with appropriate representatives of any employees who may be affected where the employer is proposing to dismiss as redundant 20 or more employees within a period of 90 days or less. Although the legislation includes a requirement that the employees be at "one establishment", this requirement has been the subject of significant judicial scrutiny, and in January 2014 the Court of Appeal referred the point to the European Court for a ruling.

### Employees' Right To Strike

There is no general right for employees to strike. However, certain immunities will be granted in respect of industrial action if there is a Trade Union involved, provided the action is conducted strictly in accordance with statutory requirements (e.g. conducting a ballot beforehand).

### Employees On Strike

Employers can still dismiss employees on strike if the strike was not properly authorised. Even if the strike was validly authorised, after a certain period the employer can dismiss employees. Other courses of action may also be open to the employer depending on the circumstances (e.g. withholding pay, seeking an injunction, claiming damages for financial loss).

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where the employee was acting wholly outside the course of his employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract, ie must give the notice required under the contract.

For employees employed before 6 April 2012, if the employee has 12 months continuous service of employment, or is dismissed summarily without notice being given after 51 weeks or more, (s)he has statutory unfair dismissal protection.

For employees employed after 6 April 2012, the employee needs 24 months continuous service of employment to be afforded statutory unfair dismissal protection. In most cases, there are certain minimum steps which must be followed before termination to avoid the termination amounting to an unfair dismissal. An employer must be able to demonstrate a "potentially fair" reason for dismissal. Whether a dismissal for the reason(s) identified is nevertheless unfair depends on the tribunal's view as to the reasonableness of the employers' actions. It is important to note that compliance with the ACAS Code of Practice (see Discipline and Grievance above) of itself is not sufficient to guarantee fairness.

However, the termination of employment will almost always be valid if the employer has given effective notice of termination (even if not for the proper notice period) and even if the employer has not followed the minimum unfair dismissal steps. An employee has the right to be re-engaged or re-instated only in rare cases.

**Instant Dismissal**

The employer can terminate an employment contract by instant dismissal if the employee is guilty of gross misconduct and/or has committed a fundamental breach of contract, but even in this instance the employer must still follow the minimum statutory steps for dismissal (see discipline and grievance above) and must still be able to satisfy the test of fairness to avoid liability for unfair dismissal.

**Employee's Resignation**

The agreement can generally always be terminated by the employee's resignation. Normally the contract will stipulate the notice period required.

**Termination On Notice**

The parties can terminate the employment contract on notice, but there may still be liability for unfair dismissal. There are statutory minimum periods of notice which will override the contractual notice period. The minimum period of notice is dependent on the period of continuous employment. Under the Employment Rights Act 1996, if the period of continuous employment is less than two years, not less than 1 week's notice should be given. If the employee's period of continuous employment is more than two years but less than twelve, the notice should be not less than one week for each year of continuous employment. If the employee's period of continuous employment is twelve years or more, the notice period should not be less than twelve weeks.

**Termination By Reason Of The Employee's Age**

Any dismissal based on a person's age amounts to unlawful direct age discrimination under the Equality Act 2010, unless the employer can objectively justify it or can establish that being below that age is an "occupational requirement".

**Automatic Termination In Cases Of Force Majeure**

The contract will be deemed "frustrated" where intervening events make its continued performance impossible, although instances are rare. Death of the employee or complete destruction of the workplace are examples.



**Termination By Parties' Agreement**

The parties are entirely free to agree termination on any grounds they desire.

Where the parties agree to terminate the employment, they are not required to obtain the courts' or regulatory body's approval before the termination is effective, but any termination agreement between the parties in which the employee purports to give up certain statutory legal rights will only be binding if it complies with certain requirements. By virtue of the Employment Rights Act 1996, the agreement will be void (with regard to giving up the of statutory rights, if not the termination of employment) unless it is in writing, relates to identified claims, and records that the employee has received independent legal advice from a suitably qualified person on the nature and effect of the agreement. The agreement (which is known as a "settlement agreement") must identify the employee's adviser by name.

**Directors Or Other Senior Officers**

There are no special rules which relate to the termination of a director's or other senior officer's employment, but in the case of a statutory director (or other company officer), termination of employment does not automatically bring to an end the directorship. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of association).

**Special Rules For Categories Of Employee**

There are no categories of employee to whom special rules apply, but certain categories (e.g. pregnant women) benefit from more generous rules for protection from unfair dismissal. Apprentices under common law and under certain statutes have additional protections against redundancy and dismissal.

**Specific Rules For Companies in Financial Difficulties**

There are special rules which apply if a company is in financial difficulty. If a company goes into liquidation, all employees are automatically dismissed. Any claims by the employees against the company are as unsecured creditors- though the debts are viewed as "preferential" up to certain limits. By contrast, if a company goes into administration, the administrator has 14 days to decide whether or not to "adopt" the employees' employment contracts. If the employee works for longer than 14 days, the administrator loses the right to terminate the employment contract. A further factor to consider is when the assets (including employees) of a company in administration are packaged up and are sold to another company. In this situation, the employees will be normally be transferred in accordance with the TUPE rules, as described above.

**Restricting Future Activities**

Generally clauses that attempt to restrict the future activities of an employee are contrary to public policy and therefore unenforceable, but the courts will uphold restrictions if they are drafted sufficiently narrowly. Essentially such restrictions must be designed to protect a "legitimate business interest" and they should be no wider than is necessary to protect those interests.

Further they must be clear and reasonable in time and area. Typical clauses include those designed to restrict an employee from joining a competitor (or setting up in competition), from soliciting business from/dealing with certain customers or from enticing other employees to leave.

Each case is considered on its own facts, so what might be considered appropriate for one individual may be held by a court to be unreasonable for another – even if the individuals work for the same employer.

### Severance Payments

Normal contractual principles apply to severance payments included in the contract.

In cases of redundancy and unfair dismissal, there are statutory payments which are calculated by reference to the employee's age, length of service and salary (subject to certain statutory caps, reviewed annually). In cases of unfair dismissal only, the severance payment will include an additional compensatory element (damages) to reflect the losses suffered by the individual, but this is again subject to cap (reviewed annually, but currently one year's gross salary or £74,200, whichever is the lower). Compensation in discrimination and whistleblowing claims is, however, uncapped.

### Special Tax Provisions And Severance Payments

Contractual payments are subject to tax in the normal way. The first £30,000 of non-contractual severance payments is generally tax-free subject to certain conditions; there are certain other tax concessions for benefits in kind provided on termination (e.g. provision of outplacement services). All other non-contractual severance payments will be subject to tax.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

Most claims to an ET (including contractual claims) must be lodged within 3 months of the event (or the last in a series of linked events). ET claims are from April 2014 subject to a pre claim conciliation process which affects time limit durations. Claims for redundancy payments or claims for equal pay must generally be made within 6 months. However, contractual claims (including a claim for equal pay) brought in the civil courts can be made up to 5 years after the event.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Witness statements prepared in advance are rather frowned upon by lawyers, tribunals and judges. There are separate practice rules for employment tribunals to those applying in England. The favoured approach is for the advocate to undertake a formal examination in chief of the witness in order to elicit the evidence in chief. In addition, witnesses in Scotland are not normally allowed to sit in an employment tribunal or court and hear the evidence of others before giving their own evidence.

In September 2014 there is a referendum on independence from the rest of the UK. If independence occurs other differences in the law from the rest of the UK may occur for example final appeals on matters of law may no longer be available to the Supreme Court in London.

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# Ukraine

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Local Common Courts have exclusive jurisdiction for claims arising out of an employment contract. The decision (resolution) by local common court may be subject to appeal and shall be resolved by the District Court of Appeal, and afterwards by the High Specialized Court of Ukraine for Civil and Criminal Cases.

### The Main Sources Of Employment Law

Ukraine is a continental law jurisdiction. All employment arrangements are governed by laws (statutes). The main sources of legislation are the Labour Code of Ukraine, and Ukrainian Laws 'On Labour Protection', 'On vacations' and 'On Payment for Labour'. There are also significant amounts of regulations, introduced by specific legislation, which governs the legal relationships for certain types of workers.

### National Law And Employees Working For Foreign Companies

Further to the provision of the Ukranian law "On international private law", labor relations are governed by the laws of the jurisdiction where work is executed.

Ukrainian labor law is applicable to employment contracts concluded between Ukrainian nationals and non-national employers situated in the Ukraine.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The labour relations of the national employee working in another jurisdiction are subject to Ukrainian law provided that:

1. The national Employee works for a diplomatic establishment of the Ukraine domiciled in another jurisdiction;
2. The national Employee and Ukrainian employer –conclude an employment contract that provides that the work shall be done outside of the Ukraine. If employment contract contradicts the laws of the country in which the Employer and Employee are based, then Ukrainian law will not apply:
3. International agreements of the Ukraine provide accordingly.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

As a rule, employment contracts are in writing. An employment contract must be in writing when:

1. an employee insists on it;
2. the contract provides severe working conditions, dangerous to the health and safety of the employee;
3. it is required by legislation for certain types of workers/jobs (i.e. CEO);
4. the employee is a minor; and
5. the employer is natural person.

### Mandatory Requirements:

#### Trial Period

A trial period is not a mandatory requirement to the contract. A trial period may be introduced by an employment contract but it may not exceed three months (sometimes in cases provided by laws a trial period may last for six months).

#### Hours Of Work

Subject to certain exceptions, the working week must not exceed 40 hours.

#### Earnings

The monthly wages of employees is subject to a statutory minimum which was introduced by law and which is reviewed annually. The current statutory minimum monthly wage is about 98 Euro (1218 UAH).

#### Holidays / Rest Periods

Employees are entitled to a minimum of 24 days paid holiday per year. There are also various compulsory daily and weekly rest periods and breaks which are to be observed.

There are compulsory additional holidays for the certain types of work in the Ukraine, guaranteed to:

1. employees working in severe, hazardous, intense working conditions (the list of jobs, engaged in this type of work is provided by correspondent legislation. The duration of the additional holiday may not exceed 35 calendar days);
2. employees having special status of those suffering from Chernobyl catastrophe (the duration of additional holiday amounts to 14 calendar days);
3. employees, studding on distance or in evening for the period of examination (the duration of the holiday is from 10 to 40 calendar days, depending on the type of studies, place of studies and type of exams);
4. female employees, having 2 or more children under age 15, of one disabled child, or one adopted child, as well as single parent employee with one or more child (the duration of the holiday is 10 working days).

Before holiday starts employer is to pay compensation to the employee in the amount of average daily wage for each day of the holiday.

There are circumstances when employees are entitled to be released from work without compensation by the employee.
Among others these are the following:

1. male employee is entitled to be released from work for 14 days upon the childbirth while his spouse enjoys maternity leave;
2. female employee is entitled to be released from work to take care of a child under 6 years old due to medical recommendation. The duration of the release to be defined by the medical document;
3. employee, who is getting married, is entitled to be released from work for 10 calendar days;
4. employee, whose relative or spouse has died, is entitled to be released from work for the period of 7 calendar days;
5. employee is entitled to be realised from work for 15 calendar days if he/she is admitted to take exams to enter University.

Working place of the employee for the period of holiday and release from work is kept open.



#### Minimum/Maximum Age

Employees must be at least 16 (this can be varied in certain cases). Ukrainian laws provide f or different rules and restrictions (e.g. on working time, types of work) for minors or young workers. There is no maximum age limit, except for civil servants. Civil servants may work until the age of 65.

#### Illness/Disability

Employees in the Ukraine are insured by their employers (and partially at the expense of employee) in case of illness or disability. State Social Insurance Funds reimburse loss of earnings to the employee for the period of illness or disability. State Social insurance contributions for illness or disability are mandatory for all employers and all employees.

#### Location Of Work/Mobility

The employee's normal place of work must be specified by the employer.

Relocation of the business (to another city, region) is regarded as a significant change in employment contract. Thus consent of the employee is required. Employer is to notify the employee about relocation 2 months prior to event. In case employee does not accept the changes proposed by the employer the employment contract is subject to termination. Severance pay will also be payable to dismissed employee in the amount of one month's salary.

All reasonable cost connected with relocation of the business incurred by employee is subject to reimbursement by the employer.

Mobility clauses can be included in the employment contract. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse all reasonable travel expenses.

Mobility clauses are restricted by the following statutory provision:

1. pregnant female employee, female employee with a child under 3 years of age, or sole father male-employee with a child under 3 years of age are banned to be sent to the business trip by employer; and
2. female employee and sole father male employee with the child under 14 years of age are banned to be sent to the business trip by employer without prior consent of the employee.

#### Pension Plans

There is a system of obligatory state pension insurance in the Ukraine. Each employer is required to make contributions for obligatory social insurance in the state pension fund in the amount from 36 to 40 percent of the monthly wage bill paid to all employees, subject to the type of economic activity of the employer. Employees are obliged to contribute 3.6% of their earnings to the State Pension Fund.

Except for certain cases, men have the right to retire at 60 and women at 55. To qualify men must have worked for at least 25 years before retirement and women for at least 20 years before retirement.

There is also a system of non-obligatory private pension funds in the Ukraine.

#### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

A range of "family-friendly" rights exist in the Ukraine, including paid maternity leave (70 days before expected childbirth and 56 days after the childbirth), paid paternity leave, paid parental leave, part-time working and paid adoption leave.

A pregnant employee or single parent of a child below the age of 14 may request part-time work and the employer is obliged to introduce this following the request.

The Employer cannot dismiss a pregnant woman or a woman with a child under 6 years of age or a single parent.

A pregnant woman or a woman/single parent with the child under 3 years old may not be involved in night shift working or working at weekends. Such an employee cannot be sent on a business trip.

A pregnant woman or a woman/single parent with a child under 3 years old who needs medical treatment has the right to be transferred to work with a more favourable regime and workload that provides flexibility, without suffering a loss in earnings.

Employee with adopted child enjoys the same scope of right as other employees with children (including paid adoption leave, release from shift-time or night-time working, additional paid holidays, right to be released from work to take care of the adopted child due to medical recommendations, etc.).

### Compulsory Terms

The compulsory terms of the employment contract are: the names of the parties to the contract; the date when employment begins; the scales and intervals of pay; the hours of work; holiday entitlement; place of work; job title/job description; certain information regarding grievance and disciplinary procedures, guarantees, rules and grounds for dismissal.

### Non-Compulsory Terms

An employer and an employee are free to agree any other terms in addition to the compulsory provisions, provided that these terms do not contradict the law.

### Types Of Agreement

Contracts of employment (whether in writing or not) exist in several different forms: fixed term, variable, full-time or part-time, seasonal, for the certain type of work until it is completed. The compulsory terms apply regardless of the type of contract.

### Secrecy/Confidentiality

There is no implied duty for the employee to respect the confidentiality of the employer's commercial and business information in the Ukraine. To protect secret and confidential information, employers must include such a provision in the employment contract. The Employer is recommended to specify the type of information that is regarded as a trade secret, and therefore protected, to prevent future disclosure.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine ownership of IP rights.

### Hiring Non-Nationals

Non-nationals and persons without citizenship may enjoy the same scope of rights and guarantees as Nationals in labour relations, unless otherwise is specified in Ukrainian legislation or International agreements of Ukraine.

Non-nationals and persons without citizenship, living in Ukraine on a long-term basis upon obtaining the status of an immigrant, have the right to work or to carry on other labour activity foreseen by Laws without any limits.

Non-nationals and persons without citizenship, having no immigrant status may not be admitted to work in Ukraine before employer obtains permission from the State Employment Service.

### Hiring Specified Categories Of Individuals

There are restrictions on the admission to certain hazardous activities and restrictions on the types of work that vulnerable groups (e.g. children or pregnant women) can be required to undertake.

### Outsourcing And/Or Sub-Contracting

Labor laws are not applicable to the Outsourcing and Sub-contracting.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

In accordance with common contractual principles, an employer may not change any terms of an employee's contract without an employee's consent. An employer may introduce significant changes to the terms of the employment contract only where a substantial change in the organization of business occurs. An employer is obliged to notify the employees about significant changes in the terms of their contracts two months prior to the implementation of the changes. If an employee does not accept the changes to the terms of his/her employment he or she has the right to terminate the contract and the employer is obliged to pay him severance in the amount of one month's salary.

### Change In Ownership Of The Business

Changes in the ownership of business do not affect employment contracts.

### Social Security Contributions

All employees are subject to the following state social security:

1. in the case of illness;
2. in the case of professional diseases or accident at work;
3. in the case of unemployment.

Both employers and employees are to make contributions to the aforementioned state funds.

### Accidents At Work

Employers have a duty to provide safe working conditions for employees. Employers must give safety instructions to employees before they start work.

If an employee is injured, suffers from professional disease or dies due to an accident at work or because of severe/improper working conditions, an employer is obliged to start an investigation as well as notify the State Inspection of Labour Protection.

It is compulsory in the Ukraine for an employer to take out insurance to cover potential claims by employees for injury/death/professional disease in the workplace. The insurance covers loss of earnings paid on a regular basis unless the employee regains the ability to work. Employees are also entitled to as well as one-off compensation payment, paid in cases of death or significant harm to health and working ability.

The insurer for such cases of professional diseases or accidents at work is the State Social Security Fund.

In some cases where an employer violates the requirements of safety, its management, responsible to control and preserve safety at working place may also be criminally liable.

### Discipline And Grievance

Where an employee is subject to discipline the following penalties may be appropriate – reproof or dismissal.

Other disciplinary penalties can be implemented for some categories of workers by legislation.

A disciplinary penalty should be applied no later than one month after the day of disclosure of the employee's action. A disciplinary penalty cannot be applied six months after the employee's breach.

Before the application of a disciplinary penalty an employer must request a written explanation from the employee. For every breach only one disciplinary penalty can be implied. When choosing the type of penalty, an employer must take into account the degree of the breach, the harm caused by it, the circumstances of the breach and the employee's previous work record.

An employee may sue an employer for an improper disciplinary penalty.

### Harassment/Discrimination/Equal pay

Employees are protected against discrimination on the grounds of sex, age, sexual orientation, marital status, race, religion or belief, disability, part-time status and fixed-term status, language, place of living, property status.

The concept of equal pay is recognised by legislation, namely the Constitution of Ukraine, and The Law of Ukraine on provision of equal rights for men and women. It provides that a woman employed at an establishment in the Ukraine is entitled to enjoy contractual terms that are as favourable as those of a male employee in the same employment, provided that the woman and the man are employed to do work of equal value. Employers are restricted from specifying gender in a vacancy ad, except for certain types of work which may be performed by a person of a specific gender only.

### Compulsory Training Obligations

Generally, there are no compulsory training obligations for employees, but obviously some trades/professions will impose their own standards/expectations.

### Offsetting Earnings

It is possible for employers to offset earnings against an employee's debts. However, an employer may only make a deduction from an employee's wage either:

1. on an employee's written request;
2. to execute a court decision;
3. to return advance or excessive payment; or
4. to reimburse direct loss caused by an employee to an employer.

The total sum of the deduction may not exceed 20 per cent of the earnings. In cases provided by law or in cases of a court decision, the deduction may be raised to 50 per cent of the employee's earnings.



### Payments For Maternity And Disability Leave

Further to Ukrainian Law "On vacation" maternity leave, which may last either 126 or 140 days (where necessary due to medical reasons), maternity pay shall be calculated and paid by an employer on the basis of an average employee's earning for one working day for each day of maternity leave. When calculating maternity pay, the employer takes into account an employee's earnings for 6 months prior to maternity leave.

In addition to maternity leave paid by the employer, the State Social Insurance Fund pays social aid to one of the parents in the amount prescribed by the legislation. In 2014 the total sum of aid for the birth of the first child is amounted to 30 960 UAH (about 2495 EURO) and for the birth of a second child in the family, 61 920 UAH (about 4989 EURO).

With regard to disability leave/sickness absence, an employee will be entitled to receive from the State Social Insurance Fund sick pay for the whole period of absence provided the reason for the absence is evidenced by a special medical document. The entitlement depends on the period that the absent employee was insured for before the illness, but it may not be less than 60 per cent of the employee's average earnings.

### Compulsory Insurance

See the sections on Social Security and Pension Plan.

### Absence For Military Or Public Service Duties

The Employment contract is subject to termination due to the employee being called to Military Service. An Employee called to Military Service is entitled to a severance payment of two month's salary.

Employees who perform public duties during hours of work are entitled to an average earning payment. Employees' jobs must be kept open. Such rights are guaranteed by law.

### Works Councils or Trade Unions

Employees have the right, without any permission, to create trade unions to representative Employees as well as to enforce and defend employee rights and interests. Employees have the right to join any existing unions as provided for in the Union's charter document. The aforementioned right is confirmed by the Constitution of Ukraine and the Law of Ukraine "On the Trade Unions, their Rights and Guarantees of Activity".

The elected body of a primary trade-union organization has the following duties to conclude and control the implementation of collective agreements with an employer; to ensure that the employer observes and ensures the working safety regulations, other legislation concerning employees' rights; gives consent to the employer for the dismissal of employees in certain cases defined by law; approves a schedule of vacations of employees; approves overtime, working at weekends, etc; discusses with the employer plans of social development of company, improvement of working conditions, medical services, etc.

### Employees' Right To Strike

According to the Constitution of Ukraine employees have the right to strike where the strike is called in order to protect economic and social interests.

Prohibition of a strike is possible but only on the basis of law.

### Employees On Strike

Participating in a strike, except when the strike is illegal, shall not be treated as a breach of the employment contract and may not be considered as a basis for bringing a disciplinary action against an employee. Organization of, or participation in, an illegal strike, will constitute a violation of the employment contract.

Employees participating in a strike shall not be paid for the whole period of the strike. Non-striking employees, prevented from reaching their workplace due to the strike, shall be paid an average salary for the whole period of the strike.

### Employers' Responsibility For Actions Of Their Employees

An employer bears civil responsibility for losses caused by an employee in the course of work. The employer is not liable for the employee's actions when an employee is acting outside the course of employment.

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# 04. Firing The Employee

### Procedures For Terminating the Agreement

In all cases the termination of an employment contract must comply with the terms of the contract and law. In most cases the termination of an employment contract must follow specific dismissal procedures in order to avoid an unfair dismissal claim.

The termination of an employment agreement may occur on:

1. An Employee's initiative;
2. An Employer's initiative; or by
3. The Consent of both parties.

### Instant Dismissal

An employer has the right to terminate an employment agreement if:

1. An employee appears not to have appropriate qualification for the work, or an employee's state of health becomes or appears to be inadequate for the job/work;
2. An employee systematically (more than two times in the course of one calendar year) fails to comply with the disciplinary rules or obligations under the employment contract, which leads to losses incurred by an employer;
3. An employee is absent from work without any reasonable grounds for more that four working hours within one working day;
4. An employee is absent from work for more than four months due to disability caused by illness, except for maternity leave, and professional diseases and injury caused in the course of work;
5. An employee has appeared drunk or in a state of drug induced intoxication in the workplace;
6. An employee has committed theft in the workplace;
7. An employee with managerial duties (CEO, deputy directors, heads of branches, accountants) has committed substantial misconduct;
8. An employee with managerial duties has committed improper salary payment (fails to pay in time, or in full, or pays below the minimum limit);
9. An employer losses confidence in an employee having access to money or other assets because of the misconduct of the employee;
10. An employee involved in working with the children (minors) has committed immoral acts at work.

An employer also has the right to terminate a contract with an employee due to significant changes in the business organization, due to the winding up of a company, due to insolvency, due to reorganization of the business or due to redundancy. In the aforementioned cases an employer is obliged to notify employees of the dismissal two months prior to the date of a dismissal. Severance pay will also be payable to dismissed employees in the amount of one month's salary.

### Employee's Resignation

An agreement can generally always be terminated by an employee's resignation. Normally, the contract will stipulate a notice period; the usual period is two weeks. In cases prescribed by law an employee is released from the obligation of giving notice and may request an employer to terminate the contract on a particular date (for example, the time employer fails to perform his contractual obligations, or fails to observe an employee's rights as prescribed by the law).

### Termination By Parties' Agreement

The parties are entirely free to agree to terminate a contract at any date for any reason.

### Directors Or Other Senior Officers

In addition to the above, some specific regulations apply to the an employment of directors of Joint-Stock Companies, provided for by the law of the Ukraine "On Joint-Stock companies". An employment contract with a director of such a company may contain additional reasons for termination of such a contract.

### Special Rules For Categories Of Employee

There are special regulations for civil servants: judges, policemen, firemen, custom officers, etc.

There are also additional guarantees provided by the legislation for certain socially vulnerable categories of employees: disabled, minors, pregnant women, etc.

### Specific Rules For Companies in Financial Difficulties

There is specific regulation for companies declared insolvent. During insolvency, salaries due to employees by the company shall be paid second once the secured creditors have been paid.

If a company is declared bankrupt by the court and the liquidation procedure is started the liquidator has the right to notify all the employees that they will be dismissed and will provide them with 2 months notice. Upon the termination of an employment contract a severance becomes due to employees dismissed in the amount of one month's salary.

### Restricting Future Activities

Generally, clauses that attempt to restrict the future activities of an employee are contrary to state policy and, therefore, unenforceable.

### Severance Payments

Normal contractual principles apply to severance payments required by law and/or included in a contract.

In certain cases, set out by the Labour Code of the Ukraine, an employer must make severance payments to an employee because of a dismissal. The amount of the severance payment depends on and is calculated by reference to the reason of an employee's dismissal (see above).

### Special Tax Provisions And Severance Payments

There are no special tax provisions with regard to severance payments.

### Allowances Payable To Employees After Termination

Unless otherwise provided in an employment contract, there is no allowance in addition to a severance payment that shall be paid to the employee upon termination of the contract.

### Time Limits For Claims Following Termination

An employee may claim for unfair dismissal within one month of receiving the documents about a dismissal from an employer.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matter which are important or unique to this jurisdiction.

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# Uruguay

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

All lawsuits arising from a labour relationship dispute may be brought before the Labour Courts. At first instance the claim is heard by a professional Judge. Appeals are heard before a Tribunal comprising of three professional Judges. When the amount of the claim is less than approximately U$S 4.000, there is only one instance.

Uruguayan labour law and also labour courts are influenced by the principle of "in dubio pro operario", which means that generally speaking the law and the jurisprudence aims to protect the employee.

The Labour Ministry acts as a mediator between the unions and the enterprises but its decisions are not binding of the parties. Its function is to help the parties resolve the conflict.

### The Main Sources Of Employment Law

In Uruguay there is not a labour contract law (act) or a labour code. The rules that govern employment are scattered in different texts of various weights. There are constitutional rules, rules that are applicable to employment law that are from other legal sources, provisions passed via decrees of the Executive Power and, finally, conventional rules.

The principle is that labour rules are public policy thus the flexibility scheme provided by the texts is very limited.

Labour relations are also ruled by Collective Agreements entered into by unions and employers. It must be pointed out that collective agreements apply to all employees even those that are not members of the union.

### National Law And Employees Working For Foreign Companies

National law applies to every person working in Uruguay regardless of their nationality and regardless of whether the employer is a national or a foreign company.

### National Law And Employees Of National Companies Working In Another Jurisdiction

The principle is that national law only applies to people who work in Uruguay. Uruguayan nationals working in another jurisdiction will be subject to that jurisdiction's law.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

The agreement between the employer and the employee is generally verbal in Uruguay therefore there is no need to have a written contract. There is no obligation on the employer to register the employment relationship with the Labour Ministry.

Although there is no legal requirement for the employment agreement to be in writing, contracts for a specified term should be executed in writing. When hiring an employee for a specified term, a justifiable reason should be given for employing the employee for such a fixed period.

The law does not regulate a probation period, nevertheless the Judiciary in its totality admits the existence of a test period at the beginning of the labour contract. The period by which the worker is on a trial basis must bear relation to the total duration of the contract, being the allowed maximum of three months.

## Mandatory Requirements:

### Trial Period

The Judiciary provide that trial periods are allowed in Uruguay but they are not mandatory. Because trial periods are not mandatory, they should be agreed in writing. A trial period should not exceed three months or ninety days.

### Hours Of Work

Employees in the commercial sector are not allowed to work more than 44 hours per week and a maximum of eight hours per day. In the industrial sector, employees cannot work more than 48 hours per week with a daily limit of eight hours.

Commercial employees are entitled to a weekly rest of 36 hours. Generally speaking, this rest period is taken from 1:00 p.m. on Saturday and continues all through Sunday. It is possible to agree other rest days provided that the duration of such a rest period is 36 consecutive hours.

The weekly rest entitlement of employees in the industrial sector is 24 hours and is taken on Sunday. In both sectors there should be a rest period of between thirty minutes and two hours and a half in between working hours. Commercial employees should take their rest period between the fourth and the fifth hour of work. Industrial employees should take their rest period on the fifth hour of work. The thirty-minute rest period is paid as it is considered as working time. A one-hour rest period might be paid, but this would have to be agreed upon by the parties. A two hours or a two and a half hour break are never paid.

All working time that exceeds the maximum daily working time limit is regarded as overtime.

Where an employee works overtime during a working day he / she is entitled to double pay for those extra hours. Where an employee works overtime on a holiday he / she is entitled to be paid three and a half times more for those additional hours.

The amounts paid as overtime are intrinsically considered salary, thus they should be taken into account for the calculation of the remaining labour credits, including dismissal compensation.

The exceptions to the above are, among others, higher company personnel, e.g. those who hold a higher position to the Chief of Department, professionals, highly specialized experts and commercial travellers.

### Earnings

In Uruguay salaries are fixed by the Council of Wages, which are institutes of tripartite organizations that determinate the minimum wages and work conditions that workers are entitled. Salaries are also fixed by collective agreements between unions and employers.

In addition, employees are entitled to an annual bonus which is supplementary to the employee's salaries. This is a special bonus which is equivalent to one twelfth of the total salary paid by the employer in the period 1 December to 30 November.



The bonus is paid in two instalments. The first instalment is paid in June and corresponds to what was earned from 1 December until 30 May. The second instalment is paid between 14 December and 23 December.

### Holidays / Rest Periods

Every employee who completes one year of employment is entitled to take 20 days paid holiday.

In cases where the employee does not achieve one full year of employment during the holiday year (1 January to 31 December), he/she will have the right to take a holiday proportional to the worked period.

Every four years, as from the fifth year, one extra day of holiday is accrued.

Additionally employees can earn a holiday salary, which is an amount of money given to the employee before going on holiday. This holiday salary is intended to enable employees to enjoy their holidays. This benefit is equivalent to a net day's wage.

### Minimum/Maximum Age

The minimum age to work is 15 years. There are no maximum age limits. 60 years is considered retirement age, but it is not mandatory.

### Illness/Disability

The social security system covers health insurance and sick pay. The system is compulsory.

The employer must also pay to the Banco de Seguros del Estado an insurance for work related accidents.

Allowances for illness pay and disability pay during the labour relationship are covered by the social security system.

### Location Of Work/Mobility

The employer has the authority to make changes relating to the employees work location. This right is limited by the principle of reasonableness. Mobility clauses can be included in the contract of employment, but they cannot be operated unreasonably. Where the job requires travel to other temporary locations, it is normal for the employer to reimburse the employee for all reasonable travel expenses.

### Pension Plans

Starting on 1 April 1996 (date on which Law 16,713 of 3 September 1995 took effect) the Social Security system is mix. Employees pay social security contributions to a public solidarism system and to personal and individual accounts known as Administradoras de Fondo Previsional" (AFAP) system.

Once the employee retires he will receive a pension paid by the public system and another paid by the AFAP

### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

Parental rights do exist and include paid maternity leave, paternity leave, adoption leave, time off for dependants and part-time working.

An employee is entitled to three days paternity leave and to additional leave paid by the social security system, which currently extends to 3 days as well.

A pregnant employee is entitled to fourteen weeks leave. During maternity leave the employee receives her wages from the social security system.

Parents are entitled to a reduction of their working schedule by half, until child turns 4 months old. The benefit shall not be used by both parents at once. The cost of the reduction is paid by the social security system

An employee is entitled to 6 weeks adoption leave. During adoption leave the employees salary is paid by the social security system. If the adopted person is severally disabled, the employee is entitled to request an additional 6 months leave (without payment).

### Compulsory Terms

As there is no requirement for there to be a written contract, there are no compulsory terms to be included.

### Non-Compulsory Terms

Parties are free to agree whatever they want in their contract, taking in account that these provisions cannot be less favourable to the employee than those of the law or those of a collective agreement.

### Types Of Agreement

There are two types of labour agreements: Agreements with a fixed term and agreements with no fixed term. Both types of labour contracts are entered into within a private level between the employee and the employer, with no obligation whatsoever as to the registration or entry before the Ministry of Labour.

The default position is the agreement with no fixed term, without time limit. Contracts for a specified term must have a justifiable ground. Said ground lies on the actual duration of the specific work to be done (i.e. temporary work; replacement workers.)

There is no regulation regarding the maximum duration of the contract for a specified term. Judicial decision states that the maximum term should be that of the duration of the hired work. Consequently, the term should be fixed for each specific case.

### Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality. During the employment relationship the employee is under an implied obligation to maintain secrecy and confidentiality with regards to employer information. Even after the termination of the contract, and even if there is no express clause in the contract, the employee must keep information which he/she has acquired during the labour relationship confidential.

Breach of confidentiality can be a criminal offence in some cases (e.g. within the financial sector).

### Ownership of Inventions/Other Intellectual Property (IP) Rights

There is a specific law which determines ownership of Intellectual Property rights. If the employee is employed to invent, then the employer owns the rights to the invention. In cases where the employee makes an invention using the employer's knowledge and instruments, the ownership rights are shared between the employee and the employer, in case the employer is interest in this right. If the employee creates an invention based on his knowledge and personal skills the right of ownership belongs to him.

### Hiring Non-Nationals

Uruguayan law does not apply differently to employment agreements of national and non-national workers. In principle there are no restrictions on non-nationals working in Uruguay. However, non-national employees must obtain a document certifying permanent residence in Uruguay and good health.

No work authorization is needed for a non-national to develop his professional activities in Uruguay. However, if the non-national wishes to stay in the country for a period of more than 180 days, he must obtain temporary or permanent residence.

Temporary residents are allowed to stay in the country for two years, which is renewable for to provide for a further two years of temporary residence. Throughout their residence period, temporary residents may leave the country and re-enter as many times as may be necessary.



### Hiring Specified Categories Of Individuals

In general there are no specific rules about hiring different categories of individuals aside from special protection for children and female employees.

### Outsourcing And/Or Sub-Contracting

There are specific rules relating to outsourcing and sub-contracting. In cases of outsourcing and sub-contracting of services associated with the company's principal activity or associated with some specific accessory activities (like cleaning, maintenance, security and surveillance) the national law establishes joint liability of both companies involved for the payment of labour credits as social security contributions. If the company which hires the services controls the fulfilment of labour and security obligations of the outsourcing company, the law establishes a secondary liability of the company which hires the services.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

The employer has the authority to make certain changes to the employment contract. This authority to make changes in the employment contract is known as "ius variandi" and is commonly used to change working hours and the location of work.

There are restrictions placed on the use of "ius variandi". "Ius variandi" or the authority to change certain aspects of the employment contract is not unlimited. "Ius variandi" is limited by the principle of reasonableness and changes cannot be used to reduce the salary or the labour category of the employee nor can such changes be detrimental to the employee.

Any changes to the contract which do not respect the limitations of the employers' powers would result in a breach of contract and consequently the employee would be entitled to treat the contract as being terminated. The employee may claim that he has been constructively dismissed and claim severance pay. However, if the change in question has not exceed the imposed limits, the employer may have a defence to a breach of contract or constructive dismissal claim.

### Change In Ownership Of The Business

In principle under the labour contract the employee cannot be substituted by the employer, but the employer can be. When there is a change in ownership of a business (except a change merely in the shareholding ownership), all employees are automatically transferred to the new employer on the same terms and conditions. According to labour principles, the new employer assumes all the benefits that the employees enjoy and has to recognise the seniority of the employees that are transferred. Employees should be notified if the employer is changing.

Employees can refuse to the change of the employer. If the employee refuses to transfer to the new employer, but has no good reason for the refusal, then he/she is deemed to have their contract of employment terminated. However, if it is reasonable for the employee to refuse to the change of employer (e.g. the new employer has previously unfulfilled labour credits) then he/she can consider themselves dismissed and claim severance pay.

### Social Security Contributions

Both employers and employees are required to make social security contributions. The amount that each is to contribute is established by law.

Social security contributions cover benefits of retirement, disability, health, death and unemployment.

Illness pay and maternity pay during the labour relationship are covered by the social security system. Consequently the employers contribute towards such allowances payable to employees during their employment by their social security contributions. Some collective agreements provide for greater contributions from the employer.

### Accidents At Work

Accidents at work are regulated by a specific law which establishes a compulsory insurance to cover labour accidents. This insurance must be taken out with the State Insurance Bank. The insurance provides employees with cover from the first day of employment, even if the employer has not implemented the insurance. The premiums -charged to the employer- are fixed according to tables prepared by the State Insurance Bank taking into account the type of activity performed by the insured individual.

The employee cannot claim damages from an accident at work directly from his employer, but the State Insurance Bank must pay all medical expenses. However, the employee could claim extra damages from his employer in cases of fault or gross negligence on the part of the employer regarding labour security regulations.

### Discipline And Grievance

There are no specific rules regarding discipline and grievance.

It is understood that the employer has disciplinary powers as part of his power to organize work.

### Harassment/Discrimination/Equal pay

Harassment and discrimination are contrary to constitutional principles. There are no specific anti-discrimination regulations in labour law, except rules providing for individual cases.

Despite that, based on constitutional principles the Judiciary has understood that in cases of harassment or discrimination of any kind, an employer is in breach of constitutional human rights which deserves the protection of the Magistracy.



Sexual harassment is specifically regulated. Sexual harassment Law defines the concept of sexual harassment as unwanted conduct of a sexual nature which, if refused, may harm his/her employment relationship or could create a hostile or humiliating work environment. The purpose of the Act is to prevent sexual harassment and requires employers to implement aimed at preventing it.

The Law establishes under what circumstances the employer can be held liable for harassment. When an employee of the employer commits the offence of harassment and the employer is aware of the situation and does not take any action to prevent such actions of the employee, the employer will be liable. If the employer is found liable then the employer is ordered to pay the harassed employee compensation of six months' salary.

### Compulsory Training Obligations

In Uruguay there are no training obligations established by Law.

### Offsetting Earnings

According to regulation it is possible for employers to offset earnings against employee's debts if there is a law or a bargaining agreement that allows it. Offsetting of earnings is subject to a maximum of 70% of the employee's wage.

### Payments For Maternity And Disability Leave

The Law establishes maternity and illness pay for employees during the labour relationship. Those allowances are covered by the social security system.

### Compulsory Insurance

The above mentioned Law N° 16.074 establishes a compulsory insurance against labour accidents. This insurance must be procured with the State Insurance Bank. This insurance is automatic, as explained above.

### Absence For Military Or Public Service Duties

In Uruguay enforced military or public service duties do not exist.

Employees are not allowed time off work to serve in the army.

### Works Councils or Trade Unions

The employees have a constitutional right to establish a union and are free to join them. Moreover constitutional principles and Law protects employees affiliated to a union against any act of discrimination related with such membership.

### Employees' Right To Strike

The Constitution (section 57) recognizes the right of employees to go on strike. However the Law does not establish clear regulations as to this right. Due to lack of clarity in the regulations, the unions can go on strike under any circumstances.

### Employees On Strike

If an employer fires an employee who is on strike, this may be considered as an unfair dismissal. The employees would claim that they are entitled to be reinstated due to the dismissal not being valid.

In this case the employer would have to prove that the dismissal is not related with the union activities.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of their employees by virtue of the Civil Code. The employer, if entitled, may seek recovery of any money paid from the employee.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

There is no rule establishing the way in which a labour relationship should be terminated. There are rules which relate to severance payments but not as the procedure to be followed when terminating the employment.

### Instant Dismissal

The employer can terminate the relationship by instant dismissal. There is no obligation to give reasons of the dismissal either, in Uruguay the dismissal does not have to be caused.

No approval from a court or other regulatory body is required for termination to be effective.

### Employee's Resignation

An employee can resign at any moment.

### Termination On Notice

Parties may terminate an agreement on notice. No minimum period of notice is required.

### Termination By Reason Of The Employee's Age

Employment can be terminated by reason of the employee's age, but such a dismissal may be considered an unfair dismissal and consequently may give rise to a claim of special compensation.

### Automatic Termination In Cases Of Force Majeure

Force majeure in labour relationships is very exceptional. In some cases, the Courts have accepted it as a reason to terminate the labour relationship without paying any compensation.



### Termination By Parties' Agreement

Parties are free to agree termination under whatever conditions as far as they respect public policy.

### Directors Or Other Senior Officers

The same rules apply to directors (when they are employees) as to other employees.

### Special Rules For Categories Of Employee

There are no special rules for categories of employees.

### Specific Rules For Companies in Financial Difficulties

Employers can only restrict the future activities of employee if this is agreed between the parties.

### Restricting Future Activities

Generally, clauses that attempt to restrict the future activities of an employee are contrary to state policy and, therefore, unenforceable.

### Severance Payments

When the employee is dismissed he / she is entitled to receive compensation except when there has been a dismissal for cause (which implies gross misconduct).

In the case of employees paid monthly, compensation is equivalent to one month's salary for every year or portion worked, with a maximum limit of six months pay. It should be noted that the term monthly payment includes not only the salary but also any salary remuneration earned by the employee (overtime, commissions, portion of holiday salary, accrued leave, 13th salary, etc.).

The employees that are paid monthly do not have to work for a certain qualifying period in order to be entitled to compensation for dismissal.

### Special Tax Provisions And Severance Payments

Severance compensation is not taxable.

### Allowances Payable To Employees After Termination

With the contributions paid by employer and employees to the social security system the employee receives an unemployment payment for the six months following termination of the labour relationship.

### Time Limits For Claims Following Termination

The statute of limitation rules establish that claims must be filed within one year after the date of termination.

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# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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# USA - Arizona

# USA - Arizona

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Certain claims may be asserted before the Arizona Industrial Commission, the Arizona Civil Rights Division, and, in some instances, local agencies. Most claims may be asserted in courts of general jurisdiction, although certain claims must first be presented to the appropriate administrative agency.

### The Main Sources Of Employment Law

Common law, state statutes and state regulations are the main sources of employment law in Arizona. Major state employment statutes include the Arizona Civil Rights Act (A.R.S. §§41-1401 et seq.), the Arizona Wage Law (A.R.S. §§23-350 et seq.), and the Arizona Workers' Compensation Law (A.R.S. §§23-901 et seq.) Individual contracts and collective bargaining agreements may also govern the employment relationship.

### National Law And Employees Working For Foreign Companies

State law applies to all individuals physically working in the state. Federal law and, in some instances, a national treaty with a foreign government may also apply. The parties may contractually agree to apply a certain state's law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

State law applies only when the employee is physically working in the state or when both parties have agreed in writing to the application of Arizona law.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no legal requirements regarding the form of an employment agreement. Employment agreements are not required to be in writing, but to be enforceable in most circumstances an employment contract must be in writing and signed by both the employer and the employee. (A.R.S. §23-1501(2)).

### Mandatory Requirements

#### Trial Period

There is no legal requirement to provide trial periods (also referred to as "probationary periods" or "introductory periods"). The terms of a collective bargaining agreement may apply.

#### Hours of Work

Arizona law provides few wage and hour standards, but provides for a minimum wage which changes every year based on a cost of living formula. The minimum wage in Arizona for 2014 is $7.90. There is no restriction on the number of hours employees may be required to work, except for children under the age of 16 (A.R.S. §23-233). Except for laws mandating minimum wages, provisions covering the payment of wages, and special overtime provisions for certain public employees, workers in Arizona are governed by the federal Fair Labor Standards Act. The terms of a collective bargaining agreement may also apply.

#### Earnings

All non-exempt employees must be paid the federal or state minimum wage, whichever is higher, for all hours worked (A.R.S. §23-363). Arizona does not have a statute relating to the payment of overtime, and thus relies on the federal Fair Labor Standards Act overtime provisions. The terms of a collective bargaining agreement may also apply.

A non-exempt employee is any employee who is not exempt from the overtime and minimum wage provisions of the federal Fair Labor Standards Act.

#### Holidays/Rest Periods

There are no statutory provisions regarding holidays and rest periods. The terms of a collective bargaining agreement may apply.

#### Minimum/Maximum Age

Arizona statutes restrict the employment of children between 16 and 18 years of age to certain categories of work. Additional federal and state rules apply to the employment of children under the age of 16 (A.R.S. §23-230 et seq.). There are no maximum age limits. The Arizona Civil Rights Act prohibits discrimination on the basis of age for individuals age 40 or older (A.R.S. §41-1401 et seq.). The terms of a collective bargaining agreement may also apply.

#### Illness/Disability

There are no statutory provisions regarding illness or disability, such as paid leave. However, federal and state law impose specific anti-discrimination and leave requirements for employees with a disability or serious medical condition. The terms of a collective bargaining agreement may also apply.

#### Location of Work/Mobility

There are no statutory provisions regarding location of work or mobility.

It is not common in Arizona for employers to include mobility clauses in employment agreements. Generally, an employer can require an employee to work wherever the employee is needed.

#### Pension Plans

There are no statutory provisions regarding pension plans. Federal law may apply.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

There are no statutory provisions regarding pregnancy, maternity or adoption benefits; however, state non-discrimination requirements apply. Federal leave requirements and the terms of a collective bargaining agreement may also apply.

### Compulsory Terms

There are no compulsory terms that must be included in an employment agreement.

### Non-Compulsory Terms

The employer and employee may agree to any terms, provided that the terms do not abrogate statutory rights (e.g., employees may not agree to compensation less than the minimum wage or waive their right to overtime compensation).

### Types Of Agreement

Employers and employees may enter into a variety of agreements related to the employment relationship including standard employment agreements (regarding hours, wages, benefits, etc.), confidentiality and non-disclosure agreements, non-competition agreements, non-solicitation agreements, etc. Common law and state statutes will determine the enforceability of such agreements.

Some employment agreements are for fixed terms, others are for "at will" employees and may contain restrictions on competition or solicitation of customers, and may also include confidentiality clauses.

### Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied in the employment relationship. During the employment relationship, an employee is under a duty of loyalty and must not act contrary to the employer's interest by, for example, misappropriating trade secrets. Arizona's Uniform Trade Secrets Act regulates the misappropriation of trade secrets both during and after employment (A.R.S. §44-401 et seq.). Employers and employees may also enter into confidentiality and non-disclosure agreements.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

There are no statutory provisions regarding employee ownership of inventions and other intellectual property rights. Contractual provisions and federal law may apply.

### Hiring Non-Nationals

The Legal Arizona Workers Act requires employers to use the federal "E-Verify" program to verify that new employees have a valid work authorization, and provides for sanctions against employers who knowingly or intentionally hire unauthorized workers (A.R.S. §23-212). All employers must ensure that all employees are eligible to work in the United States in accordance with federal law.



### Hiring Specified Categories Of Individuals

There are restrictions on the types of work that children between the age of 16 and 18 years of age may be hired to perform. For example, children under age 16 may not be employed in certain hazardous or detrimental occupations (A.R.S. §23-232).

### Outsourcing And/Or Sub-Contracting

There are no provisions regarding outsourcing and/or subcontracting. The terms of a collective bargaining agreement may apply.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Changes to an employment contract are generally governed by the contractual terms and common law.

### Change In Ownership Of The Business

There are no statutory provisions regarding change in ownership of the business. Contractual provisions and federal law may apply. It is for the old and new employer to decide what happens to the employees.

### Social Security Contributions

Employers and employees are both required by federal law to make social security contributions. Employers are also required by state law to make contributions for unemployment benefits and may also be required to pay for workers' compensation insurance (A.R.S. §§23-601 et seq., 23-901 et seq.).

### Accidents At Work

Employee injuries occurring at work are governed by the Arizona Workers' Compensation Law (A.R.S. §23-901 et seq.). Employers may also be responsible under common law for accidents caused by the acts of their employees where the employees were acting in the course and scope of their employment. Federal law may also apply.

### Discipline And Grievance

There are no statutory provisions regarding discipline and grievances. A collective bargaining agreement or other contract may apply.

### Harassment/Discrimination/Equal pay

The Arizona Civil Rights Act prohibits discrimination in employment on the basis of race, color, religion, national origin, sex, ancestry, age (40 or older), or disability (A.R.S. §41-1401 et seq.). This law applies to employers with fifteen or more employees, except for the prohibition on sexual harassment which applies to employers with at least one employee. Certain municipalities also prohibit discrimination on these and other bases. The Arizona Equal Pay statute prohibits employers from paying females a wage rate less than the wage rate paid to male employees who perform the same quantity and quality of the same classification of work (A.R.S §§23-340, -341).

### Compulsory Training Obligations

There are no statutory provisions regarding compulsory training obligations.

### Offsetting Earnings

Under Arizona's wage statute, an employer cannot withhold or divert any portion of an employee's wages except where (1) the employer is required to do so under state or federal law (e.g., taxes); (2) the employee has submitted a voluntary authorization to the employer (e.g., union dues deduction); (3) the employer has received a written authorization from the employee based on an agreement with the employee (e.g., payment for lost tools or equipment); or (4) there is a good faith dispute as to the amount of wages due (A.R.S. §23-350 et seq.). Deductions from wages for garnishments must also comply with state and federal requirements (A.R.S. §12-1598 et seq.).

### Payments For Maternity And Disability Leave

There are no statutory provisions regarding payments for maternity and disability leave.

Some employers allow employees to use accumulated vacation or other paid leave to cover at least a part of the time they will be absent. Beyond that, employees may take the time as unpaid leave.

### Compulsory Insurance

Arizona employers with one or more employees must carry workers' compensation insurance (A.R.S. §23-901 et seq.).

### Absence For Military Or Public Service Duties

Employers are prohibited from dissuading employees from joining the National Guard or retaliating against employees who serve. Employees who are ordered to active state duty are entitled, upon return from duty, to reinstatement to their previous position or to a higher position commensurate with their ability and experience (A.R.S. §§26-167, 168). Federal law may also apply.

An employer may not dismiss or in any way penalize an employee because of the employee's jury summons or service. The employer is not required to pay the employee for time away during jury duty. Absences due to jury service may not affect the employee's vacation or seniority rights (A.R.S. §21-236).



Employees with less than 3 hours between the opening of the polls and the beginning of their normal work hours or the end of their normal work hours and the closing of the polls are entitled to take paid leave from work, at the employer's cost, at either the beginning or end of a shift for such an amount of time that provides 3 consecutive hours in which to vote (A.R.S. §16-402).

### Works Councils or Trade Unions

Arizona law affords to agricultural and some public safety employees the right to organize and bargain collectively through representatives of their own choosing (A.R.S. §§23-1381, 23-1411). Some municipalities have enacted ordinances providing for municipal employee organizing rights as well. Federal law may also apply.

### Employees' Right To Strike

Striking for the purpose of forcing an employer to replace non-union employees with union members is prohibited by Article 25 of the Arizona Constitution. The Arizona Constitution also provides that an individual may not be denied employment because of non-membership in a labour organization (right-to-work).

### Employees On Strike

Federal law may apply. However, the National Labor Relations Act gives employees the right to strike.

### Employers' Responsibility For Actions Of Their Employees

Under the doctrine of respondeat superior, an employer may be liable for the negligent acts or omissions by an employee that are committed within the course and scope of employment. Employers may also be liable for negligent hiring and/or retention where the plaintiff can prove the following: (1) the employee is unfit; (2) who presents a probable danger; (3) the employer knew or should have known of the employee's unfitness or danger (i.e., foreseeability); and (4) the employer's negligence (in hiring or supervision) was the proximate cause of the plaintiff's injury.

# 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no statutory provisions regarding procedures for terminating an employment agreement. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time. An employment contract or collective bargaining agreement may specify termination procedures.

### Instant Dismissal

There are no statutory provisions regarding procedures for instant dismissal of an employee. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time. An employment contract or collective bargaining agreement may contain notice requirements. Employees terminated by the employer must receive their final paycheck within seven days, or by the end of the next pay period, whichever is sooner.

### Employee's Resignation

There are no statutory provisions regarding employee resignation. An employment contract or collective bargaining agreement may specify resignation procedures.

### Termination on Notice

There are no statutory provisions regarding termination on notice. An employment contract or collective bargaining agreement may contain notice requirements.

### Termination By Reason Of The Employee's Age

The Arizona Civil Rights Act prohibits discrimination in employment on the basis of age (40 or older). This provision applies to employers with fifteen or more employees (A.R.S. §41-1401 et seq.). Federal law may also apply.

### Termination By Parties' Agreement

The parties are free to terminate the employment relationship on any grounds they desire, except for unlawful reasons proscribed by federal, state or local law.

### Directors Or Other Senior Officers

There are no statutory provisions regarding termination of directors and senior officers. An employment contract may apply and contain termination procedures. The termination of employment does not automatically terminate board membership. Separate steps, generally set out in the bylaws or articles of incorporation/organization, are required to terminate board membership.



### Special Rules For Categories Of Employee

There are no statutory provisions regarding the termination of certain categories of employees. However, termination decisions must comply with the anti-discrimination provisions of the Arizona Civil Rights Act

### Specific Rules For Companies in Financial Difficulties

There are no statutory provisions regarding companies in financial difficulty. Federal bankruptcy law, the Employee Retirement Income Security Act, the Worker Adjustment and Retraining Notification Act, and other federal laws may apply.

### Restricting Future Activities

Contracts in restraint of trade are unlawful in Arizona. Restrictive covenants limiting individuals in the exercise or pursuit of their occupations are in restraint of trade and are also unlawful. However, reasonable non-competition and non-solicitation agreements are permitted between employers and employees in order to protect (1) confidential or trade secret business information; or (2) customer or supplier relationships, good will, or loyalty.

The agreement must be reasonable in both duration and geographic scope and must be supported by consideration (at-will employment constitutes sufficient consideration under Arizona law). Enforceability of restrictive covenants is determined on a case-by-case basis. Agreements that prohibit an employee from soliciting employees of a former employer, or that prohibit disclosure of confidential information are generally enforceable. In Arizona, if a court finds that an agreement is too broad, the court does not have the power to modify the agreement to the extent necessary to make it reasonable unless the parties to the agreement have already set out alternative temporal or geographic limitations among which the court can choose.

### Severance Payments

There are no statutory provisions regarding or requiring severance payments. Severance payments are not required unless the employer and the employee have a contract providing for severance. There are specific rules governing the validity of a release provided in exchange for severance payments.

### Special Tax Provisions And Severance Payments

Severance payments are taxed in the same way as other wages. Federal law may also apply.

### Allowances Payable To Employees After Termination

Employees may be entitled to unemployment benefits after termination of employment so long as they meet certain requirements (A.R.S. §23-601 et seq.).

### Time Limits For Claims Following Termination

Statutes of limitation vary depending upon the nature of the claim.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Arizona Employment Protection Act: The Arizona Employment Protection Act ("EPA") limits wrongful discharge tort claims based on the public policy expressed in a state statute to those situations in which the statute contains no remedy of its own. The EPA also provides protection for whistleblowers terminated for disclosing, in a reasonable manner, that the employer has violated or will violate the Arizona constitution or statutes. In addition, the EPA sets forth the requirements for an enforceable employment contract (A.R.S. §23-1501).

Constructive Discharge: Arizona's constructive discharge statute defines the kind of conduct and working conditions necessary for constructive discharge claims under Arizona statutes and common law (but does not affect constructive discharge claims under federal law) (A.R.S. §23-1502).

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# USA - California

# USA - California

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Most employment related claims are adjudicated through California's civil court system or the federal court system. However, there are specialized forums for on-the-job injuries under the workers' compensation system. Workers' compensation provides the "exclusive remedy" for job-related injuries unless those injuries are the result of particular intentional conduct or negligence far outside of the scope of employment, or the injuries are the result of acts that are made unlawful by anti-discrimination/harassment/retaliation laws.

In addition, challenges to awards of statutory benefits, such as unemployment insurance and state disability insurance, must be adjudicated before the California Employment Development Department.

Finally, there are specialized administrative agencies, like the Department of Industrial Relations, for wage and working conditions disputes. These agencies have the power to order payment of back wages and penalties. Employees may choose to file claims before the administrative agency, or may file claims directly with the courts. Employees claiming violations of California or federal anti-discrimination/harassment/retaliation laws must first file those claims with the California Department of Fair Employment and Housing or federal Equal Employment Opportunity Commission, before commencing a court action.

### The Main Sources Of Employment Law

The main sources of employment law in California are codified in the California Labor Code, California Government Code, California Civil Code, and California Unemployment Insurance Code. However, there are often statutes contained in other codes that impact California employers.

Laws governing wages, working conditions, and workplace injuries are generally codified in the California Labor Code. Laws governing anti-discrimination/harassment/retaliation are generally codified in the California Government Code. In addition to the statutes, administrative agencies are charged with creating regulations to provide guidance regarding the implementation and interpretation of the statutes. Often times the administrative agencies also provide opinion letters and other interpretive guidance regarding various employment laws. While the guidance is not binding, it provides employers with useful insight into how a statute or regulation may be interpreted when challenged.



California employers must also comply with all applicable federal laws governing the employer-employee relationship.

The employer-employee relationship may also be governed by non-codified laws, collective bargaining agreements and individual contracts.

### National Law And Employees Working For Foreign Companies

As noted above, in addition to California law, there are several federal statutes and regulations governing the employer-employee relationship for workers in the United States. Both California and federal law apply to workers who work within California regardless of the employee or the employer's nationality.

### National Law And Employees Of National Companies Working In Another Jurisdiction

If a national employee is providing services outside of California, federal law and the law of the state in which the employee is working will apply.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Under California law, a written employment agreement is not required, nor are there any requirements as to the form of any employment agreement.

### Mandatory Requirements

#### Trial Period

There is no legal obligation to provide an employee with a trial period, often called "probationary" or "introductory" period. Employment in California is presumed to be "at-will" meaning that the employer or the employee can terminate the employment relationship at any time, with or without notice, and with or without cause. However, the "at-will" status can be altered by agreement, employer policies or practices and representations by the employer. The use of a trial period may impact the "at-will" status of employees.

#### Hours of Work

There are no mandatory requirements regarding when employees may be required to work. Employees working under California Wage Orders 4, 8, and 13 cannot be required to work more than 72 hours per "workweek". Employees are to receive at least one day of rest per "workweek".

The laws governing hours of work and compensation for those hours depend heavily on whether the employee is an exempt or non-exempt employee. Both California and federal laws contain complex and detailed standards for determining whether an employee is an exempt employee.

### Hours of Work

Generally, if an employee is "exempt", he or she is exempt from overtime payments and is paid a salary, regardless of the number of hours worked each day. If an employee is "non-exempt" he or she may only work more than eight hours in any workday, or more than six days in any workweek if the non-exempt employee is paid overtime. Unlike federal law, which only requires employers to pay overtime for those hours worked in excess of forty hours in one work week, California law requires employers pay overtime for all hours worked in excess of forty in one workweek and in excess of eight hours in a single workday. Another unique aspect of California law is that the amount of overtime depends on how many hours the employee works in a workday and/or in a workweek, and whether the employee works a seventh consecutive day in a given workweek. For example, a non-exempt employee is entitled to a rate of one and one-half times his or her regular rate of pay for those hours worked in excess of eight hours in any workday and a rate of two-times his or her regular rate of pay for those hours worked in excess of twelve hours in a workday.

"Workday" is a consecutive 24 hour period, and "workweek" is a consecutive seven-day period, although employers may define "workday" and "workweek".

### Earnings

Non-exempt employees must be paid at least minimum wage for all hours worked. Employers are not permitted to apply a "tip credit" or similar offsets to wages. There are rare circumstances in which an employee may be paid less than the minimum wage, which are inapplicable to most California employers. Exempt employees must be paid the amount required to meet the minimum compensation requirements contained in the exemption standards.

Employers must also be aware of obligations to pay non-exempt employees split shift premiums, call-in pay, and on-call/stand-by pay.

### Holidays/Rest Periods

Employers are not required to provide paid days off for holiday. If employers choose to offer paid vacation or paid time off, the employees must accrue the amount incrementally and must be paid for all time accrued but unused at the time the employment ends. In addition employers may not have a "use-it-or-lose-it" policy with regard to accrued vacation or paid time off, but may institute a "reasonable cap" on accrual.

"Rest periods" under California law are 10 minute rest periods for every four hours worked, as noted above. In addition, non-exempt employees are entitled to take a paid 10-minute rest period for every four hours of work, and are entitled to take an unpaid 30-minute meal period if the employee works 5 or more hours in a workday. Employees working 10 or more hours in a workday may take a second unpaid meal period. In addition to exemption status and company policies, the duration and frequency of rest periods can be limited or expanded according to the type of occupation.

### Minimum/Maximum Age

Any employers employing children under the age of 18 must comply with California's child labor laws and obtain all necessary work permits. In many circumstances employers may not employ workers younger than 16. California does not have a maximum working age.

### Illness/Disability

California employers are not required to provide paid sick leave to employees. However, certain cities, such as San Francisco, have enacted sick leave ordinances requiring employers to provide a minimum amount of paid sick leave to employees. The amount of leave provided depends on the size of the employer. If sick leave is provided, employers must allow the employee to take half of the time off to care for an ill family member (referred to as "kincare").

Both California and federal law prohibit discriminating against an employee on the basis of a disability and there are several laws which apply to these types of issues. Notably, an employer must make "reasonable accommodations" to allow a qualified disabled person to perform his or her job.



Under California and federal law, workers who personally suffer from a "serious health condition" are entitled to unpaid leave for up to twelve weeks under either the California Family Rights Act ("CFRA") or the Family and Medical Leave Act ("FMLA"), but only if the worker meets the service requirements and works for a qualified employer. The employer has the authority to elect which Act to apply; the employee is not entitled to leave under each Act. In addition, employees who are unable to work because they are disabled by pregnancy may be entitled to up to four months of leave under California's Pregnancy Disability Law. In such circumstances, the employer is obligated to hold open the employees' job unless the employer can show that the job would have been eliminated or that holding it open is a significant hardship (often difficult to establish).

Employees qualified to take leave under the CFRA and FMLA are also entitled to take leave for the serious health condition of specified family members, including parents, children and spouses. California includes registered domestic partners in the definition of "spouse" whereas the federal law does not. However, the U.S. Department of Labor issued regulatory guidance stating that same-sex couples who are married and living in one of the states where same-sex marriage is legal, which includes California, are now eligible for the spousal benefits afforded by the FMLA.

### Location of Work/Mobility

Employees are not required to have a specified location of work, although most do. For employees who do not have a regular work location, employers may be obligated to pay for certain travel time and travel expenses related to the employee's commute.

### Pension Plans

Employers are not obligated to provide pension or retirement plans. In addition, if an employer chooses to provide such a plan, the employer is not obligated to make contributions to the plan. However, if a retirement plan is offered, the employer must fully disclose the plan and offer it to all employees. Pension and retirement plans are governed by federal law. Specifically, the plans are governed by the United States Employee Retirement Income Security Act (ERISA).

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Female employees who work for employers with 5 or more employees and who are unable to work because they are disabled by pregnancy are entitled to take up to four months of leave per pregnancy.

All employees, male and female, who work for employers with 50 or more employees and who meet all eligibility requirements are entitled to take leave under the federal Family Medical Leave Act and the California Family Rights Act for "baby bonding" within one year of the birth or placement of the child. Employees taking leave are generally entitled to take 12 weeks of leave in a 12 month period. The eligibility requirements for such leave are complicated and should be carefully navigated by California employers.

If an employee is not entitled to take statutory leave, California employers may choose to provide time off for the birth or placement of a child.

Employers cannot discriminate against an employee who takes statutorily protected leave.

In addition, California has several leave rights impacting parents' ability to take time off for family-related matters.

### Compulsory Terms

California does not require that employers provide employees with an employment agreement.

### Non-Compulsory Terms

The employer and employee are free to agree to any terms and conditions of employment, so long as the terms are not less favourable than the terms and conditions guaranteed by California and federal law.

### Types Of Agreement

The employment relationship in California is heavily regulated, and even the presumption that employment is "at-will" has been codified by statute. However, as discussed above, employers are free to contract more precise terms and conditions of employment with the employees that can modify the "at-will" nature of employment. For example, employers and employees may enter into agreements for a fixed time period, and/or employment that can only be terminated "for cause" (as defined in the agreement), or termination with a set notice period.

In addition, employers may contract with employees regarding maintaining confidentiality of information, utilizing arbitration to resolve employment disputes, and ownership of employee property. Finally, an employer's policies or oral representations to the employees can create contractual obligations between the parties. For example, representations that the employee will be given notice of dismissal prior to dismissal can create an obligation to provide notice.

### Secrecy/Confidentiality

Broadly, the California Uniform Trade Secrets Act ("UTSA") prohibits individuals, including employees, from using or disclosing another's trade secrets, which are defined by statute. Employers may use agreements to mirror and reinforce the employee's obligations under the UTSA, and protect information that may not rise to the level of trade secrets. California's trade secret law differs from the UTSA with respect to the fact that employers own trade secrets created by their employees, so long as the trade secrets were not created on the employee's own time and without the use of employee materials.

California generally prohibits non-competition and non-solicitation agreements. Agreements restricting competition are governed by California's Business and Professions Code and are prohibited, except in rare circumstances expressly provided for in the code and to the extent necessary to protect trade secrets.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Much like anything else that an employee acquires by virtue of his or her employment, inventions and intellectual property, which are developed by the employee during — and sometimes after the term of — employment, using the employer's tools and work time, will belong to the employer.

### Hiring Non-Nationals

Rules and regulations regarding hiring non-nationals are very strict and are governed by federal law. However, an employer may not discriminate in the hiring process against a person based on their right to work credentials, and may only ask for the credentials after a job has been offered.

Employers may be subjected to penalties for employing an individual who is not entitled to work in the United States. Employers must also conduct the federally required I-9 verifications.



### Hiring Specified Categories Of Individuals

Generally for private employers, there is no quota system that requires that an employer hire a certain number of ethnic minorities, disabled persons or other persons included in protected classes.

There are restrictions on whether certain employees (e.g. children) can perform certain job duties. The restrictions are designed to protect the health and welfare of more vulnerable members of a workforce.

### Outsourcing And/Or Sub-Contracting

There are no specific rules about out-sourcing or subcontracting (often called "independent contractors") except that employers may not avoid wage and hour laws, payroll tax laws, the Unemployment Insurance Code, or obtaining Workers' Compensation Insurance by incorrectly classifying employees as contractors. California's administrative agencies utilize different tests to determine whether an individual is an employee or contractor. However, each of these tests centers around the extent to which the employer is exercising control over the individual; the more control, the more likely the individual is an employee. In addition to liability for the wage, taxes or insurance payments that were avoided through the misclassification, significant penalties can be assessed against an employer who incorrectly classifies individuals as independent contractors instead of employees.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

California contract does not permit a change to the contract by one party unless the other party consents. However, employers can include in the agreement how the agreement can be modified, and in what circumstances the employer is permitted to unilaterally modify the agreement without the employee's consent.

### Change In Ownership Of The Business

There are several considerations that should be addressed by the selling and purchasing companies, and depending on the nature of the sale, a variety of different notices that must be provided to employees. Notices can be required by different administrative agencies, such as the California Employment Development Department, or required by different laws, such as the Consolidated Omnibus Reconciliation Act (COBRA), California Consolidated Omnibus Reconciliation Act, the Worker Adjustment and Retraining Notification Act (WARN), and the California Worker Adjustment and Retraining Notification Act (WARN).

In addition, purchasing employers are often determined to be the "successor employer" when an employee is pursuing a claim for wages, harassment, discrimination, breach of contract, and other claims. However, sellers should be aware that the sale of a business can act as a termination of the employment relationship, even if the employee continues working the same capacity at the new employer, and steps should be taken to address that issue as part of the sale process.

### Social Security Contributions

Employees are required to make contributions to the federal Social Security program, and employers are obligated to make the contributions on behalf of the employee.

### Accidents At Work

Employers are required to follow regulations enacted by the federal Occupational Safety and Health Administration as well as the California Occupational Safety and Health Administration. Additionally, employers are required to create Injury and Illness Prevention Programs that are individualized for their workplace. If, or when, employees do get hurt or become ill on the job, the Workers' Compensation system provides an expeditious method for employees to get prompt treatment for their injuries so that they can return to work.

Under the workers' compensation system, employees are entitled to receive prompt and effective medical treatment for injuries or illnesses sustained on-the-job, regardless of fault. For employers who are properly insured, workers' compensation is the "exclusive remedy' for employees who sustain injuries while on the job. Employees are therefore prevented from suing their employers over those same injuries outside of the workers' compensation system. If an employee does file a claim, it is unlawful for employers to retaliate against that employee for doing so.

Failing to carry workers' compensation coverage is not only punishable by a state imposed penalty of up to $100,000; it is also considered to be a misdemeanour crime, punishable by a fine of up to $10,000 and / or imprisonment in the county jail for up to one year. In addition, if the Department of Labor Standards Enforcement learns that the employer is operating without workers' compensation coverage, it can impose a "stop work" order on the employer. The Department of Labor Standards Enforcement can also impose a penalty of $1,000 per employee on the payroll at the time the stop order is issued and served, up to $100,000. Failure to abide by a stop work order is also a crime, punishable both by a fine and imprisonment. In addition, the employer will have to pay for all of the injured employee's medical bills out-of-pocket.



### Discipline And Grievance

No statutes exist that require a set procedure for discipline and grievances. Employers who use a progressive discipline policy guaranteeing certain steps prior to termination are required to follow that policy (a failure to do so could result in a breach of contract claim), and those who guarantee a grievance process must also follow that process. In addition, employers with collective bargaining agreements or memoranda of understanding with unions must follow the procedures outlined in those agreements.

### Harassment/Discrimination/Equal pay

California employers must comply with both federal and state anti-discrimination and anti-harassment laws. In addition, counties, cities and municipalities may have additional laws providing further protections for employees. Protected classes under federal and/or California state law include:

Race, colour, national origin/ancestry, citizenship, sex (including pregnancy-related conditions), religion, marital status, sexual orientation, gender identity and gender expression, retaliation (for opposing unlawful employment practices, for filing a complaint, for testifying about violations or possible violations), association with a Protected Class, age, disability, genetic predisposition to certain genetic conditions, exercise of family/medical leave rights, veteran status or military service leave, and exercise of other statutory leave rights.

### Compulsory Training Obligations

Employers are not required to train employees for the jobs for which they have been hired.

### Offsetting Earnings

All deductions made from an employee's wages must be statutorily authorized or specifically authorized in writing by the employee. Employers engaging in "self-help" to recover debts owed will be subject to penalties.

### Payments For Maternity And Disability Leave

Employers may choose to provide compensation for employees who are on leave for disability or family-related leave. Employees may apply for wage replacement through the state-run State Disability Insurance and Paid Family Leave programs, administered by the California Employment Development Department. These programs do not provide employees with the right to take a leave of absence, they simply provide wage replacement. All employers/employees participate in these programs through payroll deductions.

### Compulsory Insurance

California employers are not required to provide employees with health, dental, vision or life insurance. California employers are required to purchase and maintain workers' compensation insurance to compensate employees for workplace injuries. In addition, employers are obligated to make appropriate payroll deductions and payments to the state run disability, unemployment and paid family leave insurance programs.

Beginning in 2014, the Affordable Care Act requires that employers with more than 50 full-time equivalent employees (FTEs) provide health insurance to full-time employees or pay a penalty.

### Absence For Military Or Public Service Duties

California does not have its own leave law for military services. Military leave is governed by federal law, and employers must comply with the Uniformed Services Employment and Reemployment Rights Act of 1994. California does require employers with 25 or more employees to provide up to ten days of unpaid leave to an employee whose spouse has been granted leave from military service while on active duty.

In addition, California law requires that employers permit employees time off to vote, serve as a witness pursuant to a subpoena, serve as a juror, and to fulfil obligations as an emergency responder.

In addition to the leaves of absence discussed above, California employers are also required to provide time off to employees to attend to disciplinary matters of their minor children in school; provide time off to attend the criminal proceedings when the employee, or his or her family member, was a victim of a serious crime; provide time off to obtain Court assistance when the employee or his or her family member, was the victim of sexual assault or domestic violence (employers with 25 or more employees must provide additional time off for medical attention, counselling and safety planning); and provide time off for school or daycare activities up to 40 hours per year if the employer has 25 or more employees.

### Works Councils or Trade Unions

The rights of employees of private employers to form and belong to unions are primarily governed by the federal National Labor Relations Act ("NLRA"). Rights of public body or governmental employees to form and be a member of a trade union are governed specifically by other state laws. California enacted the Agricultural Labor Relations Act, which applies solely to agricultural employers and employees, and mirrors the NLRA in many respects.

### Employees' Right To Strike

An employee's right to strike under any of the laws discussed above is clearly set by the governing laws. These laws apply to employees on strike and set out the circumstances under which employees may strike. Private employees who are not members of a union do not have a statutory right to strike. Strikes in California most often occur in the agricultural, grocery and hospitality industries, as well as in the public sector.



### Employees On Strike

Similarly, treatment of employees on strike is governed by the applicable law, and the agreement governing the parties' relationship.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of their employees if the employee was acting in the course and scope of their employment at the time of the employee's actions.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

Because an employee is presumed to be employed "at-will" in California, there are no specific requirements for terminating the employment relationship. If an employment agreement exists, the provisions of that agreement will govern the termination of the employment relationship and the procedures that must be followed in terminating the employee.

### Instant Dismissal

"At-will" employees may be dismissed without warning or prior discipline.

If employees have an employment agreement that modifies the "at-will" employment, employers will need to adhere to those agreements. If an employee's agreement provides that they may only be terminated for the reasons set forth in the agreement, and the employer fails to adhere to those restrictions, the employer may be liable for breach of the agreement.

### Employee's Resignation

"At-will" employees are free to resign their employment at any time. Those employees whose relationship is governed by an employment agreement may have certain provisions related to resignation that will need to be complied with.

### Termination on Notice

Employers are not required to provide "at-will" employees with notice. An employee's agreement may govern particular notice requirements. In addition, in the event of a "mass layoff" or plant closure, employers may be obligated to provide notice to employees prior to termination pursuant to the federal WARN or California WARN laws.

### Termination By Reason Of The Employee's Age

Employees age 40 and above may not be dismissed because of their age under California and federal law.

### Automatic Termination In Cases Of Force Majeure

As discussed above, California employees may be dismissed at any time with or without cause, so long as the reason for dismissal is not an illegal reason.

Employees whose employment is governed by an employment agreement may have those agreements terminated for the reasons enumerated in the agreement. Employers whose employment agreements that do not include provisions for termination in cases of force majeure—unexpected or uncontrollable events - may be held liable for breach of contract unless they are able to establish that their performance is excused under the general laws governing contracts.

### Termination By Parties' Agreement

Parties are free to agree to termination on any grounds and terms they desire, so long as those provisions do not violate state and federal laws.

Where the parties agree to sever the employment relationship and a severance payment is provided to the employee in exchange for the release of all claims against the employer, the release is only effective if it complies with certain statutory requirements. For example, a general waiver and release purporting to release all claims known or unknown must comply with the California Civil Code, and a release of age discrimination claims must comply with the federal Older Workers Benefit Protection Act. California has generally prohibited the waiver of prospective claims on the basis that enforcement would contravene public policy.

### Directors Or Other Senior Officers

There are no special rules or requirements that relate to the termination of a director or other senior officer. Termination of employment does not always terminate the directorship. Terminating the employee's role as director must be done in accordance with the company's governing documents and law.

### Special Rules For Categories Of Employee

There are no categories of employees to whom special rules apply from a general termination. However, employees protected by anti-discrimination laws may not be dismissed because of their membership to a protected class. If an employee is dismissed, even partly because of their membership in a protected class, the employee may bring claims for discrimination and wrongful dismissal, among other claims.



### Specific Rules For Companies in Financial Difficulties

Employers who must comply with federal or California WARN laws may be exempt from compliance if the employer is in severe financial distress. Employers that must comply with WARN laws must generally provide advance notice (60-days) to employees of a plant closure or mass layoff. However, both laws contain exemptions from compliance with the notice requirements in defined circumstances in which the employer unexpectedly suffers severe financial hardship and is unable to maintain operations. Notwithstanding the foregoing exceptions, the employer must give as much notice as is practicable.

### Restricting Future Activities

The California Business and Professions Code generally prohibits employers from restricting the employee's future activities. The Code contains specific circumstances under which a reasonable non-competition agreement may be enforced, generally surrounding the sale of a business or significant portion thereof. In the traditional employer-employee relationship, agreements restricting competition will not be enforced.

### Severance Payments

California law does not require that employers provide a severance payment to an employee. Severance payments are only required when guaranteed by contract or policy. Employers may choose to provide a severance payment, and may condition receipt of that payment upon the employee's execution of a release of claims against the employer.

### Special Tax Provisions And Severance Payments

Severance payments are generally subject to taxes in the same manner as wages.

### Allowances Payable To Employees After Termination

Employers are not required to continue payments to the employee unless contractually obligated to do so.

Employers who provide health benefits are required to permit employees to continue their coverage through the federal COBRA and/or California COBRA laws. Assistance with payment of the premiums for continued coverage may be available under state programs, and are potentially subject to employer contribution under the federal American Recovery and Reinvestment Act of 2009.

### Time Limits For Claims Following Termination

The statutes of limitations for claims against employers vary depending on the nature of the claims brought. Generally the time limitations range from one year to four years following the incident underlying the claim.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

Many of California's employment laws are unique to the state. Even the best intentioned employer can find themselves in violation of state law if the employer is unaware of the "lay of the land." For example, California has extensive wage and hour regulations and several statutorily mandated unpaid leaves of absences.

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# USA - Colorado

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Certain claims may be asserted before the Colorado Division of Labor and Employment, the Colorado Division of Civil Rights, and, in some instances, local agencies. Most claims may be asserted in courts of general jurisdiction, although certain claims must first be presented to the appropriate administrative or governmental agency.

### The Main Sources Of Employment Law

Common law, state statutes and state regulations are the main sources of employment law in Colorado. Major state employment statutes include the Colorado Anti-Discrimination Act (Colo. Rev. Stat. §24-34-401 et seq.), the Colorado Wage Claim Act (Colo. Rev. Stat. §8-4-101, et seq.), the Colorado Employment Security Act (Colo. Rev. Stat. § 8-70-101, et seq.) and the Colorado Workers' Compensation Act (Colo. Rev. Stat. §8-40-101 et seq.). Individual contracts (whether written or oral), employee handbooks and policies, and collective bargaining agreements may also govern the employment relationship.

### National Law And Employees Working For Foreign Companies

State law applies to all individuals physically working in the state. Federal law and, in some instances, a national treaty with a foreign government may also apply. The parties may contractually agree to apply a different state's law in some limited circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

State law applies when the employee is physically working in the state or when both parties have agreed in writing to the application of Colorado law. There are instances when another state's labor laws, most notably wage/hour and wage collection laws, can apply to Colorado residents when they work outside the state.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no legal requirements regarding the form of an employment agreement, and employment agreements are not required.

### Mandatory Requirements

#### Trial Period

There is no legal requirement to provide trial periods (also referred to as "probationary periods" or "introductory periods"). The terms of a collective bargaining agreement may apply.

#### Hours of Work

There is no restriction on the number of hours employees may be required to work, except children. However, employees who are non-exempt under state and federal wage and hour laws are entitled to overtime pay at a rate of one and one-half times the regular rate of pay for all hours worked over 40 in a workweek, 12 hours in a work day, or 12 consecutive hours. (Colorado Wage Order 30) The terms of a collective bargaining agreement may also apply and may supersede or override state law minimums.

#### Earnings

All non-exempt employees must be paid the federal or state minimum wage, whichever is higher, for all hours worked (Colorado Wage Order 30). Exempt employees must be paid certain minimum weekly salaries or fees in accordance with federal law. Certain employees or occupations are exempt from all provisions of Colorado Minimum Wage Laws, including but not limited to administrative, executive/supervisor, professional, outside sales employees, and elected officials and members of their staff. An employee whose physical disability has been certified by the director to significantly impair such disabled employee's ability to perform the duties involved in the employment, and minors under 18 years of age (that have left school), may be paid 15% below the current minimum wage less any applicable lawful credits, for all hours worked (Colorado Wage Order 30). The terms of a collective bargaining agreement may also apply.

#### Holidays/Rest Periods

Employees are entitled to a paid 10-minute rest period for each 4 hours of work or major fractions thereof. It is not required that the employee be permitted to leave the premises for the rest period. Employees shall be entitled to an unpaid, uninterrupted and "duty free" meal period of at least a thirty minute duration when the scheduled work shift exceeds five consecutive hours of work (Colorado Wage Order 30). The terms of a collective bargaining agreement may apply.

#### Minimum/Maximum Age

The minimum age for most jobs is 14 years old. Children under the age of 14 are allowed to work only in certain industries. Certain federal and state rules apply to the employment of children under the age of 16 (Colo. Rev. Stat. §8-12-101, et seq.). There are no maximum age limits. The Colorado Anti-Discrimination Act prohibits discrimination on the basis of age for individuals age 40 or older (Colo. Rev. Stat. §24-34-401, et seq.). Federal law and the terms of a collective bargaining agreement may also apply.

#### Illness/Disability

There are no statutory provisions regarding illness or disability, such as paid leave. However, federal and state law impose specific anti-discrimination and leave requirements for employees with a disability or serious medical condition. The terms of a collective bargaining agreement may also apply.

#### Location of Work/Mobility

There are no statutory provisions regarding location of work or mobility.

#### Pension Plans

There are no statutory provisions regarding pension plans. Federal law is dominant in the pension and employee benefits area.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

There are no statutory provisions regarding pregnancy, maternity or adoption benefits; however, state non-discrimination requirements apply. Federal leave requirements and the terms of a collective bargaining agreement may also apply.

### Compulsory Terms

There are no compulsory terms that must be included in an employment agreement.

### Non-Compulsory Terms

The employer and employee may agree to any terms, provided that the terms do not abrogate statutory rights (e.g., employees may not agree to compensation less than the minimum wage or waive their right to overtime compensation or worker's compensation) (Colo. Rev. Stat. §8-4-121).

### Types Of Agreement

Employers and employees may enter into a variety of agreements related to the employment relationship including standard employment agreements (regarding hours, wages, benefits, etc.), confidentiality and non-disclosure agreements, non-competition agreements, non-solicitation agreements, etc. Common law and state statutes will determine the enforceability of such agreements.

### Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied in the employment relationship. During the employment relationship, an employee is under a duty of loyalty and must not act contrary to the employer's interest by, for example, misappropriating or improperly disclosing trade secrets. Colorado's Uniform Trade Secrets Act regulates the misappropriation of trade secrets both during and after employment (Colo. Rev. Stat. §7-74-101, et seq.). Employers and employees may also enter into confidentiality and non-disclosure agreements, although covenants restricting trade are void except to protect disclosure of trade secrets, among other exceptions (Colo. Rev. Stat. §8-2-113).

### Ownership of Inventions/Other Intellectual Property (IP) Rights

There are no statutory provisions regarding employee ownership of inventions and other intellectual property rights. Contractual provisions and federal law may apply.

### Hiring Non-Nationals

Employers who transact business in Colorado are required to: (1) Make an affirmation within 20 days after hiring a new employee that the employer has examined the legal work status of the newly hired employee; not falsified the employee's identification documents; and has not knowingly hired an unauthorized non-national. The employer must keep a written or electronic copy of the affirmation for the term of employment of each employee; and (2) The employer must keep a written or electronic copy of the employee's documents required by 8 U.S.C. §1324a (commonly known as Form I-9 identity and employment authorization documents). The copies must be retained for the term of employment of each employee. (Colo. Rev. Stat. §8-2-122).

All employers must also ensure that all employees are eligible to work in the United States in accordance with federal law (e.g., completion of I-9 Form).



### Hiring Specified Categories Of Individuals

There are restrictions on the types of work that children may be hired to perform. For example, children under age 16 may not be employed in hazardous or detrimental occupations (Colo. Rev. Stat. §8-12-101, et seq.).

### Outsourcing And/Or Sub-Contracting

There are no provisions regarding outsourcing and/or subcontracting. The terms of a collective bargaining agreement may apply.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Changes to an employment contract are generally governed by the contractual terms and common law. Any contract containing covenants not to compete executed during the course of employment must have consideration, which can include initial employment or continued employment of an at will employee.

### Change In Ownership Of The Business

Parties may implement provisions restricting trade, including non competition agreements, in connection with a change in ownership of the business (Colo. Rev. Stat. §8-12-113). Contractual provisions and federal law may apply.

### Social Security Contributions

Employers and employees are both required by federal law to make social security contributions. Employers are also required by state law to make contributions for unemployment benefits and may also be required to pay for workers' compensation insurance (Colo. Rev. Stat. §8-40-101, et seq.).

### Accidents At Work

Employee injuries occurring at work are governed by the Colorado Workers' Compensation Law (Colo. Rev. Stat. §8-4-101, et seq.). Employers may also be responsible under common law for accidents caused by the acts of their employees. Federal occupational health and safety laws may also apply.

### Discipline And Grievance

There are no statutory provisions regarding discipline and grievances under state law. A collective bargaining agreement or other contract may apply.

### Harassment/Discrimination/Equal pay

The Colorado Anti-Discrimination Act prohibits discrimination in employment on the basis of race, color, religion, national origin, gender, marital status/family relations, sexual orientation, ancestry, age (40 and older), or disability. With certain exceptions, this provision applies to any person employed by an employer, except a person in the domestic service of any person (Colo. Rev. Stat §24-34-301, et seq.). The Colorado Anti-Discrimination Act also prohibits employers from paying females a wage rate less than the wage rate paid to male employees who perform the same quantity and quality of the same classification of work. Colorado also follows federal laws prohibiting employers from using genetic information or genetic test results to distinguish between, discriminate against, or restrict the rights or benefits of current or prospective employees, nor are they allowed to disclose an employee's genetic information.

### Compulsory Training Obligations

There are no statutory provisions regarding compulsory training obligations.

### Offsetting Earnings

In addition to deductions mandated by local, state, or federal law, an employer may make deductions for loans, advances, goods and services, equipment or property provided, insurance and other benefits, garnishments, and other deductions for theft or shortages if certain proper steps are undertaken (Colo. Rev. Stat. §8-4-105(1)). The employer may not make deductions below minimum wage (Colo. Rev. Stat. §8-4-105(2)).

### Payments For Maternity And Disability Leave

There are no statutory provisions regarding payments for maternity and disability leave.

### Compulsory Insurance

All public and private employers in Colorado, with limited exceptions, must provide workers' compensation coverage for their employees if one or more full or part-time persons are employed. A person hired to perform services for pay is presumed by law to be an employee. This includes all persons elected or appointed to public sector service and all persons appointed or hired by private employers for remuneration (Colo. Rev. Stat. §8-40-101, et seq.).

### Absence For Military Or Public Service Duties

Time off for the performance of military obligations is protected under both federal and Colorado law. An employer may not refuse to hire, discriminate against, or discharge a person due to service or intended service in the national guard or state militia (Colo. Rev. Stat. §28-3-506). Leave without pay must be granted for additional periods of compelled service for up to 15 days a year. Private employees have reinstatement rights to the same or similar position (Colo. Rev. Stat. §§28-3-609 and 610.5).



### Works Councils or Trade Unions

Two or more persons have the right to organize and bargain collectively with an employer (Colo. Rev. Stat. §§8-2-101, 8-3-106). State employees also have the right to bargain collectively (Executive Order D 028 07).
Federal law may also apply.

### Employees' Right To Strike

All private employees have the right to organize and bargain collectively through representatives of their own choosing (Colo. Rev. Stat. §8-3-106). State employees have a qualified right to strike. Under the Industrial Relations Act, a state employee's right to strike is conditioned on whether the Director of the Division of Labor chooses to exercise jurisdiction over the labor dispute. Federal law may also apply.

### Employees On Strike

Generally, federal law applies to employees engaging in strike, picketing or boycott activities. State and local laws may apply when there is strike violence.

### Employers' Responsibility For Actions Of Their Employees

Under the doctrine of respondeat superior, an employer may be liable for the negligent acts or omissions by an employee that are committed within the course and scope of employment. Employers may also be liable for negligent hiring and/or retention where the following elements are met: (1) the employer knew or should have known of an employee's dangerous proclivities; (2) the employee was hired (or retained in employment); (3) the employer's negligent act or omission was the proximate cause of an injury sustained by the plaintiff at the hands of the employee; and (4) the employee's misconduct was consistent with the employee's dangerous proclivity. For this claim, it is not necessary that the offending conduct occur within the course and scope of employment.

## 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no statutory provisions regarding procedures for terminating an employment agreement. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time, as permitted by law. An employment contract or collective bargaining agreement may specify termination procedures.

### Instant Dismissal

There are no statutory provisions regarding instant dismissal of an employee. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time, as permitted by law. An employment contract or collective bargaining agreement may contain notice, pay in lieu of notice and/or severance requirements.

### Employee's Resignation

There are no statutory provisions regarding employee resignation.
An employment contract or collective bargaining agreement may specify resignation procedures.

### Termination on Notice

There are no statutory provisions regarding termination on notice.
An employment contract or collective bargaining agreement may contain notice requirements.

### Termination By Reason Of The Employee's Age

The Colorado Anti-Discrimination Act prohibits discrimination in employment on the basis of age (40 or older) (Colo. Rev. Stat. §24-34-401, et seq.).
Federal law also applies.

### Termination By Parties' Agreement

The parties are free to terminate the employment relationship on any grounds they desire, except for unlawful reasons proscribed by federal, state, or local law.

### Directors Or Other Senior Officers

There are no statutory provisions regarding termination of directors and officers.
An employment contract may apply and contain termination procedures.
The termination of employment does not automatically terminate board membership. Separate steps, generally set forth in the bylaws or articles of incorporation/organization, are required to terminate board membership.

### Special Rules For Categories Of Employee

There are no statutory provisions regarding the termination of certain categories of employees; however, termination decisions must comply with the anti-discrimination provisions of the Colorado Anti-Discrimination Act.

### Specific Rules For Companies in Financial Difficulties

There are no statutory provisions regarding companies in financial difficulty, but there are Federal laws in relation to bankruptcy. Employee Retirement Income Security Act ("ERISA"), the Worker Adjustment and Retraining Notification Act, and other federal laws may apply. Colorado has no state WARN statute.

### Restricting Future Activities

Contracts in restraint of trade are unlawful in Colorado, and restrictive covenants limiting individuals in the exercise or pursuit of their occupations are in restraint of trade. However, reasonable non-competition and non-solicitation agreements are permitted (1) to protect confidential or trade secret business information; (2) in the context of the sale of a business; (3) between the company and an individual in an executive or managerial position.



The agreement must be reasonable in both duration and geographic scope and must be supported by consideration (at-will employment constitutes sufficient consideration under Colorado law. Enforceability of restrictive covenants is determined on a case-by-case basis. In Colorado, if a court finds that an agreement is too broad, the court has the power to modify (i.e., blue pencil) the agreement to the extent necessary to make it reasonable, although modification is not required (Colo. Rev. Stat. §8-12-113).

### Severance Payments

There are no statutory provisions regarding or requiring severance payments. Severance payments are not required unless the employer and the employee have a contract providing for severance. There are specific rules governing the validity of a release provided in exchange for severance payments.

### Special Tax Provisions And Severance Payments

Severance payments are taxed in the same way as other wages.
Federal law may also apply.

### Allowances Payable To Employees After Termination

Employees may be entitled to unemployment benefits paid through a state unemployment compensation agency primarily funded by employer taxes after termination of employment so long as they meet certain requirements.

### Time Limits For Claims Following Termination

Statutes of limitation vary depending upon the nature of the claim.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

Prohibition of discrimination on the basis of lawful off-duty activity: Colorado prohibits an employer from taking adverse action against an employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours, unless certain limited exceptions apply (Colo. Rev. Stat. §24-34-402.5).

Jury Duty: a Colorado employer can require a worker to report to work after jury duty, if the jury duty does not last throughout the employee's entire shift. Under C.R.S. §13-71-126, an employer must pay the worker their usual wages, up to $50 per day, for the first three days of jury duty. An employer may pay the worker more, by mutual agreement. This law applies to full-time, part-time and temporary workers who have worked for the same employer for 3 months or more.

Voting: As a general rule, Colorado employers must provide employees who are eligible voters up to two hours off with pay if the employee does not have three consecutive hours off to vote between the time of poll opening and closing, 7 a.m. and 7 p.m.

Health Insurance Continuation: Colorado law requires employers who are not covered by the Consolidated Omnibus Budget Reconciliation Act ("COBRA") to offer health insurance continuation upon a qualifying event of up to 18 months unless the individual becomes eligible for other group coverage. Continuation is available for individuals or their dependents who have had 6 months of continuous coverage under the group policy. The employer is obligated to notify employees of their continuation rights. (Colo. Rev. Stat. §10-16-108)

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# USA - Delaware

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Certain claims can be asserted before the Delaware Department of Labor. Most claims can be asserted in courts of general jurisdiction although certain claims must be first presented to the appropriate administrative agency.

### The Main Sources Of Employment Law

Employment arrangements are governed by general common law principles of contract law, but there are common law, statutory and administrative requirements which override those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements, and in some instances employee handbooks, form part of the contractual relationship.

### National Law And Employees Working For Foreign Companies

Federal law, state common law and state statutes apply to all individuals physically working in the state, regardless of nationality, and regardless of the law governing their contract of employment, although in certain narrow instances a national treaty with a foreign government may pre-empt the application of national law. The parties may by contract agree to apply state law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law applies to all employees working in the United States and, in some circumstances, to employees outside of the United States for United States based companies. State law applies only when the employee is physically working in the state or when both parties have agreed in writing to the application of the laws of another state.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no legal requirements for the agreement to be in any particular form.



### Mandatory Requirements :

#### Trial Period

There is no requirement to have a trial period.

#### Hours of Work

There are no mandatory restrictions on hours of work for employees 18 years of age or older.

#### Earnings

There are federal and state minimum wage, prevailing wage and overtime pay requirements.

#### Holidays/Rest Periods

There are no mandatory private sector holidays. Rest breaks are not required but meal breaks of at least 30 consecutive minutes are required for employees who work 7.5 or more consecutive hours, absent a collective bargaining agreement to the contrary.

#### Minimum/Maximum Age

There is a normal minimum age of 14 (which can be varied in certain cases). Different rules (e.g. on working time, meal/rest breaks, occupational restrictions, work permits) apply to children or young workers. There is no maximum age for employment.

#### Illness/Disability

Federal and state law impose specific requirements on employers for employees with a disability or serious medical condition. Disabled employees may require a reasonable accommodation.

#### Location of Work/Mobility

There are no compulsory terms.

#### Pension Plans

Please see Federal chapter – there are no additional state-based requirements.

#### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Federal and state law prohibit discrimination on the basis of pregnancy, childbirth or related medical conditions as unlawful sex discrimination.

#### Compulsory Terms

There are no compulsory terms.

#### Non-Compulsory Terms

The parties are free to agree to other non-compulsory provisions.

### Types Of Agreement

These rules do not differ for different types of agreements, but some terms of some agreements may not be enforceable.

### Secrecy/Confidentiality

Delaware's Uniform Trade Secrets Act (6 Del. C. § 2001 et seq.) regulates the misappropriation of trade secrets. Moreover, state common law prevents unfair competition through the misuse of confidential information. Parties may also establish additional protections by contract.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

An employee's right to certain inventions is governed by statute (19 Del. C. § 805) and an employment agreement which is in contradiction with this statute is unenforceable as against state public policy.

### Hiring Non-Nationals

Employers are obliged by federal law to ensure that all employees are entitled to work in the United States; different requirements may apply depending on the nationality/status of the individual concerned.

### Hiring Specified Categories Of Individuals

There are restrictions on the types of work that minors can be required to undertake.

### Outsourcing And/Or Sub-Contracting

Federal law places specific requirements entities contracting with the federal government or their sub-contractors. Additional restrictions may be established by a collective bargaining agreement.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers are allowed to make changes to the contract, unless the contract provides that changes may only be made with the consent of both parties.

### Change In Ownership Of The Business

Changes in ownership of the employing entity do not alter the rights, liabilities or responsibilities of that entity. Asset purchasers may assume such liabilities if deemed a successor. Federal law requires 60 days' prior notice (or 60 days' pay) in the event of plant closings or mass lay-offs affecting specific numbers of employees. Collective bargaining agreements are typically neither terminated nor are their provisions impaired in the event of a merger, consolidation, or change in ownership.

### Social Security Contributions

There are compulsory social security contributions that must be made by the employer and/or the employee.

### Accidents At Work

Federal law places recordkeeping and worksite requirements concerning worksite safety and injuries for certain employers. State workers compensation law governs the treatment of employees injured at work.

### Discipline And Grievance

There are no rules relating to discipline and grievance procedures unless a collective bargaining agreement or a specific contractual provision provides otherwise.



### Harassment/Discrimination/Equal pay

Federal and state laws recognize harassment as well as retaliation and discrimination as offences where they relate to certain discriminatory factors. The concept of equal pay is recognised by federal and state legislation. Federal and/or state law protect employees from harassment or discrimination on grounds of sex, age, national origin, race, color, marital status, sexual orientation, genetic information, religion, disability, military service/veteran status, gender identity and membership in a volunteer emergency responder organization. Federal and state law prohibit discrimination in rates of pay based on gender.

### Compulsory Training Obligations

Federal and state laws regarding worksite safety require appropriate training for safety in the worksite.

### Offsetting Earnings

Employers are not permitted to make deduction against pay unless authorized by the employee in writing. Deductions per pay period may not exceed 15% of the employee's gross wages, with the full outstanding balance collectible at termination as long as that is part of the original agreement. Federal law requires payment of at least the minimum wage.

### Payments For Maternity And Disability Leave

Payments for maternity and disability leave are permitted but not compulsory.

### Compulsory Insurance

Employers are required to obtain insurance for workers' injury and for unemployment.

### Absence For Military Or Public Service Duties

Federal law provides for unpaid leave for caregivers of covered military members. State law provides paid leave for employees of State government who are called into service or who voluntarily enter the armed forces of the United States or the National Guard of the State.

### Works Councils or Trade Unions

Under federal law employees can force the employer in certain cases to recognize and bargain collectively with a union. Individuals who are involved as representatives on such bodies are protected from being subjected to certain action (e.g. dismissal) because of their activities in that role.

### Employees' Right To Strike

Under federal law groups of employees may strike even if there is not a collective bargaining agreement or formal union at the site of employment, subject to limits for public services.

### Employees On Strike

Employers cannot typically fire employees on strike, unless the employees engage in serious misconduct while striking or the strike was unlawful and unprotected. However, if employees are on an economic strike they may be permanently replaced by the employer, their names placed on a preferential hiring list for future vacancies and they may be denied reinstatement if there are no open positions upon the conclusion of the strike, and until open positions materialise.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employee except where the employee was acting outside the course of employment or for personal reasons.

## 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no set procedures for terminating the contract of employment unless such a procedure is set out in a collective bargaining agreement or the contract of employment.

### Instant Dismissal

Employment relationships are typically deemed to be "at-will" unless there is a promise by the employer that alters the "at-will" relationship. Thus, either the employer or the employee can terminate the relationship at any time without notice, absent a contractual provision to the contrary and except for reasons prohibited by law.

### Employee's Resignation

An agreement can be terminated by the employee's resignation subject to the terms of a collective bargaining agreement or contract of employment.

### Termination on Notice

Notice is typically not required for termination, unless provided for in the contract or collective bargaining agreement.

### Termination By Reason Of The Employee's Age

Termination by reason of age is generally prohibited.

### Automatic Termination In Cases Of Force Majeure

In rare circumstances, an employment agreement can be terminated automatically because of force majeure.



### Termination By Parties' Agreement

The parties are entirely free to agree to terminate on any grounds they desire except for discriminatory reasons proscribed by federal or state law.

### Directors Or Other Senior Officers

In the case of a director, termination of employment does not automatically bring the board membership to an end. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of incorporation).

### Special Rules For Categories Of Employee

There are no special rules for categories of employees, but employers should bear in mind prohibitions against discrimination.

### Specific Rules For Companies in Financial Difficulties

Collective bargaining agreements and other executory contracts may be terminated on approval of a bankruptcy court in certain circumstances. Federal notice requirements for mass layoffs and plant closings may be reduced in such circumstances.

### Restricting Future Activities

Non-compete and non-solicitation covenants are enforceable only to the extent they are reasonable and supported by consideration (continued at-will employment in exchange for a covenant not to compete with the employer constitutes sufficient consideration under Delaware law). Each case is considered on its own facts, so what might be appropriate for one employee may be unreasonable for another.

### Severance Payments

Severance is not required unless the employer has a severance policy or the employee has a written contract providing for severance. There are specific rules governing the validity of a release provided for severance.

### Special Tax Provisions And Severance Payments

Severance payments to an employee, whose employment is involuntarily terminated, is treated as taxable income to the employee and is therefore generally subject to income tax.

### Allowances Payable To Employees After Termination

Federal and state law require that employers pay all wages owed on the next regular payday. Additionally, there is an unemployment compensation tax imposed on employers.

### Time Limits For Claims Following Termination

Time limits exist for claims following termination and depend on the nature of the claim.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

None.

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# USA - Federal Jurisdiction

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Certain federal employment related claims can be asserted before the Department of Labor, the Equal Employment Opportunity Commission, and the National Labor Relations Board. Most claims may be asserted in courts of general jurisdiction (state courts) and some in courts of limited jurisdiction (federal courts), although certain claims must first be presented to the appropriate state, federal, and/or other administrative agency. Parties may also contract or agree to arbitrate or mediate disputes such as the American Arbitration Association and other forums for alternative dispute resolution.

### The Main Sources Of Employment Law

The United States Constitution, federal statutes, administrative regulations or rules adopted by agencies, and the common law are the main sources of federal employment law. Guidelines from federal administrative agencies, judicial decisions and interpretations of such guidelines, collective bargaining agreements, and employment agreements may also govern employment relationships.

### National Law And Employees Working For Foreign Companies

Federal employment laws generally apply to all employees who work in the United States or its territories, regardless of their citizenship or work authorization status. Federal laws apply to employees who work in the United States or its territories, whether they work for a United States or foreign employer. In certain narrow instances, employees working in the United States for a non-United States company may not be covered by certain federal laws, if the employer is not a United States employer and is subject to a treaty or other binding international agreement (e.g. Friendship, Commerce, and Navigation Treaties).

### National Law And Employees Of National Companies Working In Another Jurisdiction

Individuals who are not United States citizens are not protected by certain United States laws when employed outside the United States or its territories. United States citizens who are employed outside the United States by a United States employer or a foreign company controlled by a United States employer, are protected by certain federal laws. However, United States employers are not required to comply with the requirements of certain federal laws, if adherence to those laws would violate a law of the country in which the workplace is located.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Written employment agreements are not required in the United States and individual written employment contracts are optional. There are no legal requirements regarding the form of an employment agreement, and employment agreements are not mandatory; however, where employment agreements exist, they may not be contrary to applicable federal and state employment laws. Offer letters, preserving the at-will employment relationship are often used to provide the key terms and conditions of employment instead of an employment agreement, which may alter the at-will employment relationship. Different laws govern the employment contracts of employees represented by labor unions.

### Mandatory Requirements:

#### Trial Period

There are no legal requirements to provide trial periods (also referred to as "probationary periods" or "introductory periods"). The terms of a collective bargaining agreement or employment agreement may apply or provide for a trial period. Trial periods may adversely impact at-will employment status. There may also be a defined period of time before an employee is eligible for benefits under the applicable plan documents.

#### Hours Of Work

There is no restriction on the number of hours employees may be required to work, except for minors (those under 18 years of age). However, employees who are non-exempt under federal wage and hour laws are entitled to overtime pay at a rate of one and one-half times the regular rate of pay for all hours worked over 40 hours in a workweek. Employment agreements may not be contrary to applicable federal laws (e.g., the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.). The terms of a collective bargaining agreement and applicable state law may also apply and modify the allowable hours of work. The employer must also understand what constitutes "hours worked" under the Fair Labor Standards Act to determine whether overtime is required or not.

#### Earnings

All non-exempt employees must be paid the federal or state minimum wage, whichever is higher, for all hours worked. Exempt employees must be paid certain minimum weekly salaries or fees in accordance with federal law.

The current federal minimum wage is $7.25/hour, although some states have higher minimum wage rates. The terms of a collective bargaining agreement and applicable state law may also apply. Employers may also have certain requirements regarding payroll withholdings that cannot be avoided.

#### Holidays / Rest Periods

There are no federal statutory provisions regarding holidays and rest periods; however, such terms may be negotiated in an employment agreement. Moreover, short breaks (lasting about 5 to 20 minutes) may be considered compensable under federal law and included in the calculation of overtime. Bona fide meal periods (typically lasting 30 minutes or more) are not considered work time and are not compensable under federal law. The terms of a collective bargaining agreement and applicable state law may apply.

#### Minimum/Maximum Age

Federal law requires that minor employees (under 18 years of age) cannot hold certain jobs, are limited in the total hours per week that they can work, cannot be employed during certain hours, and cannot perform certain types of work. Federal law does not proscribe a maximum age for age discrimination or employment. Generally, 14 years of age is the minimum age for employment and the number of hours worked are limited for those under the age of 16. Applicable state law regarding minors and maximum ages may apply.

### Illness/Disability

The Family Medical Leave Act, 29 U.S.C. § 2601 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., govern certain types of leaves of absences, some of which may be occasioned by a serious medical condition or disability. Applicable state law and the terms of a collective bargaining agreement may also apply.

### Location Of Work/Mobility

There is no federal statutory provision requiring an employee to remain in a particular work location or that precludes an employer from seeking to relocate an employee. Applicable state law and the terms of a collective bargaining agreement may provide certain requirements.

### Pension Plans

Certain employees are entitled to a pension, such as certain public employees, and private employers may establish pensions through contracts or collective bargaining (but such pensions are not otherwise required). Employee pension benefit plans are typically governed by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The Pregnancy Discrimination Act, 42 U.S.C. § 2000(e) - (k), prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions. If an employee is temporarily unable to perform her job because of her pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments, or take disability leave or leave with pay, the employer must also allow an employee who is temporarily disabled because of pregnancy to do the same. The Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., provides eligible employees up to 12 weeks of unpaid maternity/paternity/adoption leave, and the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., may also apply with respect to certain serious health conditions associated with pregnancy. The terms of a collective bargaining agreement and applicable state law may also apply.

### Compulsory Terms

There are no compulsory terms that must be included in an employment agreement.

### Non-Compulsory Terms

The employer and employee may agree to any terms, provided that the terms do not abrogate statutory rights or otherwise conflict with a statute (e.g., employees may not agree to compensation less than the minimum wage or waive their right to overtime compensation).

## Types Of Agreement

Employers and employees may enter into a variety of agreements related to the employment relationship, including standard employment agreements (regarding hours, wages, benefits, etc.), confidentiality and non-disclosure agreements, non-competition agreements, non-solicitation agreements, etc. Further, there are collective employment agreements, individual employment agreements, fixed duration/term agreements, part-time employment agreements, etc. Agreements can also be verbal, written, or implied. Common law and state statutes will determine the enforceability of such agreements.

## Secrecy/Confidentiality

Employers may use confidentiality or non-disclosure agreements or include such provisions in an employment agreement. The U.S. Economic Espionage Act of 1996, 18 U.S.C. § 1831 et seq., makes theft/misappropriation of trade secrets a federal crime. The Federal Computer Fraud and Abuse Act, 18 U.S.C.A § 1030 prohibits the theft of trade secrets from computer based programs or its destruction.



There are also specific statutes particular to certain industries or professions that may require or limit contractual or secrecy obligations. The Uniform Trade Secrets Act has been passed in many states; however, not necessarily in its uniform state. State statutes and common law apply with respect to trade secrets. Confidentiality restrictions can be included in a contract if desired.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Federal laws govern the ownership of certain intellectual property (IP) rights. In the absence of a written agreement between the parties, the employer typically owns the IP rights. Ownership may not be exclusive, depending on the type of IP. Individual employment agreements can include terms that properly assign IP (assignment of inventions agreement), protect works made for hire, and prevent improper use of IP developed for the employer.

## Hiring Non-Nationals

Federal anti-discrimination laws prohibit employers from discriminating against individuals based on their national origin and citizenship. Employers cannot, however, hire individuals not authorized to work in the United States. Employers should confirm the potential employee's status through a Form I-9 for U.S. nationals or by verifying the visa status of foreign nationals.

## Hiring Specified Categories Of Individuals

There are restrictions on the types of work that minors (under 18 years of age) may be hired to perform. Equal employment opportunity laws generally cover hiring practices, so any specific category of individual sought to be hired should be separately researched (and state law and collective bargaining agreements should be consulted).

## Outsourcing And/Or Sub-Contracting

There are no provisions regarding outsourcing and/or subcontracting (although employers that contract with the federal government should further review this issue). The terms of a collective bargaining agreement and the statutes governing or relating to unions may apply. Further, employers may remain liable for their outsourcing or subcontracting, if not done properly. If an employer properly outsources or sub-contracts, that person or persons should not be considered an employee (unless not done properly). As a result, employment laws should not apply to an outsourced or sub-contracted party that should be considered an independent contractor.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

The terms of the employment contract, terms of a collective bargaining agreement and/or common law will govern whether an employer can change the terms in the contract and there are no federal law governing the ability to make changes to the contract, provided the changes are not contrary to applicable statute, if any. Specific situations are more fully discussed below.

### Change In Ownership Of The Business

Depending on the type of transaction, certain federal laws may apply when there is a change in the ownership of the business. For example, under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., covered employers are required to provide covered employees with 60 days prior notice in the event of plant closings and mass layoffs affecting specific numbers of employees. Certain industries may have specific requirements. The terms of a collective bargaining agreement or applicable state law may also apply.

The Workers Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., provides certain procedures related to its notice requirements that must be followed in order to avoid the statutory penalties.

Considering employees are providing personal services to their employer, an employee is not required to continue his or her employment with an acquiring company; however, to the extent there is a contract of employment, the employee may be responsible for damages in the event of a breach (provided the contract is assignable, which would be determined under the applicable state law). The employer may also have notification obligations to the state or local government.

### Social Security Contributions

Employers and employees are both required by federal law (the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq.) to make Social Security (and Medicare) contributions, withhold those amounts from the employee's pay check, and remit those amounts to the appropriate governmental authority. Employers may also be required by state law to make contributions for unemployment benefits and may also be required to pay for workers' compensation insurance.

Employers are not required to contribute towards any allowances payable to employees during their employment, although some states may require employers to contribute monies for periods of disability or leave.

### Accidents At Work

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., is the main federal law governing accidents at work. Applicable state law may also apply.



### Discipline And Grievance

There are no federal statutory provisions regarding discipline and grievances for private sector employees; however, private sector employers can contract for or otherwise agree to progressive discipline or a grievance process and employees can bring federal employment claims, if they are treated differently with respect to discipline and grievances than other employees based upon a protected classification. Public employers and Union employees may receive further statutory protections for employee discipline and grievances, including the National Labor Relations Act, 29 U.S.C. § 151 et seq., the Labor Management Relations Act, 29 U.S.C. § 141 et seq., and the National Railway Labor Act, 45 U.S.C. § 151 et seq. A collective bargaining agreement, other contract or state law may apply.

### Harassment/Discrimination/Equal pay

Several federal laws address discrimination and harassment. In the employment context, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., prohibits discrimination and harassment based upon an individual's membership in a protected classification. Other federal statutes include the Pregnancy Discrimination Act, 42 U.S.C. § 2000(e)(k), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq., Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and the Genetic Information Non-discrimination Act of 2008, 42 U.S.C. 2000ff et seq. The Equal Pay Act of 1963, 29 U.S.C. § 206(d), addresses discriminatory compensation, which has been most recently addressed in the Lilly Ledbetter Fair Pay Act of 2009. State law and local ordinances may also apply.

### Compulsory Training Obligations

There are no federal statutory provisions regarding compulsory training obligations.

### Offsetting Earnings

For non-exempt employees, the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., requires the payment of at least minimum wage for all hours worked (and overtime for all hours worked in excess of 40 hours per workweek). Employers may be required to garnish their employees' wages. The Consumer Credit Protection Act, 15 U.S.C. § 1671 et seq., protects employees from discharge by their employers because their wages have been garnished for any one debt, and it limits the amount of an employee's earnings that may be garnished in any one week. Employees may authorize employers to deduct earnings from their pay checks in accordance with applicable state laws. However, by reason of garnishment or otherwise, an employee's wages cannot result in a payment of less than minimum wage.

### Payments For Maternity And Disability Leave

Federal law requires employers to provide unpaid maternity, disability, and child care leave to certain employees (Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.). There are no statutory provisions regarding payments for maternity and disability leave. However, maternity leave and the pay for same should be treated the same as other short term leaves. Applicable state law and the terms of a collective bargaining agreement may apply.

### Compulsory Insurance

There are no federal laws requiring employer-provided insurance; however, collective bargaining agreements and applicable state law may apply (including workers' compensation insurance). The Patient Protection and Affordable Care Act was enacted in March 2010; however, the health reform law is extraordinarily complicated and all of its provisions become effective at various times, and some of those provisions have already been extended. The statute also remains subject to further modification or legislative change. This issue should be more fully explored before determining the employers obligations.

### Absence For Military Or Public Service Duties

The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq., requires employers to provide unpaid leave to covered employees called to serve in the armed forces and provides for certain reinstatement rights. There are no separate laws covering absences in connection with "public service." Applicable state law or the terms of a collective bargaining agreement may also apply.

### Works Councils or Trade Unions

The National Labor Relations Act, 29 U.S.C. § 151 et seq., the Labor Management Relations Act, 29 U.S.C. § 141 et seq., and the National Railway Labor Act, 45 U.S.C. § 151 et seq. govern the relationships between employers and unions.

### Employees' Right To Strike

Strikes are protected as long as they are lawful, a determination that may depend on the purpose of the strike, its timing, or the conduct of the strikers. The right to strike may be limited for public service employees. Applicable state law and the terms of a collective bargaining agreement may also apply.

### Employees On Strike

Employees may be terminated for striking depending on the purpose of the strike, its lawfulness, its timing or the conduct of the strikers. Applicable state law and the terms of a collective bargaining agreement may also apply.

### Employers' Responsibility For Actions Of Their Employees

Under the doctrine of respondeat superior (also known as vicarious liability) an employer may be liable for the negligent acts or omissions by an employee that are committed within the course and scope of employment. Employers may also be liable for negligent hiring and/or retention where the following elements are met: (1) the employer knew or should have known of an employee's dangerous proclivities; (2) the employee was hired (or retained in employment); (3) the employer's negligent act or omission was the proximate cause of an injury sustained by the plaintiff at the hands of the employee; and (4) the employee's misconduct was consistent with the employee's dangerous proclivity. For this claim, it is not necessary that the offending conduct occur within the course and scope of employment. Employers may be statutorily responsible for the actions of their employees, depending on the particular occupation or industry and the employee's conduct.



## 04. Firing The Employee

### Procedures For Terminating the Agreement

There are no statutory provisions regarding the form or procedures for terminating an employment agreement. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time, provided the termination does not otherwise violate an applicable statute. An employment contract or collective bargaining agreement may specify termination procedures or forms.

To the extent there is a contract of employment or collective bargaining agreement, the terms of such an agreement will need to be followed for purposes of terminating the employment relationship.

### Instant Dismissal

There are no federal statutory provisions precluding an employer from instantly terminating an employee (other than under the Workers Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., regarding group lay-offs referenced above). Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time (provided such termination is not in violation of the law) and may be done immediately. An employment contract or collective bargaining agreement may contain notice requirements.

### Employee's Resignation

There are no federal statutory provisions precluding an employee from resigning. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated by the employee at any time and may be done immediately. An employment contract or collective bargaining agreement may specify resignation procedures.

### Termination On Notice

There are no federal statutory provisions regarding providing notice of termination in an employment contract. Accordingly, notice provisions are not required in a contract of employment. Nonetheless, the terms of an employment contract or collective bargaining agreement may contain notice requirements and any such notice requirements should be reviewed before termination to determine compliance.

Federal law does not require a minimum period of notice of termination in an employment contract. The terms of an employment contract or collective bargaining agreement may contain notice requirements.

### Termination By Reason Of The Employee's Age

Age discrimination is prohibited by federal laws, including the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., which protects employees age 40 or over.

### Automatic Termination In Cases Of Force Majeure

There are no federal statutory provisions regarding whether an employment agreement or collective bargaining agreement can be automatically terminated in cases of force majeure. The terms of an employment contract or collective bargaining agreement may contain terms related to force majeure.

### Termination By Parties' Agreement

There are no federal statutory provisions regarding the termination of an employment agreement by the parties thereto. In the absence of an employment contract to the contrary, the parties are free to terminate the employment relationship on any grounds they desire, except for unlawful reasons proscribed by federal, state or local law. If the parties to an employment contract agree to terminate it, they generally have the right to do so with no other recourse, provided the parties were capable of making such an agreement. A collective bargaining agreement may also restrict the ability of the parties to terminate an agreement by mutual consent (as the union may also need to be a party to any such termination by agreement).

Approval from a court or other regulatory body is not required before an employment agreement is terminated, unless otherwise provided in the employment agreement. In certain instances, however, settlements of certain types of claims must be approved by certain administrative agencies. In addition, any termination agreement between the parties in which the employee purports to give up statutory legal rights will only be enforceable if it complies with certain statutory requirements, if applicable.

### Directors Or Other Senior Officers

There are no federal statutory provisions regarding termination of directors and officers (as directors and officers will receive the same treatment under the law as employees, to the extent they are employees and receive no further protections resulting from their corporate status as a director or officer). An employment contract, articles of incorporation, by-laws, shareholder agreement, or other agreement governing the director or officer position may apply and contain termination procedures. The termination of employment does not automatically terminate board membership or officer status. Separate steps, generally set forth in the bylaws or articles of incorporation/organization, are required to terminate board membership. The termination or removal of a director or other senior officer would be governed by the applicable compliance document of the employer and may also be governed by state statute.

### Special Rules For Categories Of Employee

There are no federal statutory provisions regarding the termination of special categories of employees; however, termination decisions must comply with federal anti-discrimination laws (and as previously discussed). Employees covered by the Workers Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., and subject to such act may be entitled to certain notice of their termination. Collective bargaining agreements and applicable state law may also apply.



### Specific Rules For Companies in Financial Difficulties

There are no specific federal statutory provisions requiring employee notification of a company in financial difficulties. If the company files bankruptcy, however, the bankruptcy court or the trustee may impose certain restrictions on employers.

### Restricting Future Activities

There are no federal statutory provisions governing post-employment restrictions. State law and common law govern clauses which restrict future activities post employment.

### Severance Payments

There are no statutory provisions regarding or requiring severance payments. Individual severance payments are not required unless the employer and the employee have a contract providing for severance. Also, if an employer establishes a severance plan for some or all of its employees, that severance plan may be governed by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq., depending on the nature of the severance arrangement, and the employee may have certain rights to severance payments to the extent the employee is eligible. There are specific rules governing the validity of a release provided in exchange for severance payments.

### Special Tax Provisions And Severance Payments

Severance payments are taxed in the same way as other wages. If an arrangement provides for a "deferral of compensation" (as may be the case with severance agreements), such agreements may be subject to Section 409A of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. If a severance agreement is subject to 409A and not compliant in writing and in operation, severance pay and benefits may be includible in gross income before they are actually received and such amounts may also be subject to an additional tax equal to 20% of the accelerated income and possibly interest. Severance payments are exempt from 409A to the extent they provide for the payment incident to an involuntary separation from service (including certain terminations for "good reason") or a voluntary termination during a 409A compliant "window period" if (1) the aggregate severance payments are less than two times the lesser of the qualified plan compensation limit for the year of termination or the employee's prior year compensation, and (2) the severance is paid within two years following the end of the year in which the separation occurs.

### Allowances Payable To Employees After Termination

There is no federal law that requires employers to contribute towards any allowances paid to employees after termination. Employees may be entitled to unemployment benefits after termination of employment pursuant to state law.

### Time Limits For Claims Following Termination

Statutes of limitation vary depending upon the nature of the claim and the applicable law(s).

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

The United States Constitution holds that certain matters are of such a national, as opposed to local, character that federal laws pre-empt or take precedence over state laws. This doctrine is often referred to as pre-emption. Certain federal employment laws specifically pre-empt state laws (e.g., the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq. and the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq. The FAA provides for contractually-based compulsory and binding arbitration, resulting in an "arbitration award" entered by an arbitrator or arbitration panel as opposed to a "judgment" entered by a court of law. The FAA applies where the transaction contemplated by the parties "involves" interstate commerce and is predicated on an exercise of the Commerce Clause powers granted to Congress in the United States Constitution.) If pre-emption does not apply, then employers must comply with the terms of the statute (whether state or federal) which offers the greatest rights to employees.

State courts are courts of general jurisdiction, while federal courts have limited jurisdiction. Employers generally prefer to litigate employment disputes in federal court. Federal courts have jurisdiction when there is a federal question (where an interpretation of a federal law is required) or diversity jurisdiction. Diversity jurisdiction usually exists where the parties are diverse in citizenship, which generally indicates that they are citizens of different states or not United States citizens. In addition, to obtain diversity jurisdiction the sum at issue must exceed the sum or value of $75,000, exclusive of interests and costs and without considering counterclaims. Defendants may be able remove cases from state court to federal court when the requirements for federal jurisdiction are met (diversity and amount in controversy, the case involves a federal question, or a supplemental jurisdiction exists).

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# USA - Florida

# USA - Florida

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are no specialized labour courts in Florida. Employment disputes are resolved in the federal courts (United States District Courts), the Florida state courts (most often in the "circuit court"), in administrative proceedings before federal or state agencies (United States Equal Employment Opportunity Commission; Florida Commission on Human Relations) or in private dispute-resolution proceedings (arbitration and/or mediation) agreed to by the employer and employees or by the employer and a labour union. The rules of procedures for resolving such disputes, and the applicable laws, vary from forum to forum.

### The Main Sources Of Employment Law

Florida "employment law" arises from federal and Florida statutes and from common law principles. Federal and Florida statutes prohibit discrimination (including harassment) and retaliation (taking against a person who complained of discrimination) against job applicants and employees and establish requirements for wages and wage payments, workplace safety and health, unemployment and workers compensation, and labour-management relations. Federal and Florida common law principles of contract law also impact the employment relationship, particularly with non-competition/restrictive covenants, confidentiality/trade secrets and non-solicitation agreements.

### National Law And Employees Working For Foreign Companies

The laws of the United States generally apply to persons working in Florida.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Various federal laws (including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act and the American with Disabilities Act) apply to American citizens working in foreign jurisdictions for United States companies. Florida law applies when the employee is physically working in Florida or when the parties have agreed in writing to the application of the laws of Florida.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement in Florida for the terms and conditions of the employment relationship to be set out in writing. However, any such agreement is subject to the usual non-discrimination and non-retaliation statutes and to common law contract principles and, to a lesser extent, particular statutory requirements as to certain types of agreements. For example, the scope and duration of "non-competition" agreements is limited by a specific Florida statute.

### Mandatory Requirements:

#### Trial Period

There is no legal obligation for employers to provide a "trial period" for new employees. However, many employers do have 60 - or 90-day probationary periods for new workers, but such employers ensure that the policies providing for any such probationary period do not impair any "at will" employment relationships (discussed under "Types of Agreement" below).

#### Hours Of Work

There is no limitation on the days or times of work, or on the weekly hours of work, for adult employees (workers over 18 years of age). However, federal law requires that overtime wages must be paid at 1.5 times the employee's regular rate (as defined in the law) to certain employees who work more than 40 hours per week. Federal and Florida "child labour" laws restrict the work days and work hours for employees who are not 18 years of age (and those laws also restrict the tasks that minors can be given by limiting their involvement in dangerous duties).

#### Earnings

Certain employees are entitled to a minimum wage ($7.93 per hour in Florida as of January 1, 2014, to continue through 2014) that is subject to change annually (usually 1 January each year). Further, the federal Fair Labor Standards Act requires that overtime be paid at 1.5 times the employee's regular rate (as defined in the law) to certain employees who work more than 40 hours per week and, further, that certain employees "exempt" from overtime wages (such as certain executives, administrators and professionals) be paid salaries of at least $455 per week. There are particular requirements for employees who regularly receive gratuities ("tips").

#### Holidays / Rest Periods

There are no federal or Florida law requirements for employers to provide paid holiday or rest periods for adults. Federal and Florida "child labour" laws limit working hours and require certain rest periods for employees who are not 18 years old.

#### Minimum/Maximum Age

Federal and Florida laws prohibit employers from employing minors (persons under 18 years of age) in certain dangerous jobs, prohibit minors from working on certain days and at certain hours, and limit the total number of weekly hours they may work. There is no maximum age for employment. Employers generally cannot discriminate against employees because of age and, other than in rare circumstances involving very senior and highly-compensated executives, employers cannot discharge employees because they have reached a specific age (that is, mandatory retirement at a specified age is almost always illegal).

#### Illness/Disability

Federal and Florida laws prohibit discrimination against qualified persons with disabilities and require that, under certain circumstances, employers make "reasonable accommodation" for such disabilities in order to allow the disabled employees to perform the essential functions of their jobs. The federal Family and Medical Leave Act requires that larger employers (those having more than 50 names on the payroll) provide eligible employees with up to 12 weeks of unpaid job-protected leave to care for their own serious health conditions, to care for a spouse, child or parent with a serious health condition or for the birth or placement of a child with the employee or arising from the employee's (or certain family members') military service.

### Location Of Work/Mobility

There are no federal or Florida laws limiting the employer's or employees' locations of work or the mobility of employees. Employees may be freely transferred to a different work location and can be required to travel as part of their job. However, federal and Florida laws require that employers provide work areas for employee free from recognized safety and health hazards and federal law requires that, under certain circumstances, certain employees must be paid for their travel times.

### Pension Plans

There is no requirement that employers have pension plans but, if there is a plan, it is very likely to be governed by federal laws and regulations regarding employee eligibility, plan funding, use and distribution of plan assets, etc.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

Federal and Florida laws prohibit discrimination based on pregnancy. The federal Family and Medical Leave Act law requires that certain employees of larger employers be given up to 12 weeks unpaid leave in conjunction with the birth of a child or adoption/foster placement of a child with that employee.

The leave for birth or placement of a child is available both to male and female employees (that is, "paternity" leaves can be required under the same circumstances as maternity leaves).

### Compulsory Terms

Employment agreements are not required. There are no compulsory terms that must be included in an employment agreement if one should be prepared.

### Non-Compulsory Terms

Employers and employees are free to agree to any terms of employment agreements provided that such terms are consistent with the applicable federal and Florida statutes (e.g., the parties cannot agree to discriminate, cannot agree to pay wages below any minimums required by law, cannot agree to non-competition provisions that otherwise would violate the applicable Florida statute, etc.).

### Types Of Agreement

Employment relationships in Florida are presumed to be for an indefinite term and thus to be "at will," meaning that the employment relationship can be ended at any time by either party for any reason with or without notice. However, the parties by contract may agree to a definite term of employment and, thus, make the employment not "at will".

### Secrecy/Confidentiality

Florida's trade secret statute and the state's common law limit an employee's ability to divulge confidential non-public employer information. Employers and employees may also agree by contract to additional restraints on the use of and disclosures of such information or to waive the statutory limitations.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Employers normally own any work created by the employee during the employment or created using the employer's information, equipment or materials. Federal statutes also protect the ownership and use of such intellectual property.



### Hiring Non-Nationals

There are detailed federal requirements for the employment of non-United States citizens (as discussed in more detail in the "USA-Federal" section, above). Employers must ensure that, at the time of hire, such persons are entitled to work in the United States. The requirements for hiring aliens may be different (and much more complex) depending on the alien's work status, the nature of the employer's business (whether it is a contractor or subcontractor to the United States Government), and the duration and nature of the potential employment.

### Hiring Specified Categories Of Individuals

Federal and Florida "child labour" laws limit the duties, work days, and work hours of employees who are less then 18 years old. Federal and Florida laws also prohibit discrimination against job applicants because of race, sex, color, national original, age, disability, etc. Florida law also generally prohibits discrimination based on marital status (that is, whether the applicant/employee is married, single, divorced, etc.). Federal law imposes requirements on an employer's hiring of non-United States citizens. Finally, certain employers who contract (or subcontract) to the federal government are subject to "affirmative action" obligations with respect to minorities and military veterans.

### Outsourcing And/Or Sub-Contracting

There are no statutory restraints on outsourcing and/or sub-contracting work. However, such limitations may be contained in a collective bargaining agreement specifically negotiated between the employer and a labour union (a relationship governed by federal law and discussed in "USA-Federal," above).

## 03. Maintaining The Employment Relationship

### Changes To The Contract

If the employment is "at will," the employer is free to change an employee's terms and conditions of employment at any time for any non-discriminatory, non-retaliatory reason. If the employment relationship is not "at will" (that is, the parties have agreed to employment for a definite duration), or if the parties have contracted for specific compensation/benefits, the employer's ability to change the relationship will depend on the terms of the parties' agreement.

### Change In Ownership Of The Business

If there is a change in ownership with a "stock sale," employees are presumed to continue in their employment relationship with the new owners on the same terms and conditions. If the change in ownership is the result of an "asset sale," it may be necessary to obtain the employees' agreement to the transfer of any employment contracts.

In the absence of any agreements with individual employees or binding company policies to the contrary, there is no additional compensation (such as severance pay) owed to workers in conjunction with a change in the ownership of the business. However, a collective bargaining agreement with a labour union may require negotiations with the union about the effects of the transaction and that agreement may require certain sums to be paid to affected workers.

### Social Security Contributions

Employers are required by federal law to contribute to the federal social security trust fund for employees. Employers are not required to provide paid "sick days" to employees (although it is a common practice in Florida) but the federal Family and Medical Leave Act requires that larger employers provide certain job protections (including job-protected unpaid leaves of absence) and other benefits to qualified workers in conjunction with their serious illnesses or the serious illnesses or military service of family members. Further, Florida law requires employers to provide workers compensation benefits for employees injured on the job (and prohibits retaliation against employees seeking such benefits).

### Accidents At Work

Federal law requires employers to report certain workplace accidents to the federal Occupational Safety and Health Administration. Florida's workers compensation statute requires most employers to obtain insurance coverage for workplace injuries/illnesses and, through that coverage, to provide benefits to workers injured on the job.

### Discipline And Grievance

There are no general statutory requirements concerning discipline of employees or their assertion of grievances. However, employers cannot consider an employee's protected characteristics (race, sex, age, pregnancy, marital status, etc.) in making discipline decisions nor can they retaliate against employees who assert their rights under any of the applicable employment statutes or who complain about suspected employer misconduct or violations of law. Employers must comply with the procedural requirements of any collective bargaining agreement with a labour union. Although many employers have an "open door" policy allowing employees to assert grievances, or have internal complaint procedures, a grievance mechanism is typically only required under a collective bargaining agreement.

### Harassment/Discrimination/Equal pay

Harassment and discrimination arising from an employee's protected characteristics (race, sex, color, national origin, pregnancy, age, disability, etc.) is prohibited by federal and Florida laws. The discrimination laws apply to every aspect of the employment relationship (i.e., job application/hiring, wages, benefits, working conditions, etc.). Further, employers cannot retaliate against employees who complain about suspected discrimination, harassment or employer violations of law. In addition, certain contractors and subcontractors to the United States Government have affirmative action obligations with respect to minorities and military veterans (including requirements that the employer/contractor collect and maintain specific data about job applicants, hirings, promotions, etc.).



Florida law also generally prohibits discrimination based on marital status (that is, whether the applicant/employee is married, single, divorced, etc.).

Federal and Florida equal pay laws require that men and women be paid the same wages for work requiring equal skill, effort, responsibility and performed under similar working conditions.

### Compulsory Training Obligations

There are no general compulsory training obligations required by statute. However, the federal Occupational Safety and Health Administration requires that employees working in certain dangerous jobs or performing hazardous tasks be given training in the performance of those jobs/tasks.

### Offsetting Earnings

Federal law generally permits an employer, with an employee's actual or implied consent, to offset earnings against debts to the employer unless the offset reduces an employee's net weekly wage below any mandatory minimum wage. Florida's wage garnishment statute requires that, under certain conditions, employers withhold a portion of employees' wages and pay them to the employees' creditors.

### Payments For Maternity And Disability Leave

The federal Family and Medical Leave Act (discussed in "USA-Federal, above) requires larger employers to provide job-protected but unpaid maternity, disability and child care leave to qualified employees. Florida employers customarily provide some paid sick leave for workers (though such payments are not required). The Florida workers compensation law provides specified benefits for covered employees injured on the job.

### Compulsory Insurance

Florida law requires most employers to have workers compensation insurance to benefit employees injured on the job. Florida also requires employers to make contributions to the state's unemployment compensation system to fund employment compensation benefits to unemployed former employees.

### Absence For Military Or Public Service Duties

Federal law requires employers to provide unpaid leave to employees called for military duty and to reinstate those workers to their prior positions when they return from military service. Federal law also requires that unpaid leave be given to certain employees who are related to persons called for active military duty or who have returned from such duty but require care/assistance. There are no statutory requirements for absences in connection with other "public services."

Employers having more than 50 employees also must provide 3 days' unpaid leave for employees subject to domestic violence (and, in certain cases, to employees whose family members are subject to domestic violence). There are local laws in certain Florida counties requiring additional domestic violence leave.

Federal and Florida disability discrimination laws also may require unpaid leaves of absence as a "reasonable accommodation" for disabled employees.

### Works Councils or Trade Unions

There is extensive regulation of collective bargaining rights and the relationship between labour unions and employers (discussed in "USA-Federal," above).

### Employees' Right To Strike

Employees in the private sector have the right to strike. Their collective bargaining rights and strikes are discussed in "USA-Federal," above.

### Employees On Strike

Private sector employees on strike may be replaced under certain circumstances. Their strike rights are discussed in "USA-Federal," above.

### Employers' Responsibility For Actions Of Their Employees

Employers are generally responsible for the actions of their employees unless the worker is acting outside the course and scope of employment.

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## 04. Firing The Employee

### Procedures For Terminating the Agreement

There are no statutorily-required procedures for dismissing employees. However, a collective bargaining agreement with a labour union may impose requirements on employers and, of course, employers must follow any termination procedure in any employment agreements with individual employees. Any procedures used to dismiss employees must be applied in a non-discriminatory and non-retaliatory manner. An employee's complaint about suspected employer misconduct (such as discrimination or harassment) cannot be a factor in the dismissal decision or in the protocol used for discharging workers.

### Instant Dismissal

Unless there is a collective bargaining agreement with a labour union, or a "notice" requirement promised by the employer's policies or contained in an agreement with an employee, there is no advance notice required for dismissal of individual employees. Florida law allows persons employed for an indefinite term (that is, "at will" employees) to be discharged at any time for any non-discriminatory, non-retaliatory reason. Any employment contract with an employee for a definite term of employment may limit the employer's right to "instant dismissal" if the parties have agreed to such limitation. However, federal law provides that employers having more than 100 employees (the "WARN" law, discussed in "USA-Federal, above) have to provide affected employees with sixty days' notice of certain "plant closures" and "mass layoffs" as defined in that law.



### Employee's Resignation

Unless there is a collective bargaining agreement with a labour union, employees are not required to provide advance notice of resignation. Florida law allows employees employed for an indefinite term (that is, "at will" employees) to resign at any time for any reason with or without prior notice. However, an employment contract with an employee for a definite term of employment may limit the employee's right to resign.

### Termination On Notice

Unless there is a collective bargaining agreement with a labour union, there is no advance notice required for dismissal of an individual employee. However, federal law (the "WARN" statute, discussed in "USA-Federal, above) requires that employers having more than 100 employees give sixty days notice (or sixty days' wages) to workers affected by certain "plant closures" or "mass layoffs" (as defined in the WARN law).

### Termination By Reason Of The Employee's Age

Federal and Florida law prohibit the dismissal of an employee because of age except in very limited and unusual circumstances involving highly-compensated and very senior executives, that is, mandatory retirement based on age is almost always illegal.

### Automatic Termination In Cases Of Force Majeure

Employment relationships may be terminated automatically in cases of force majeure unless otherwise restricted by a specific contract with the individual employee or by a collective bargaining agreement between the employer and a labour union (which relationship is governed by federal law).

### Termination By Parties' Agreement

Florida law allows persons employed "at will" (that is, for an indefinite term of employment) to be discharged or to resign at any time for any non-discriminatory and non-retaliatory reason and, in such circumstances, the employer need not justify the reason for the separation. Employers and employees may agree by contract to certain terms and conditions which will trigger a termination of the relationship.

### Directors Or Other Senior Officers

There are no special requirements regarding the termination of a director or other senior officer's employment.

### Special Rules For Categories Of Employee

There are no special rules for discharging categories of employees but, of course, an employee cannot be discharged because of his/her protected characteristics (race, sex, age, disability, pregnancy, marital status, etc) or because the employee has complained about suspected employer misconduct (including discrimination or harassment) or suspected employer violation of law. A collective bargaining agreement with a labour union may require special consideration of certain employees (typically employees with long tenure) as provided by the agreement.

### Specific Rules For Companies in Financial Difficulties

There are no special requirements for discharging employees applicable to companies in financial difficulties. However, such companies more often than not must comply with the federal plant closures and mass layoff statute (the "WARN" statute, discussed in "USA-Federal, above) in conjunction with reductions-in-force of personnel in "plant closures" or "mass layoffs" (as defined in the WARN law).

### Restricting Future Activities

Florida allows employers to require employees to sign non-competition agreements limiting their post-employment activities, including employment by a competitor, use/dissemination of confidential information, and non-solicitation of customers or co-workers. A Florida statute requires that such "non-competition" agreements be reasonable in both scope and duration. Employees can be required to enter into such an agreement before or during the employment (and, if the applicant/employee refuses to sign, the job can be denied or the worker discharged). If a non-competition agreement is sought at the end of employment, the employer will have to compensate the employee for it and, even then, the departing employee cannot be required to sign.

### Severance Payments

Severance payments are not required by federal or Florida law although they are customary in many industries and in many companies. Of course, if severance payments are offered, they must be provided in a non-discriminatory and non-retaliatory manner.

### Special Tax Provisions And Severance Payments

Severance pay is usually taxed as ordinary income (wages) of the employee and may be treated as a business expense by the employer.

### Allowances Payable To Employees After Termination

Florida employers are required to contribute to an unemployment compensation trust fund. Discharged employees may seek benefits from that fund through Florida's Agency for Workforce Innovation.

### Time Limits For Claims Following Termination

Federal and Florida laws provide their own specific deadlines for the assertion of employment-related claims. The federal deadline for discrimination and retaliation claims is 300 days; the Florida deadline for such claims is 365 days. Employees are allowed two years (and, under certain circumstances, three years) to assert claims for unpaid minimum or overtime wages under federal law. Various other applicable employment laws have individual statutes of limitations for the assertion of claims.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Florida employers who adopt a drug-free workplace program in compliance with the Florida's workers' compensation statute can qualify for special workers' compensation insurance rates and for additional defenses to employees' claims for workers compensation benefits.

Florida's whistleblower law prohibits adverse employment action against an employee because (a) he/she has disclosed or threatened to disclose to a government agency any suspected employer conduct that violates a law or (b) he/she gave information to or testified in a government investigation of the employer or (c) he/she objected to or refused to participate in any employer activity, policy or practice which violates a law. Whistleblowing employees subjected to retaliation by the employer may sue for compensatory damages (such as loss of wages) and attorneys' fees.

Florida's "guns at work" law permits employees lawfully in possession of a firearm to keep them locked in private vehicles on the employer's parking lot. (The law does not require employers to permit workers to bring firearms into buildings.)

Florida's Clean Air Act prohibits smoking in most enclosed indoor workplaces.

Florida provides a presumption against "negligent hiring" to employers who carefully screen job applicants. In other words, an employer who properly screens an applicant (who later is hired) is entitled to a presumption, in any subsequent lawsuit arising out of the employee's improper acts, that it acted prudently in deciding to hire that person.

Florida's domestic violence leave law requires that certain employers provide up to three days of job-protected leave for workers who are subjected to domestic violence or who have family members subjected to such misconduct.

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# USA - Illinois


USA - Illinois

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Claims alleging violations of the Illinois Human Rights Act ("IHRA") must first be presented to the Illinois Department of Human Rights for investigation. If the investigation reveals substantial evidence that a violation of the IHRA occurred, claimants may then continue pursuing their human rights claims before either the Illinois Human Rights Commission or an Illinois State court. The Illinois Labor Relations Board and the Illinois Educational Labor Relations Board administer the State laws governing relations between unions and public employers. Certain claims can be asserted before the Illinois Department of Labor. Most claims can be asserted in courts of general jurisdiction although certain claims must be first presented to the appropriate administrative agency.

### The Main Sources Of Employment Law

Employment arrangements in Illinois are governed by general common law principles of contract law, but there are common law and legislative requirements which override those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements, and, in some instances, employee handbooks form part of the contractual relationship.

### National Law And Employees Working For Foreign Companies

Federal law, Illinois State common law, and Illinois statutes apply to all individuals physically working in the State, regardless of nationality, and regardless of the law governing their contract of employment, although in certain narrow instances a national treaty with a foreign government may pre-empt the application of national law. The parties may agree by contract to apply State law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law applies to all employees working in the United States and, in some circumstances, to employees outside of the United States for U.S.-based companies. Illinois State law applies only when the employee is physically working in the State or when both parties have agreed in writing to the application of the laws of Illinois.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Illinois is an "at-will" employment State, meaning that unless otherwise expressly agreed by the parties, both the employer and the employee retain the mutual right to terminate the employment relationship at will, for any reason, with or with cause and with or without warning or notice. If the employer and employee choose to enter into a contractual employment agreement, there are no legal requirements under Illinois law as to the form of the agreement.

### Mandatory Requirements:

#### Trial Period

None.

#### Hours Of Work

None for adults age 18 and over, although the Illinois Child Labor Law does place various limits on the working hours for minors under 16 years of age. "Non-exempt" employees who work more than 40 hours per week must be paid overtime compensation.

#### Earnings

Effective July 1, 2010, the minimum wage in Illinois is $8.25 per hour.

#### Holidays / Rest Periods

Paid holidays are not required under Illinois law. Illinois does require employers to allow employees a meal period of at least 20 minutes for employees working for 7.5 hours. Employers also must provide break time for nursing mothers to express breast milk. Employees generally also must be provided one day of rest (24 hours) per calendar week. In addition, Illinois law establishes various compulsory daily rest periods for certain professions.

#### Minimum/Maximum Age

Federal and Florida laws prohibit employers from employing minors (persons under 18 years of age) ibecause they have reached a specific age (that is, mandatory retirement at a specified age is almost always illegal).

#### Illness/Disability

The Illinois Child Labor Law generally requires employees to be at least 14 years of age, although certain exceptions exist for certain circumstances. Illinois law does apply different rules for working hours for young workers.

#### Location of Work/Mobility

No specific requirements.

#### Pension Plans

Federal law applies.

#### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

In addition to applicable federal laws, the Illinois Human Rights Act prohibits discrimination or retaliation against employees on the basis of pregnancy, marital status, parental status or child-bearing status. The Illinois School Visitation Rights Act also requires employers to provide parental leave for attendance at school activities under certain circumstances.

#### Compulsory Terms

None.

#### Non-Compulsory Terms

Allowed at the parties' discretion.



### Types Of Agreement

No particular forms of agreements are required.

### Secrecy/Confidentiality

Illinois courts generally will enforce the parties' agreements regarding the secrecy and/or confidentiality of trade secrets or other confidential or proprietary information. In addition, the Illinois Trade Secrets Act and other common law provisions also imply confidentiality obligations in all employment relationships.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of a written agreement between the parties, ownership of IP rights is determined by federal statute.

### Hiring Non-Nationals

Employers are obliged by federal law to ensure that all employees are entitled to work in the U.S.; different requirements may apply depending on the nationality/status of the individual concerned. Illinois law imposes additional non-discrimination and employee privacy obligations on employers during the employment eligibility confirmation process.

### Hiring Specified Categories Of Individuals

The Illinois Child Labor Law regulates the employment of minors.

### Outsourcing And/Or Sub-Contracting

No prohibitions unless mutually agreed.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers are allowed to make changes to the contract, unless the contract provides that changes may only be made with the consent of both parties.

### Change In Ownership Of The Business

Federal law and Illinois state law require 60 days' prior notice to employees and state and local agencies in the event of plant closings or mass layoffs affecting specific numbers of employees. Local laws require transfer of employees and existing contracts for certain industries. Collective bargaining agreements or the presence of a union also may provide additional requirements.

### Social Security Contributions

Both the employer and the employee have compulsory Social Security contributions required under federal law.

### Accidents At Work

Employers are required to pay for workers' compensation benefits and may not discriminate or retaliate against employees for taking workers' compensation leave or benefits.

### Discipline And Grievance

The employment agreement or applicable collective bargaining agreement will govern.

### Harassment/Discrimination/Equal pay

Both federal and state laws include non-discrimination and anti-harassment provisions. Equal pay protections also are included in federal and state laws. Under the Illinois Human Rights Act, employees are protected from discrimination based on sex, race, color, religion, national origin, age, disability, marital status, parental status, pregnancy, child-bearing status, military status, unfavourable discharge from the military, records of arrests that did not result in convictions, sexual orientation, gender identity, or order of protection status. As of June 2014, Illinois will begin recognizing same sex marriages and businesses or employers may not discriminate in their employee policies or benefit plans with regard to the sexual orientation of a married couple. Retaliation for opposition to discrimination or participation in an agency proceeding is also prohibited. Local ordinances may provide additional protections.

### Compulsory Training Obligations

None.

### Offsetting Earnings

The Illinois Wage Deduction Act, Wage Assignment Act, and Wage Payment Collection Act govern an employer's ability to offset earnings against an employee's debts. Offsets for employee debts also may not result in a payment of less than minimum wages to the employee for all hours worked during any pay period.

### Payments For Maternity And Disability Leave

Paid maternity or disability leave is not required under federal or state law. Maternity leave should be treated the same as other forms of disability leave.

### Compulsory Insurance

Under Illinois law, employers must provide for workers' compensation insurance benefits and unemployment compensation benefits.

### Absence For Military Or Public Service Duties

Both federal and state laws provide requirements for providing for leaves of absence to a military member and/or member of his/her family for circumstances related to military service or health conditions resulting from military service.



### Works Councils or Trade Unions

Under federal law, employees can force the employer in certain cases to recognize a collective bargaining representative or labor union. Individuals who are involved as representatives on such bodies are protected from retaliation because of their activities in that role.

### Employees' Right To Strike

Under federal law, groups of employees may strike even if there is not a collective bargaining agreement or formal union at the site of employment, subject to limits for public service employees.

### Employees On Strike

Employers may not typically terminate striking employees, unless the employees engage in serious misconduct while striking or if the strike was unlawful and unprotected. However, if employees are on an economic strike, they may be permanently replaced by the employer and may be denied reinstatement if there are no open positions upon the conclusion of the strike, and until open positions materialize.

### Employers' Responsibility For Actions Of Their Employees

Under Illinois common law, an employer may be held liable for the actions of its employees unless the employee was acting outside the course of employment or for personal reasons. Employers may be held strictly liable for the harassing acts of any employee with supervisory authority.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

None, unless specified in a collective bargaining agreement or other agreement with the employee.

### Instant Dismissal

Illinois is an "at-will" employment state, meaning that unless otherwise expressly agreed by the parties, both the employer and the employee retain the mutual right to terminate the employment relationship at will, for any reason, with or without cause and with or without warning or notice.

### Employee's Resignation

Employees may terminate the employment relationship by resigning, with or without notice.

### Termination on Notice

Unless otherwise agreed by the parties, no termination notice is required except in plant closing or mass layoff situations that trigger 60-day prior notice requirements under federal and/or state law.

### Termination By Reason Of The Employee's Age

Discrimination based on age is prohibited except in very limited circumstances usually involving professions related to public safety. The parties may contractually agree to a mandatory retirement age.

### Automatic Termination In Cases Of Force Majeure

Employment agreements may be terminated in cases of force majeure; however, such instances are exceedingly rare.

### Termination By Parties' Agreement

The parties are free to agree to terminate the employment relationship on any grounds they wish except for discriminatory reasons prohibited by federal or state law or contrary to public policy.

### Directors Or Other Senior Officers

In the case of a director, termination of the employment relationship does not automatically end the board membership. Separate steps as required by the company's articles of incorporation are required to end the directorship.

### Special Rules For Categories Of Employee

Prior notice may be required if plant closing or mass layoff notice requirements are triggered.

### Specific Rules For Companies in Financial Difficulties

An employer's obligation to its employees continues, and may take priority over claims by its other creditors, during times of financial difficulties.

### Restricting Future Activities

Illinois courts will review an employer's restrictions on employees' future activities to ensure that they are reasonable, supported by consideration (whether entered into at the beginning of employment or through additional consideration provided during or at the end of employment), and narrowly tailored to protect the employer's legitimate business interests. Each case will be considered individually, so restrictions that may be appropriate for one employee's circumstances may be found unreasonable for other employees.

### Severance Payments

Severance payments are not required unless specifically provided by the employer's severance policy, a collective bargaining agreement, or the parties' employment agreement. Federal law provides requirements for the terms of a valid release agreement related to severance payments.



### Special Tax Provisions And Severance Payments

Severance payments are subject to ordinary income, social security, and other employment taxes.

### Allowances Payable To Employees After Termination

Employers must contribute to the State unemployment compensation fund.

### Time Limits For Claims Following Termination

Statutes of limitations for filing claims after termination vary depending on the type of claim.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Illinois laws also have a number of whistleblower protection provisions which prohibit retaliation against employees for making certain disclosures or for refusing to participate in specified activities.

Illinois wage laws require payment of all final compensation by the next regularly scheduled pay date after termination. Final compensation may include all earned bonuses, commissions, and accrued but unused vacation or paid time off. Claims for unpaid wages or compensation may not be waived by agreement of the parties but may be offset by other gratuitous payments at the time of termination (e.g., severance).

Illinois employees must be allowed to review their personnel records upon request up to twice per year and may request a copy be provided after termination. Illinois employers are prohibited from inquiring about or using the credit history of an employee or applicant as the reason for an employment decision unless a satisfactory credit history is a bona fide occupational requirement for the position. Employers also may not request or require employees or applicants to provide the employer with access to the employee or applicant's social networking or social media accounts (e.g., Facebook, etc.).

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# USA - Indiana

USA - Indiana

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employment disputes are generally adjudicated in state and federal courts, or through administrative agencies such as the Worker's Compensation Board and the Department of Workforce Development which hear employees' petition for unemployment compensation, the Equal Employment Opportunity Commission and the Indiana Civil Rights Commission, both of which adjudicate employment discrimination claims. Contractual disputes are litigated in civil courts. Labor disputes involving a collective bargaining agreement are typically handled through arbitration proceedings.

### The Main Sources Of Employment Law

The main sources of labor employment law are federal and state legislation and regulations, and court decisions. Federal legislation includes Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., the Fair Labor Standards Act, including the Equal Pay Act, 29 U.S.C. § 201, et seq., the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601, et seq., the Indiana Civil Rights Law, I.C. § 22-9-1, et seq., Indiana's wage-related statutes, including I.C. §§ 22-2-2 through 22-2-9, Indiana's Worker's Compensation Statute, under I.C. §§ 22-3-1 through 22-3-12, the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq., the Rehabilitation Act of 1973, 29 U.S.C. § 706, et seq., COBRA, 29 U.S.C. § 1161, et seq., and the National Labor Relations Act, 29 U.S.C. § 151, et seq. Collective bargaining agreements and individual contracts are also enforceable.

### National Law And Employees Working For Foreign Companies

U.S. employment discrimination laws, such as Title VII, apply to jobs located inside the U.S. when the employer is a foreign entity who is not exempted by a treaty or a binding international agreement and the employee is authorized to work in the U.S. See e.g., EEOC Commission Decision No. 84-2, CCH Employment Practices Guide ¶ 6840 (foreign company recruiting in United States was "employer" subject to Title VII for charge relating to recruitment).

### National Law And Employees Of National Companies Working In Another Jurisdiction

All federal employment laws apply to U.S. citizens working in every state. The Indiana Civil Rights Act applies only to Indiana employers that employ six or more employees working within the state of Indiana I.C. § 22-9-1-3 (2010). It does not apply to employers that are religious institutions or organizations, non-profit organizations, or an organization organized exclusively for fraternal purposes. Id. Counties and municipalities also have non-discrimination in employment laws.

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# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for a contract to be in writing. Unless the parties agree otherwise, Indiana employees are employed at will, meaning that either the employee or employer may terminate the relationship at any time and for any reason or no reason, and are not subject to a contract of employment. However, there are federal and state laws governing certain terms and conditions of employment. Further, the Indiana Supreme Court has recognized a public policy exception to the employment at will doctrine if a clear statutory expression of a right or duty is contravened, e.g. the worker's compensation retaliation exception and the whistleblower exception. See, Frampton v. Cent. Ind. Co., 297 N.E.2d 425 (Ind. 1973) (holding that employers may not retaliate against employees who make workers' compensation claims); Tony v. Elkhart County, 851 N.E.2d 1032 (Ind. Ct. App. 2006) (establishing a constructive retaliatory discharge claims).

Several Indiana statutes provide for a whistle blowing cause of action. See e.g., Ind. 22-5-3-3 (a private employer under public contract may not retaliate against a whistle blowing employee); Indiana Employees' Bill of Rights, I.C. § 4-15-10-4 (prohibits state-government employers from discharging or disciplining employees for reporting violations of law or misuse of public resources. I.C. § 20-12-1-8 (employees of state universities and occupational schools may not be discharged or disciplined for reporting violations of law or misuse of public resources; and I.C. § 22-5-3-3 (employees of private companies under private contract may not be discharged or disciplined for reporting violations of law or misuse of public resources.

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide trial periods, also called "probationary periods," when engaging new employees, but it is common practice to do so. However, Indiana has new-hire reporting requirements, which require employers to report to the Indiana Department of Workforce Development within 20 business days of the employee's date of hire the name, address, date of hire, and social security number of each new hire and the name, address, and state and federal identification number of the employer. Employers filing electronically must report twice a month not less than 12 or more than 16 days apart I.C. § 22-4.1-4.2. An employer who consistently discharges persons within four (4) weeks of their employment and replaces the discharged person without work stoppage commits a Class A infraction. I.C. § 22-2-2-12.



#### Hours Of Work

State and federal law provide that non-exempt employees must be paid 1.5 times their regular rate of pay for all hours worked in excess of 40 hours in a work week.

#### Earnings

As of January 1, 2014, Indiana state and federal minimum wage is $7.25 per hour I.C. § 22-2-2-4. However, this provision does not apply to persons under the age of sixteen.

#### Holidays / Rest Periods

There are no mandatory holidays for private employers in Indiana. No general provision requires meal or rest periods in Indiana, except that employees under the age of 18 must be provided 1 or 2 rest breaks totaling at least 30 minutes if the employee is scheduled to work at least 6 consecutive hours. Also, the state and its political subdivisions must provide reasonable paid break time each day to an employee who needs to express breast milk unless it would unduly disrupt operations of the state.

#### Minimum/Maximum Age

In Indiana, a minor must be at least 14 years of age before beginning work. The only jobs available to someone under the age of 14 are actor, performer, model, golf caddy, newspaper carrier, domestic service worker (babysitter) and farm laborer.

Indiana law has special provisions for minors who are at least 14 years of age but younger than 18. These minors must obtain an employment certificate from their school in order to secure employment. During employment, there are additional restrictions for the time and number of hours they may work, which are based on the age of the minor. An employer who employs a minor must post a conspicuous notice stating both the maximum hours a child may be employed for or permitted to work each day of the week and also the hours of beginning and ending for each day.

Indiana's Age Discrimination Act declares it an unfair labor practice to refuse to hire or rehire anyone solely because of age if that person is between the ages of 40 and 75.

#### Illness/Disability

Indiana's Civil Rights Act prohibits employment discrimination based solely upon an individual's disability. The federal Americans with Disabilities Act and the 2008 Amendments Act prohibit discrimination based on an individual's disability. The federal Family and Medical Leave Act requires covered employers to provide eligible employees with up to 12 weeks of unpaid job-protected leave to care for their own serious health condition or to care for a spouse, child, or parent with a serious health condition.

#### Location Of Work/Mobility

There are no mandatory requirements relating to an employee's location of work / mobility.

#### Pension Plans

Pension plans are not mandatory, but certain plans are regulated by the Employee Retirement Income Security Act (ERISA).

#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The federal Pregnancy Discrimination Act of 1978 prohibits discrimination or harassment of a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The federal Family and Medical Leave Act requires covered employers to provide eligible employees with up to 12 weeks of unpaid job-protected leave because of the birth of a child and to care for the newborn child or because of the placement of a child with the employee for adoption or foster care. Indiana law provides that a teacher is entitled to a pregnancy leave of no more than one year. I.C. § 20-28-10-5.

#### Compulsory Terms

There are no compulsory terms.

#### Non-Compulsory Terms

The parties are free to agree on other non-compulsory provisions, provided that these terms are no less favorable than certain statutory rights.

### Types Of Agreement

There are not different rules for different types of agreements. Indiana courts will enforce both oral and written employment agreements.

### Secrecy/Confidentiality

In Indiana, an employee who is entrusted with or who obtains trade secrets may make a valid covenant that prohibits him from competitive use or disclosure of those trade secrets. Non-compete covenants are in restraint of trade, are not favored by the law, and are strictly construed against the employer. Non-compete covenants are enforceable if the employer has a protectable interest. The covenant must be reasonable in the length of the restraint, the geographic scope of the restraint, the activity restrained, and must be reasonable regarding the protectable interest.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally, employers own intellectual property created by their employees as part of their employment or created using the employer's information, equipment, or materials.

### Hiring Non-Nationals

Employers should be aware that foreign nationals must be authorized to work in the U.S. and whether such employment is restricted in any way. U.S. laws, rules, and regulations governing the work authorization of foreign nationals are complex. The U.S. Citizenship and Immigration Services (USCIS) regulations provide guidelines for employers and employees to adhere to in order for a foreign national to work in the U.S. The USCIS establishes various categories of permanent employment visas for aliens who seek to immigrate based on their job skills. There are approximately 140,000 permanent employment visas for aliens who seek to be permanent workers. The USCIS further provides that in order for an alien to come to the United States lawfully as a nonimmigrant to work temporarily in the United States, his or her prospective employer must generally file a nonimmigrant petition on his or her behalf with USCIS. See www.uscis.gov.

### Hiring Specified Categories Of Individuals

Federal contractors have certain affirmative action obligations under Executive Order 11246. One requirement for federal contractors who have 50 or more employees and $50,000 or more in government contracts is to develop a written affirmative action program which helps the contractor identify and analyze potential problems in the participation and utilization of women and minorities in the contractors' workforce. Federal and state law prohibit employers from discriminating in terms and conditions of employment based on: race, religion, national origin, colour, gender, age (40 and over), disability, or ancestry. Indiana law sets limits on hiring employees under age eighteen, including requiring nearly all minors ages 14-17 to obtain a work permit.



On July 1, 2013, Indiana enacted a new law which stated that individuals who meet certain criteria will be able to expunge their criminal records. I.C § 35-38-9. Under this new law it is unlawful to discriminate against a person whose record has been sealed or expunged. Further, in any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests, such as: "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?" I.C. § 35-38-9-10.

### Outsourcing And/Or Sub-Contracting

There are no employment rules relating to outsourcing and / or sub-contracting.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

An employer may establish business hours, working schedules and other employment terms. An employee may place conditions on these terms. Common law contract principles apply to contract changes made by either party. Thus, an employer may not change any terms of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change). Any change of terms to which the employee does not consent will amount to a breach of contract.

### Change In Ownership Of The Business

There are no special rules which apply when there is a change in the ownership of the business. Generally, when there is a change in ownership of a business, all employees are automatically transferred to the new employer on the same terms and conditions. As Indiana is an at-will employment state, an employee may refuse to transfer to the new employer by resigning his position. However, a non-compete agreement may not be transferable to a new employer unless transferability or assignability is provided for in the agreement.

### Social Security Contributions

Both employees and employers must make social security contributions. Employers are not required to contribute toward allowances payable to employees during their employment.

### Accidents At Work

The federal Occupational Safety and Health Act (OSHA) governs when work accidents may be reported. The Indiana equivalent statute for workplace safety is the Indiana Occupational Safety and Health Act. The handling of work-related injuries is governed by the Indiana Workmen's Compensation Act, which, in most cases, prevents employees from suing employers directly for work-related accidents. The Indiana Worker's Compensation Board handles workers' compensation issues. Indiana employers, with certain exceptions, are required to insure their workers' compensation liability by either purchasing workers' compensation insurance through a company authorized by the state or, for employers seeking to self-insure, by furnishing the Workers' Compensation Board with an application and satisfactory proof of financial ability to pay compensation as provided in the workers' compensation statute.

### Discipline And Grievance

There are no laws mandating a discipline or grievance process for private sector employees who are not part of a collective bargaining unit. The discipline or grievance process for private sector employees who are a part of a collective bargaining unit is governed by the terms of the collective bargaining agreement.

### Harassment/Discrimination/Equal pay

Along with federal laws, the Indiana Civil Rights Act prohibits employers from discriminating, directly or indirectly, in terms and conditions of employment based on: race, religion, national origin, color, gender, disability, or ancestry. The Indiana Age Discrimination statute also protects individuals ages 40-75 years old from employment discrimination based solely upon age. Indiana law also prohibits an employer from terminating an employee because he or she has provided evidence in connection with a complaint under the Indiana Civil Rights Act.

Protected classifications under the Indiana Civil Rights Law include: race, religion, colour, sex, disability, national origin, and ancestry (See Ind. Code § 22-9-1-1, et seq). A separate statute provides that persons with disabilities are to be employed in public positions on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved (See Ind. Code § 16-32-3-5). There is no specific cap on damages, however, damages are generally limited to back wages.

### Compulsory Training Obligations

There are no compulsory training obligations, but some trades/professions will impose their own standards and expectations.



### Offsetting Earnings

Employers may deduct wages (make "assignments") for thirteen enumerated purposes provided the employee gives written authorization and the authorization is revocable. The limited purposes include: (1) payments for insurance premiums, (2) contributions or pledges to a charitable or non-profit organization, (3) purchase price of U.S. bonds and securities, (4) purchase price of shares of stock in the employing company, (5) dues to a labor organization, (6) purchase price of merchandise sold by the employer to the employee, (7) amount of a loan made to the employee by the employer, (8) contributions to a hospital service or a surgical or medical expense plan or to a plan existing for the purpose of paying a judgment owed by the employee; (9) payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under U.S. law; (10) payment to any person or organization for electronic deposit or credit of funds; (11) premiums or policies of insurance and annuities purchased by the employee on the employee's life; (12) purchase price of shares or fractional interest in shares in at least one mutual fund; and (13) a judgment owed by the employee (so long as pursuant to agreement between employee and creditor and not a garnishment).

Employers may also deduct for reimbursement of an overpayment to an employee as long as the employer gives the employee two weeks' notice before amounts are deducted from the employee's paycheck. An employer may not deduct an amount in dispute and is restricted from deducting any amount greater than 25% of the employee's disposable earnings or the amount by which the employee's disposable earnings exceed 30 times the minimum wage (whichever is less). However, if a wage overpayment is equal to 10 times the employee's gross wages because of a misplaced decimal point, the entire overpayment may be deducted immediately. Other restrictions apply to deducting employees' wages.

### Payments For Maternity And Disability Leave

Indiana generally does not have requirements for maternity leave, although teachers have a special provision, found at I.C. § 20-28-10-5. Further, outside the context of worker's compensation and paid disability leave provided to workplace injuries, Indiana does not provide paid disability leave.

### Compulsory Insurance

Health Insurance is not required.

### Absence For Military Or Public Service Duties

The federal Uniformed Services Employment and Reemployment Act governs military leave and reinstatement following such leave. Indiana's Military Family Leave Act permits the spouse, parent, grandparent, child or sibling of a person who is ordered to active duty to take an unpaid leave of absence upon written notice for 10 days during a one year period. Military family leave is also provided for under the federal Family and Medical Leave Act.

### Works Councils or Trade Unions

The National Labor Relations Act governs employees' right to organize. Indiana makes it a Class B criminal misdemeanor for a person to prevent another person form forming or belonging to a labor organization. Indiana law also provides that no Indiana worker or group of workers who are Indiana residents can be denied the right to select his or their bargaining representative, or be denied the right to organize into a local union or association.

### Employees' Right To Strike

Employees have the right to strike, see discussion of Collective Bargaining Rights in U.S. Federal Law section.

### Employees On Strike

For a discussion of whether an employer may fire employees who are on strike, see Collective Bargaining Rights in U.S. Federal Law section.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of their employees unless the employee is acting outside the scope of his or her employment.

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## 04. Firing The Employee

Note that the following questions assume the existence of an employment contract. In the U.S., most employees are not subject to a contract, but are instead employed at-will. However, to the extent that an employee has a contract with the employer, the agreement would be covered by contract law. The termination of employees who are part of a collective bargaining unit is typically covered by the collective bargaining agreement.

### Procedures For Terminating the Agreement

A covered employer who engages in a "mass layoff" or "plant closing" must follow the procedures in the federal Worker Adjustment and Retraining Notification Act (WARN Act). These procedures generally require advance notice of the layoff. Absent an employment agreement, Indiana is an at-will employment state and does not require an employer to have cause to terminate an employee. However, Indiana requires that when an employee makes a written request, an employer must provide the employee a signed, written letter setting forth the nature and character of the employee's job and its duration, and state the cause, if any, for the employee's resignation or discharge. Indiana does not have mandatory notice provisions for the termination of employment.



### Instant Dismissal

Employers and employees may terminate their at-will employment relationship at any time and for any reason, but not a discriminatory reason or for a reason that breaches public policy. Public policy exceptions are limited to worker's compensation retaliation, illegal conduct relating to public contracts, and where the employee is fired for refusing to commit an illegal act that the employee would be personally liable for the violation. If there is an employment contract, contract law applies.

### Employee's Resignation

An employee may terminate an employment agreement by resigning. Normally, the contract will stipulate the notice period required and an employee may be liable for breaching the employment contract if proper notice is not given. Employees can also forfeit accrued vacation for not adhering to the employer's notice requirements.

### Termination On Notice

Parties may terminate an employment agreement with or without notice. However, under general contract law principles, a party may be liable for breach of the employment agreement if the party terminates the agreement without the requisite notice provided for in the employment contract.

### Termination By Reason Of The Employee's Age

An employment agreement may not be terminated due to the employee's age, except in very limited cases where mandatory retirement is required by law.

### Automatic Termination In Cases Of Force Majeure

An employment agreement may be terminated due to force majeure. Generally, impossibility of performance is a defense in an action for damages. Legal impossibility of performing a contractual obligation is an affirmative defense that the invoking party has the burden to establish.

### Termination By Parties' Agreement

In a contract for a definite term, employment ends according to the terms of the employment agreement. Either party may be liable for breach of contract for violating the terms of the contract. However, under common law principles of contract, the parties may mutually agree to modify the term of the contract and terminate the agreement at an earlier date.

### Directors Or Other Senior Officers

There are no special rules for firing directors or special officers.

### Special Rules For Categories Of Employee

The Collective Bargaining Agreement controls termination of employees who are part of the collective bargaining unit.

In Indiana, a minor must be at least 14 years of age before beginning work. The only jobs available to someone under the age of 14 are actor, performer, model, golf caddy, newspaper carrier, domestic service worker (babysitter) and farm laborer.

Indiana law has special provisions for minors who are at least 14 years of age but younger than 18. These minors must obtain an employment certificate from their school in order to secure employment. During employment, there are additional restrictions for the time and number of hours they may work, which are based on the age of the minor. An employer who employs a minor must post a conspicuous notice stating both the maximum hours a child may be employed for or permitted to work each day of the week and also the hours of beginning and ending for each day.

### Specific Rules For Companies in Financial Difficulties

Specific rules apply when a company gets into financial difficulties. See e.g., the provisions of the WARN Act, 38 U.S.C. § 4301 et seq. The WARN Act protects workers by requiring advance notice of covered plant closings and covered mass layoffs.

### Restricting Future Activities

Non-compete covenants are in restraint of trade, are not favored by the law, and are strictly construed against the employer. Non-competes are enforceable if the employer has a protectable interest. The covenant must be reasonable in the length of the restraint, the geographic scope of the restraint, the activity restrained, and must be reasonable regarding the protectable interest. Under the "blue pencil" doctrine, Indiana courts will only strike unreasonable language. They will not modify the covenant to make it enforceable.

### Severance Payments

There are no state or federal laws requiring severance payments. Indiana requires payment of all accrued wages by the next regularly scheduled pay date after termination of employment.

Indiana's Wage Claims Act provides that whenever any employer separates any employee from the payroll, the unpaid wages or compensation of such employee must be paid at the regular pay day for the pay period in which the separation occurred. Indiana's Wage Payments Act provides that payment of all wages earned must be made no more than 10 business days after the wages are earned. Damages available to employees for an employer's failure to make timely wage payments include attorneys' fees and treble damages.

### Special Tax Provisions And Severance Payments

There are no special tax provisions which apply to severance payments.

### Allowances Payable To Employees After Termination

Employers are not required to contribute towards any allowances payable to employees after termination.



### Time Limits For Claims Following Termination

State: Employees must file a charge alleging discrimination with the Indiana Civil Rights Commission within 180 days from the date of the occurrence of the alleged unlawful discriminatory act. Federal: generally, employees must file a charge alleging discrimination with the Equal Employment Opportunity Commission ("EEOC") within 300 days after the unlawful discriminatory practice alleged in the charge was committed. However, a claim for age discrimination must be filed within 180 days, unless a state has a corresponding law prohibiting age discrimination, in which case the 180 days is expanded to 300 days. The employee's right to sue in federal court is contingent upon filing a charge of discrimination with the EEOC. Suit in federal court alleging violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act and/or the Age Discrimination in Employment Act must be filed within 90 days of receipt of the EEOC's Dismissal and Notice of Rights. Suits for unpaid wages or alleging violation of the federal Equal Pay Act ("EPA") must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

While the Indiana Civil Rights Act does not recognize sexual orientation or gender identity as protected classes for employment discrimination purposes, some Indiana counties and municipalities recognize such claims. Most municipalities and counties, however, only recognize claims of employment discrimination based upon sexual orientation. Also, see the information on at-will employment in the U.S. Federal law section.

It is also unlawful for an employer in Indiana to require as a condition of employment that an employee or prospective employee refrain from using tobacco off-duty, or to discriminate with respect to compensation, benefits, or any terms or conditions of employment, based on the use of tobacco products outside the course of the employee or prospective employee's employment, I.C. § 22-5-4-1.

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# USA - Kansas


USA - Kansas

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Certain claims may be asserted before the Kansas Department of Labor and Industrial Relations, the Kansas Human Rights Commission, and in some instances, local agencies. Most claims may be asserted in courts of general jurisdiction, although certain claims must first be presented to the appropriate administrative agency.

### The Main Sources Of Employment Law

Common law, state statutes and state regulations are the main sources of employment law in Kansas. Major state employment statutes include the Kansas Act Against Discrimination (Kan. Stat. Ann. §44-1001 et seq.), Kansas Age Discrimination in Employment Act (Kan. Stat. Ann. §44-1111 et seq.), the Kansas Wage Payment Law (Kan. Stat. Ann. §44-313 et seq.), and the Kansas Workers' Compensation Law (Kan. Stat. Ann. §44-501 et seq.). Individual contracts (whether written or oral) and collective bargaining agreements may also govern the employment relationship.

### National Law And Employees Working For Foreign Companies

State law applies to all individuals physically working in the state. Federal law and, in some instances, a national treaty with a foreign government may also apply. The parties may contractually agree to apply a different state's law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

State law applies only when the employee is physically working in the state or when both parties have agreed in writing to the application of Kansas law.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

There are no legal requirements regarding the form of an employment agreement, and employment agreements are not required.

## Mandatory Requirements:

### Trial Period

There is no legal requirement to provide trial periods (also referred to as "probationary periods" or "introductory periods"). The terms of a collective bargaining agreement may apply.

### Hours Of Work

There is no restriction on the number of hours employees may be required to work, except for children. However, employees who are non-exempt under federal wage and hour laws are entitled to overtime pay at a rate of one and one-half times the regular rate of pay for all hours worked over 40 in a workweek. Under Kansas law, non-exempt employees are entitled to overtime pay for all hours over 46 in a workweek (Kan. Stat. Ann. §44-1213). The terms of a collective bargaining agreement may also apply.

### Earnings

All non-exempt employees must be paid the federal or state minimum wage, whichever is higher, for all hours worked (Kan. Stat. Ann. §44-1203). Exempt employees must be paid certain minimum weekly salaries or fees in accordance with federal law. The terms of a collective bargaining agreement may also apply.

### Holidays / Rest Periods

There are no statutory provisions regarding holidays and rest periods. The terms of a collective bargaining agreement may apply.

### Minimum/Maximum Age

The minimum age for most jobs is 14 years old. Children under the age of 14 are allowed to work only in certain industries. Certain federal and state rules apply to the employment of children under the age of 16 (Kan. Stat. Ann. §38-601 et seq.). There are no maximum age limits. The Kansas Age Discrimination in Employment Act prohibits discrimination on the basis of age for individuals age 40 or older (Kan. Stat. Ann. §44-1111 et seq.). The terms of a collective bargaining agreement may also apply.

### Illness/Disability

There are no statutory provisions regarding illness or disability, such as paid leave. However, federal and state law impose specific anti-discrimination and leave requirements for employees with a disability or serious medical condition. The terms of a collective bargaining agreement may also apply.

### Location Of Work/Mobility

There are no statutory provisions regarding location of work or mobility.

### Pension Plans

There are no statutory provisions regarding pension plans. Federal law may apply.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

There are no statutory provisions regarding pregnancy, maternity or adoption benefits; however, state non-discrimination requirements apply. Federal leave requirements and the terms of a collective bargaining agreement may also apply.

The Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, et seq., a federal statute, provides eligible employees who work for a covered employer with up to 12 weeks of leave in a one year period for one or more of the following reasons: birth or care of newborn child of employee, placement with employee of an adopted child or child in foster care, care of an immediate family member (spouse, child, or parent) with a serious health condition, medical leave when employee is unable to work because of his or her own serious health condition or for certain qualifying military exigencies. In addition, the FMLA provides eligible employees with up 26 weeks of leave during a single 12 month period to care for a spouse, son, daughter, parent or next of kin who is a member of the Armed Forces.



A "covered employer" employs 50 or more employees during the current or proceeding calendar year within a 75 mile radius. An "eligible employee" is an employee who has worked for a covered employer for a total of 12 months and has provided at least 1,250 hours of service during the 12-month period immediately preceding the commencement of leave.

### Compulsory Terms

There are no compulsory terms that must be included in an employment agreement.

### Non-Compulsory Terms

The employer and employee may agree to any terms, provided that the terms do not abrogate statutory rights (e.g., employees may not agree to compensation less than the minimum wage or waive their right to overtime compensation).

## Types Of Agreement

Employers and employees may enter into a variety of agreements related to the employment relationship including standard employment agreements (regarding hours, wages, benefits, etc.), confidentiality and non-disclosure agreements, non-competition agreements, non-solicitation agreements, etc. Common law and state statutes will determine the enforceability of such agreements.

## Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied in the employment relationship. During the employment relationship, an employee is under a duty of loyalty and must not act contrary to the employer's interest by, for example, misappropriating trade secrets. The Kansas Uniform Trade Secrets Act regulates the misappropriation of trade secrets both during and after employment (Kan. Stat. Ann. §60-3320 et seq.). Employers and employees may also enter into confidentiality and non-disclosure agreements.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

A provision in an employment agreement requiring an employee to assign any of the employee's rights in an invention may not apply to any invention for which no equipment, supplies, facilities or trade secret information of the employer was used and that was developed entirely on the employee's own time unless (a) the invention relates to the employer's business or actual or demonstrably anticipated research or development; or (b) the invention results from any work performed by the employee for the employer (Kan. Stat. Ann. §44-130(a)). Any provision in an employment agreement purporting to apply to such excluded inventions is void and unenforceable (Kan. Stat. Ann. §44-130(b)). An employer may not require such a prohibited provision as a condition of employment (Kan. Stat. Ann. §44-130(b). Federal law may also apply.

## Hiring Non-Nationals

Kansas has no specific law relating to hiring of non-nationals. All employers must ensure, however, that they are in compliance with federal law and that all employees are eligible to work in the United States.

### Hiring Specified Categories Of Individuals

There are restrictions on the types of work that children may be hired to perform. For example, children under age 14 may not work in any occupation except as provided by the child labor laws, and children under age 18 may not be employed in any occupation declared to be hazardous by the U.S. Secretary of Labor (Kan. Stat. Ann. §38-601 et seq.).

There are specific labor provisions for agricultural employees designed to protect agricultural workers. These provisions permit freedom of association, self-organization, and designation of representatives of their own choosing (Kan. Stat. Ann §44-818 et seq.).

### Outsourcing And/Or Sub-Contracting

There are provisions within the Kansas Workers' Compensation Laws regarding responsibility for workers' compensation when an employer has subcontracted for work (Kan. Ann. Stat. §44-503). The terms of a collective bargaining agreement may also apply.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

Changes to an employment contract are generally governed by the contractual terms and common law.

### Change In Ownership Of The Business

There are no statutory provisions regarding change in ownership of the business. Contractual provisions and federal law may apply.

### Social Security Contributions

Employers and employees are both required by federal law to make social security contributions. Employing units doing business in Kansas are subject to the provisions of the Employment Security Law. However, not all employing units are subject to the taxing provisions of the law. Coverage is determined by the type and nature of the business, the number of workers employed, and the amount of wages paid for services in employment. Employers may also be required to pay for workers' compensation insurance (Kan. Stat. Ann. §§44-703 et seq., 44-501 et seq.).



### Accidents At Work

Employee injuries occurring at work are governed by the Kansas Workers' Compensation Law (Kan. Stat. Ann. §44-501 et seq.). Employers may also be responsible under common law for accidents caused by the acts of their employees where the employees were acting within the scope of their employment. Federal law may also apply.

### Discipline And Grievance

A memorandum of agreement between public employers and employees may contain a grievance procedure and may provide for the impartial arbitration of any disputes that arise on the interpretation of the memorandum agreement. Such arbitration shall be advisory or final and binding, as determined by the agreement, and may provide for the use of a fact-finding board. The public employee relations board is authorized to establish rules for procedure of arbitration in the event the agreement has not established such rules. In the absence of arbitrary and capricious rulings by the fact-finding board during arbitration, the decision of that board shall be final. Judicial review shall be in accordance with the act for judicial review and civil enforcement of agency actions (Kan. Stat. Ann. §75-4330).

There are no statutory provisions regarding discipline and grievances for private employers. A collective bargaining agreement or other contract may apply.

### Harassment/Discrimination/Equal pay

The Kansas Act Against Discrimination prohibits job discrimination on the basis of race, religion, colour, sex, disability, national origin, or ancestry (Kan. Stat. Ann. §44-1001 et seq.). The law also bars discrimination based on an employee's or a prospective employee's genetic screening or testing information. The law applies to employers of four or more workers and to those acting for an employer or employment agency, labor organization and the state and its political subdivisions. Non-profit fraternal or social organizations are exempt. Kansas also prohibits job discrimination on the basis of HIV infection (Kan. Stat. Ann. §65-6001 et seq.). The Age Discrimination in Employment Act protects individuals aged 40 or older from discrimination on the basis of their age (Kan. Stat. Ann. §44-1111 et seq.). The Kansas Equal Pay Law prohibits employers from paying females a wage rate less than the wage rate paid to male employees who perform the same quantity and quality of the same classification of work (Kan. Stat. Ann. §44-1205).

### Compulsory Training Obligations

There are no statutory provisions regarding compulsory training obligations.

### Offsetting Earnings

Employers may deduct from an employee's wages if (1) the employer is permitted by state or federal law; (2) the deductions are for medical, surgical, or hospital care, do not financially benefit the employer, and are clearly recorded in the employer's books; (3) the employer has signed authorization from the employee for deductions accruing to the benefit of the employee; or (4) deductions are for contributions to a retirement plan.

Pursuant to a signed, written agreement, an employer may deduct from an employee's wages to (1) allow the employee to repay a loan or advance from the employer, made to the employee within the scope of employment; (2) recover payroll overpayment; and (3) compensate the employer for the replacement or unpaid cost balance of the employer's merchandise or uniforms purchased by the employee. Upon written notice and explanation, an employer may deduct from an employee's final wages to (1) recover the employer's property provided to the employee in the course of business; (2) allow the employee to repay a loan or advance from the employer, made to the employee within the scope of employment; (3) recover payroll overpayment; and (4) compensate the employer for the replacement or unpaid cost balance of merchandise, uniforms, property, equipment, or other materials the employee intentionally purchased from the employer (Kan. Ann. Stat. §44-319). These deductions cannot reduce an employee's wages to below the minimum wage required by federal or state law. Deductions from wages for garnishments must also comply with state and federal requirements (Kan. Stat. Ann. §§60-730, 60-734, 60-2310, 60-2310).

### Payments For Maternity And Disability Leave

There are no statutory provisions regarding payments for maternity and disability leave.

### Compulsory Insurance

Kansas employers with gross annual payroll for the preceding calendar year of more than $20,000 must carry workers' compensation insurance. The Kansas Workers' Compensation Act does not cover private employers engaged in agricultural pursuits and employments incident thereto (Kan. Stat. Ann. §44-505).

### Absence For Military Or Public Service Duties

Employees returning from leave must be restored to a position and must have the same status in employment as they would have enjoyed if they had remained in their employment continuously from the time they were called to state duty until the time of restoration to such employment. Any person called to active duty by the state, whether by the Kansas National Guard, Kansas Air National Guard, Kansas State Guard, or other state military force, who gave notice to the employer of the call-up, is entitled to reinstatement upon satisfactory performance of military duty and release from such duty. The individual must report to the place of employment within 72 hours of release from duty or recovery from disease or injury resulting from the duty. If the person is no longer qualified to perform the duties of the position because of disability sustained during the period of state duty, but is qualified to perform another job offered by the employer, the person shall be reemployed in a position that will provide like seniority status and pay, or the nearest approximation thereof consistent with the circumstances.



A person restored to employment following state duty is considered to have been on temporary leave of absence, and shall be restored without loss of seniority. The person also shall be entitled to participate in any benefits offered by the employer pursuant to established rules and practices relating to employees on leave of absence. An individual restored to employment cannot be discharged without cause within one year after restoration to the position. It is a misdemeanour for an employer to refuse permission to a guard member to attend drill or annual muster or to perform active service when ordered. An employer that refuses leave or discharges or disciplines an employee for being absent in order to perform military duty is subject to a fine of $5 to $50 for each offense (Kan. Stat. Ann. §§48–222 and 48–517). Federal law may also apply.

Employers may not discharge, threaten to discharge, intimidate, or coerce any permanent employee because of an employee's attendance or scheduled attendance on jury duty. An employee reinstated after jury duty is treated as having been on furlough or leave of absence during the period of jury service. The employee is to be reinstated without loss of seniority, and is entitled to participate in insurance or other benefits offered by the employer. An employer who violates the jury leave provisions is liable for damages from any loss of wages and actual damages suffered by the employee. The employer shall be ordered to reinstate the employee, and may be enjoined from further violations and ordered to provide appropriate relief (Kan Stat. Ann. §43–173).

Voting: Any eligible voter is allowed 2 consecutive hours to vote in all elections while the polls are open. The employer may specify the particular time during the day for voting, but not during any lunch period.

### Works Councils or Trade Unions

Kansas employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, and such employees shall also have the right to refrain from any or all such activities (Kan. Stat. Ann. §44-803).

Public employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing, for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations (Kan. Stat. Ann. §75-4324).

Agricultural employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing, for the purpose of meeting and conferring with agricultural employers or their designated representatives with respect to grievances and conditions of employment. No agricultural employee may be required to join an employee organization as a condition of his employment, and every agricultural employee shall have the right to refuse to join or participate in the activities of employee organizations (Kan. Stat. Ann. §44-821). Federal law may also apply.

### Employees' Right To Strike

1. Private Sector Labor Relations

   Kansas recognizes the right of employees to strike; however, certain strikes, including recognitional strikes, are illegal. Employers are prohibited from interfering with or impeding or diminishing in any way the right to strike or the right of individuals to work. Further, employers shall not invade unlawfully the right to freedom of speech (Kan. Stat. Ann. §44-813). Federal law may also apply.

2. Public Sector Labor Relations.

   It shall be a prohibited practice for public employees or employee organizations wilfully to engage in a strike (Kan. Stat. Ann. §75-4333).

3. Agriculture Labor Relations.

   It shall be a prohibited practice for agricultural employees or employee organizations wilfully to engage in a strike during periods of marketing livestock or during a critical period of production or harvesting of crops (Kan. Stat. Ann. §44-828).

### Employees On Strike

Employers are prohibited from interfering with or impeding or diminishing in any way the right to strike or the right of individuals to wok. Further, employers shall not invade unlawfully the right to freedom of speech (Kan. Stat. Ann. §44-813).

### Employers' Responsibility For Actions Of Their Employees

Under the doctrine of respondeat superior, an employer may be liable for the negligent acts or omissions by an employee that are committed within the course and scope of employment. Employers may also be liable for negligent hiring and/or retention where the following elements are met: (1) the employer knew or should have known of an employee's dangerous proclivities; (2) the employee was hired (or retained in employment); (3) the employer's negligent act or omission was the proximate cause of an injury sustained by the plaintiff at the hands of the employee; and (4) the employee's misconduct was consistent with the employee's dangerous proclivity. For this claim, it is not necessary that the offending conduct occur within the course and scope of employment.



# 04. Firing The Employee

### Procedures For Terminating the Agreement

There are no statutory provisions regarding procedures for terminating an employment agreement. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time. An employment contract or collective bargaining agreement may specify termination procedures.

### Instant Dismissal

There are no statutory provisions regarding procedures regarding instant dismissal of an employee. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time. An employment contract or collective bargaining agreement may contain notice requirements.

### Employee's Resignation

There are no statutory provisions regarding employee resignation. An employment contract or collective bargaining agreement may specify resignation procedures.

### Termination On Notice

There are no statutory provisions regarding termination on notice. An employment contract or collective bargaining agreement may contain notice requirements.

### Termination By Reason Of The Employee's Age

The Kansas Age Discrimination in Employment Act prohibits discrimination in employment on the basis of age (40 or more years of age). This provision applies to employers with four or more employees (Kan. Stat. Ann. §§44-1111 et seq.). Federal law may also apply.

### Termination By Parties' Agreement

The parties are free to terminate the employment relationship on any grounds they desire, except for unlawful reasons proscribed by federal, state or local law.

### Directors Or Other Senior Officers

There are no statutory provisions regarding termination of directors and officers. An employment contract may apply and contain termination procedures. The termination of employment does not automatically terminate board membership. Separate steps, generally set forth in the bylaws or articles of incorporation/organization, are required to terminate board membership.

### Special Rules For Categories Of Employee

There are no statutory provisions regarding the termination of certain categories of employees; however, termination decisions must comply with the anti-discrimination provisions of the Kansas Act Against Discrimination and the Kansas Age Discrimination in Employment Act.

### Specific Rules For Companies in Financial Difficulties

There are no statutory provisions regarding companies in financial difficulty. Federal bankruptcy law, the Employee Retirement Income Security Act, the Worker Adjustment and Retraining Notification Act, and other federal laws may apply.

### Restricting Future Activities

Contracts preventing a former employee from engaging in ordinary competition are unlawful in Kansas. However, reasonable non-competition and non-solicitation agreements are permitted between employers and employees in order to protect a legitimate business interest. "Legitimate business interests" include: (1) customer contacts, (2) customer relationships, and (3) trade secrets. The agreement must be reasonable in both duration and geographic scope and must be supported by consideration (at-will employment or a change in conditions or terms of employment that amounts to additional consideration for the agreement constitutes sufficient consideration under Kansas law). Enforceability of restrictive covenants is determined on a case-by-case basis. Agreements that prohibit disclosure of confidential information are generally enforceable. If a court finds that an agreement is too broad, the court has the power to modify the agreement to the extent necessary to make it reasonable.

### Severance Payments

There are no statutory provisions regarding or requiring severance payments. Severance payments are not required unless the employer and the employee have a contract providing for severance. There are specific rules governing the validity of a release provided in exchange for severance payments.

### Special Tax Provisions And Severance Payments

Severance payments are taxed in the same way as other wages.
Federal law may also apply.

### Allowances Payable To Employees After Termination

Employees may be entitled to unemployment benefits after termination of employment so long as they meet certain requirements (Kan. Stat. Ann. §§44-701 et seq.).

### Time Limits For Claims Following Termination

Statutes of limitation vary depending upon the nature of the claim.

For example, any claim for employment discrimination or harassment filed under the Kansas Act Against Discrimination (KAAD) must be filed with the Kansas Human Rights Commission (KHRC) within 180 days of the alleged violation (i.e. 180 days from the date of the adverse employment action that provides the basis for a claim). K.S.A. § 44-1005(h)(1). Claims stemming from violations of federal law, such as Title VII claim, must be filed with the Equal Employment Opportunity Commission (EEOC) within 300 days from the alleged violation 42 U.S.C.A. § 2000e-5.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

#### Job Reference

Employers cannot be held civilly liable for disclosing a former employee's dates of employment, pay level, job description and duties, and wage history to a prospective employer. An employer that responds in writing to a prospective employer's written request for information about a former or current employee also has immunity from civil liability for disclosing: (1) written evaluations conducted before the employee left the company (the employee is entitled to receive a copy of such evaluations upon request); (2) whether the employee was voluntarily or involuntarily released from service; and (3) the reasons for the separation (Kan. Stat. Ann. §44–119(a)).

If the polls are open before or after the employee's scheduled work time, the employee is entitled to be absent from his employment only for such a period of time that when added to the time the polls are open, provided the time period does not exceed 2 hours. Deduction from wages or salary or other penalty against any eligible voter who participates in a general, primary and special election, whether federal, state, or local, is prohibited. Obstruction of voting privilege is a class A misdemeanour (Kan. Stat. Ann. §25–418).

#### Service Letter

An employer must provide a service letter stating the employee's length of employment, occupational classification, and wage rate upon a terminated employee's request. (Kan. Stat. Ann. §44-808)

#### Blacklisting

An employer cannot take any actions to prevent a discharged employee from obtaining employment elsewhere. The employer may, however, on request, supply a written statement giving the reason for discharge (Kan. Stat. Ann. §44-117).

#### Health Insurance Continuation

Kansas law requires employers with fewer than 20 employees to offer health insurance continuation upon a qualifying event for 18 months so long as the employee and eligible dependents have been covered by such health insurance for at least 3 continuous months (Kan. Stat. Ann. 44-2209).

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# USA - Kentucky

USA - Kentucky

**Kathleen B. Wright**
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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Parties adjudicate employment disputes in state and federal court and before various federal, state, and local agencies.

### The Main Sources Of Employment Law

The main sources of employment law are court decisions, as well as federal and state legislation and regulations. The federal statutes include, but are not necessarily limited to, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), and the Family and Medical Leave Act (FMLA). Kentucky statutes include, but are not limited the Kentucky Civil Rights Act, KRS Chapter 344, and Kentucky wage and hour laws found in KRS Chapter 337.

### National Law And Employees Working For Foreign Companies

Both federal and state law apply to employees working for foreign companies in Kentucky.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Title VII of the Civil Rights Act of 1964 (federal), the Age Discrimination in Employment Act (federal), and the Americans with Disabilities Act (federal) apply to U.S. citizens working in another jurisdiction for American or American-controlled employers.

Kentucky Civil Rights Act applies only to Kentucky employers that employ eight or more employees in the state (fifteen or more employees for purposes of disability discrimination laws).

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

Unless the parties agree otherwise, U.S. and Kentucky employees are employed at will and not subject to a contract of employment. However, there are federal and state laws governing certain terms and conditions of employment.

## Mandatory Requirements:

### Trial Period

Employers do not have to provide new employees with a trial period.

### Hours Of Work

State and federal law both provide that non-exempt employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a work week. Kentucky law requires employers who permit an employee to work seven consecutive days in a work week to pay the employee time and a half for the time worked on the seventh day.

### Earnings

The current state and federal minimum wage is $7.25 per hour. The minimum wage is review periodically by Congress, but is not reviewed on an annual basis. The minimum wage applies to all "non-exempt" employees of covered employers regardless of their age.

### Holidays / Rest Periods

Only public employers are required to provide holidays in Kentucky, except that no person can be compelled to work on Labor Day, designated by statute as the first Monday in September. Additionally, a Kentucky statute prohibits employers from requiring any employee to work without a rest period of at least ten minutes during each four hours worked, except those employees who are under the Federal Railway Labour Act. The law in Kentucky also requires employers to provide a reasonable lunch period between the third and fifth hour of each eight-hour shift.

Paid time off from work is a matter of policy for employers in Kentucky. Some employers may be required to provide employees with time off/leave pursuant to the Family and Medical Leave Act ("FMLA"), which is a Federal Statute.

FMLA leave is generally unpaid. Employees may be able to take paid FMLA leave when they have earner or accrued paid time off, e.g. vacation or sick days, and then substitutes paid time off for otherwise unpaid FMLA leave.

FMLA leave provides eligible employees of covered employers with up to twelve weeks of job protected leave in any twelve month period. The leave must be for a specific reason which includes caring for a newborn, placing a child for adoption, serious health condition or to care for a family member with a serious health condition.

### Minimum/Maximum Age

State and federal law place restrictions on employing individuals under 18 years old.

### Illness/Disability

The federal Family and Medical Leave Act requires covered employers to provide eligible employees with up to 12 weeks of unpaid job-protected leave to care for their own serious health condition or to care for a spouse, child, or parent with a serious health condition.

### Location Of Work/Mobility

The Kentucky Civil Rights Act and/or the Americans with Disabilities Act may require an employer to provide "reasonable accommodation" to assist an employee with mobility issues.

### Pension Plans

Employers do not have to provide employees with a pension plan.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The federal Family and Medical Leave Act requires covered employers to provide eligible employees with up to 12 weeks of unpaid job-protected leave because of the birth of a child and to care for the newborn child or because of the placement of a child with the employee for adoption or foster care. Kentucky law also provides for up to six weeks of leave upon adoption of a child under the age of seven.



### Compulsory Terms

There are no compulsory terms that an employee or an employer is subject to.

### Non-Compulsory Terms

Parties are free to negotiate non-compulsory terms.

## Types Of Agreement

There are no general rules applicable except in certain circumstances.

## Secrecy/Confidentiality

Kentucky state law governs the protection of trade secrets. Employers and employees may enter private agreements to protect other confidential information.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally, employers own intellectual property created by their employees as part of their employment or created using the employer's information, equipment, or materials.

## Hiring Non-Nationals

Employers should be aware that foreign nationals must be authorized to work in the U.S. U.S. laws, rules, and regulations governing the work authorization of foreign nationals are complex. Basically, U.S. Citizenship and Immigration Services (USCIS) regulations establish three classes of foreign nationals who are allowed to work in the U.S.: (1) aliens authorized to work incident to their immigration status, (2) aliens who are permitted to work for a specific employer incident to their status, and (3) aliens who must apply for and obtain permission from the USCIS in order to accept employment in the U.S.

## Hiring Specified Categories Of Individuals

Federal contractors have certain affirmative action obligations under Executive Order 11246.

## Outsourcing And/Or Sub-Contracting

Under certain situations, independent contractors and individuals retained by a company through a temporary employment agency or leasing company may be considered "employees" of the company for the purposes of employment laws.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Contract principles apply to contract changes made by either party. Changes typically require additional consideration and the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change).

### Change In Ownership Of The Business

There are no general rules pertaining to changes in business ownership. Most issues, including transfer or termination of employees, are subject to negotiation and private agreement between the seller and buyer. However, if the employees are organized or represented by a union, the successor owner may be required to bargain with the employees' union. In addition, the Family and Medical Leave Act, a federal law, may require the successor employer to credit employees' length of employment with the prior employer when determining employees' eligibility for FMLA leave.

Employees do not have an automatic right to transfer to the new employer. Whether or not the employees transfer to the new employer is subject to a private agreement / negotiation between the seller and the buyer. If employees are not transferred, they are not entitled to any compensation.

### Social Security Contributions

Both the employee and the employer are required to contribute to social security.

### Accidents At Work

Federal Occupational Safety and Health Act of 1970 (OSHA) and Kentucky Revised Statutes 338 govern workplace health and safety. In most cases, state workers' compensation law prevents employees from suing employers directly for work-related injuries.

### Discipline And Grievance

There are no laws mandating a discipline or grievance process for private sector employees who are not part of a collective bargaining unit.

### Harassment/Discrimination/Equal pay

Federal and state law prohibit employers from discriminating in terms and conditions of employment based on: race, religion, national origin, colour, gender, age (40 and over), disability, or ancestry. Kentucky law limits the hiring of employees under age eighteen. Kentucky also prohibits discrimination "because the individual is a smoker or non-smoker, as long as the person complies with any workplace policy concerning smoking."



State and federal law prohibit discrimination against individuals who are age 40 or older. State and federal law prohibit discrimination against individuals with disabilities.

The federal Pregnancy Discrimination Act amended the Title VII Civil Rights Act of 1964 to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions.

### Compulsory Training Obligations

There are no compulsory training obligations imposed on the employer or the employee.

### Offsetting Earnings

Kentucky law prohibits withholding "any part of the wage agreed upon" with certain limited exceptions "when a deduction is expressly authorized in writing by the employee."

### Payments For Maternity And Disability Leave

Employees are not entitled to payment for maternity or disability leave.

### Compulsory Insurance

Neither federal nor Kentucky law require employers to provide health insurance for employees. Kentucky law, however, requires employers to provide worker's compensation insurance for work related injuries and unemployment insurance.

### Absence For Military Or Public Service Duties

The federal Uniformed Services Employment and Reemployment Act governs military leave and reinstatement following such leave. Kentucky statutes also offer employment protections to members of the Kentucky National Guard.

### Works Councils or Trade Unions

Employees have rights for collective bargaining and "acting in concert" under the National Labor Relations Act (NLRA), a federal law.

### Employees' Right To Strike

Employees have a right to strike. See discussion of Collective Bargaining rights in U.S. Federal law section.

### Employees On Strike

See discussion of Collective Bargaining rights in U.S. Federal law section.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of their employees except when the employee is acting outside the course of his employment.

# 04. Firing The Employee

Note that the following questions assume the existence of an employment contract. In the U.S., most employees are not subject to a contract, but are at-will. The responses address at-will employees. To the extent that an employee has a contract with the employer, the agreement would be covered by contract law. The termination of employees who are part of a collective bargaining unit is typically covered by the collective bargaining agreement.

### Procedures For Terminating The Agreement

An employer who engages in a "mass layoff" or "plant closing" must follow the procedures in the federal Worker Adjustment and Retraining Notification Act. These procedures generally require advance notice of the layoff.

### Instant Dismissal

Employers and employees may terminate their at-will employment relationship at any time and for any reason, but not a discriminatory reason. If an employee is a member of a collective bargaining unit, the collective bargaining agreement would govern the termination of the employee's employment.

### Employee's Resignation

The employment relationship may be terminated by employee resignation.

### Termination on Notice

Generally, no minimum notice period is required. However, advance notice may be required in cases of mass layoffs or plant closings. See above "Procedures for Terminating the Agreement".

### Termination By Reason Of The Employee's Age

Employers cannot terminate employees because of their age except in very limited cases where mandatory retirement is required by law.

### Automatic Termination In Cases Of Force Majeure

An employment relationship may be terminated automatically in cases of force majeure.

### Termination By Parties' Agreement

The employment relationship may be terminated by agreement of the parties.

### Directors Or Other Senior Officers

No special rules exist for the termination of directors or senior officers.

### Special Rules For Categories Of Employee

The Collective Bargaining Agreement controls termination of employees who are part of the collective bargaining unit.



### Specific Rules For Companies in Financial Difficulties

The Worker Adjustment and Retraining Notification Act protects workers by requiring advance notice of covered plant closings and covered mass layoffs.

### Restricting Future Activities

Contractual provisions restricting future activities must be reasonable in scope, geographic limitation, and time.

### Severance Payments

There are no federal laws requiring severance payments. Kentucky requires payment of all accrued wages upon the end of the employment relationship.

### Special Tax Provisions And Severance Payments

No special tax provisions exist regarding severance payments.

### Allowances Payable To Employees After Termination

Employers must contribute to unemployment insurance which is payable to terminated employees eligible under the provisions of the statute.

### Time Limits For Claims Following Termination

#### State

Employees must file a charge alleging discrimination with the Kentucky Commission on Human Rights within 180 days after the unlawful discriminatory practices alleged in the charge were committed. Employees must file a lawsuit alleging violation of the Kentucky Civil Rights Act within five years after the unlawful discriminatory practices alleged in the suit were committed. Employees are required to choose one venue or the other; the election of a remedy in one forum precludes use of the other.

#### Federal

Employees must file a charge alleging discrimination with the Equal Employment Opportunity Commission ("EEOC") within 300 days after the unlawful discriminatory practices alleged in the charge were committed. The employee's right to sue in federal court is contingent upon filing a charge of discrimination with the EEOC. Suit in federal court alleging violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act and/or the Age Discrimination in Employment Act must be filed within 90 days of receipt of the EEOC's Dismissal and Notice of Rights. Suits for unpaid wages or alleging violation of the federal Equal Pay Act ("EPA") must be filed in federal or state court within 2 years (3 years for wilful violations) of the alleged underpayment.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

While the Kentucky Civil Rights Act does not recognize sexual orientation or gender identity as protected classes for employment discrimination purposes, some Kentucky counties and municipalities recognize such claims. Also, see the information on at-will employment in the U.S. Federal section. It is unlawful for employers in Kentucky to discriminate against an applicant or employee because he/she is a smoker or non-smoker. Employees must comply with the employer's workplace smoking policy. Employers cannot regulate or prohibit employees from using tobacco while off duty.

Kentucky law also makes it unlawful for employers to discriminate or retaliate against employees who file or pursue claims for worker's compensation benefits.

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# USA - Maine

# USA - Maine

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Most claims can be asserted in courts of general jurisdiction, although certain claims must be first presented to the appropriate administrative agency. Such administrative agencies include the Maine Human Rights Commission and the Office of the Department of Labor.

### The Main Sources Of Employment Law

Employment arrangements are governed by general common law principles of contract law, but there are common law and legislative requirements which over-ride those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements, and in some instances employee handbooks form part of the contractual relationship.

### National Law And Employees Working For Foreign Companies

Federal law, state common law and state statutes apply to all individuals physically working in the state, regardless of nationality, and regardless of the law governing their contract employment. However, in certain narrow instances a national treaty with a foreign government may pre-empt the application of national law. The parties may by contract agree to apply state law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law, state common law and state statutes apply to all individuals physically working in the state, regardless of nationality, and regardless of the law governing their contract employment, although in certain narrow instances a national treaty with a foreign government may pre-empt the application of national law. The parties may by contract agree to apply state law in some circumstances.

Federal law applies to all employees working in the United States and, in some circumstances, to employees outside of the United States for United States based companies. In most cases, state law applies only when the employee is physically working in the state or when both parties have agreed in writing to the application of the laws of another state.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no legal requirements as to the form of the agreement. Indeed, the agreement need not be in writing.

### Mandatory Requirements

#### Trial Period

Trial periods for new employees are not mandatory.

#### Hours of Work

Non-exempt" employees, as defined by state and federal law, who work more than 40 hours per week must be paid overtime at a rate of time and one-half times of the regular rate. This overtime requirement does not apply to "exempt" employees including certain commissioned sales employees, computer professionals, drivers, mechanics, farm workers employed on small farms, salesmen, partsmen and mechanics employed by automobile dealerships, employees of seasonal and recreational establishments, and executive, administrative, professional and outside sales employees, and other employees as described by statute. See FLSA Overtime Security Advisor, http://www.dol.gov/elaws/esa/flsa/screen75.asp.

Under Maine law, an employer may not require an employee to work more than 80 hours of overtime in any consecutive two-week period. There are exceptions, such as emergency, essential services and salaried exempt employees, agricultural workers and others.

#### Earnings

There are minimum wage requirements and requirements regarding the timing of wage payments. As of February 28, 2013, the minimum wage in Maine is $7.50 per hour.

#### Holidays/Rest Periods

In a business with three (3) or more employees working at one time, employees have the right to take a 30-minute break after six (6) hours of work, unless there is a written agreement otherwise.

#### Minimum/Maximum Age

Depending on their age, minors are limited in the hours during which they can be employed and the type of employment that they can hold. Teenagers under 16 years old need a work permit in order to be employed (except in domestic or farm work) even if they work for their parents.

#### Illness/Disability

Federal and state law impose specific requirements on employers who employ employees with a disability or serious medical condition.

Under the Maine Human Rights Act and the federal Americans with Disabilities Act, it is illegal for an employer, an employment agency, or a labor organization (such as a union) to discriminate against someone based on his or her disability.

The Federal Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. Maine's Family and Medical Leave law provides protections similar to those under federal law, but applies to smaller employers.

Further, Maine's Act to Care for Families allows employees to use their paid time off to care for ill family members.

#### Location of Work/Mobility

There are no mandatory requirements relating to an employees work location or mobility.

#### Pension Plans

Only federal requirements apply to pension plans

Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

The Federal Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid, job-protected leave per year for birth and adoption. Maine's Family and Medical Leave law provides protections similar to those under federal law, but applies to smaller employers.

Compulsory Terms

There are no compulsory terms.

Non-Compulsory Terms

The parties are free to agree other non-compulsory provisions.

### Types Of Agreement

There are agreements for a defined duration of employment and agreements that provide that the employment is "at-will" and is therefore terminable by either the employer or the employee at any time. Some terms of some agreements may not be enforceable depending on the facts of the case (e.g. certain restrictive covenants like non-competition and non-solicitation agreements).

### Secrecy/Confidentiality

Even if there no written employment contract or the contract is silent, terms to protect trade secrets and confidential proprietary information will be implied in all employment arrangements.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of a written agreement between the parties, ownership of IP rights is determined by state and federal statutes.

### Hiring Non-Nationals

Employers are obliged by federal law to ensure that all employees are entitled to work in the US; different requirements may apply depending on the nationality/ status of the individual concerned.

### Hiring Specified Categories Of Individuals

There are restrictions on the types of work that children can be required to undertake.

### Outsourcing And/Or Sub-Contracting

Outsourcing and sub-contracting is permissible so long as the worker is not a misclassified employee. In order for a person to be an independent contractor, the following criteria must be met:

1) The person has the essential right to control the means and progress of the work except as to final results;
2) The person is customarily engaged in an independently established trade, occupation, profession or business;
3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted;

AND

At least 3 of the following criteria must also be met:

1) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work;
2) The person is not required to work exclusively for the other individual or entity;
3) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
4) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
5) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person;
6) The work is outside the usual course of business for which the service is performed; or
7) The person has been determined to be an independent contractor by the federal Internal Revenue Service.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers may make unilateral changes to the contract, unless the contract provides that changes may only be made with the consent of both parties. Under Maine law, employees must be notified of a decrease in hourly wages or salary at least one day prior to the change.

### Change In Ownership Of The Business

Federal law requires 60 days prior notice in the event of a plant closings or mass layoffs affecting specific numbers of employees.

### Social Security Contributions

There are compulsory social security contributions which must be made by the employer and/or the employee.

### Accidents At Work

The Maine Workers' Compensation Act provides for an employer-financed program for compensation for workplace injuries. The purpose of the compensation is to provide monetary benefits, medical care and rehabilitation services to injured workers.

### Discipline And Grievance

There are no rules relating to discipline and grievance unless a collective bargaining agreement or a specific contractual provision provides otherwise.

### Harassment/Discrimination/Equal pay

Federal and state laws recognize harassment as an offence where it relates to certain discriminatory factors. Employees are protected from discrimination on grounds of race, colour, religious creed, national origin, ancestry, sex, age, criminal record, disability, mental illness, retaliation, sexual harassment, sexual orientation, veteran status and genetics. The concept of equal pay is recognized by federal legislation.

### Compulsory Training Obligations

There are no compulsory training obligations.

### Offsetting Earnings

Employers cannot deduct from an employee's pay for things such as broken merchandise or bills not paid by customers. Employers may deduct from an employees pay certain debts including re-payment of a loan, debt or advance made to the employee.

### Payments For Maternity And Disability Leave

Payments for maternity and disability leave is permitted but not required.

Under Maine law, if an employer's policy offers paid leave (sick, vacation, compensatory), the employee must be allowed to use up to 40 hours in a 12-month period to care for an ill child, spouse or parent.

### Compulsory Insurance

There exists compulsory insurance for workers' compensation (injury) and unemployment benefits.w

Additionally, under Federal law, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act will as of January 1, 2014, require employers with 50 or more employees who do not offer health coverage to their employees to pay $2,000 annually for a "full-time employee" (i.e. an employee working 30 or more hours per week).



### Absence For Military Or Public Service Duties

The Federal Uniformed Services Employment and Reemployment Rights Act is a Federal law that provides reemployment rights for veterans and members of the National Guard and Reserve following qualifying military service. It also prohibits employer discrimination against any person on the basis of that person's past military service, current military obligations or intent to join one of the uniformed services.

Pursuant to the Federal Family and Medical Leave Act (FMLA), eligible employees may take FMLA leave 1) when that employee's son, daughter or parent—who is a "covered military member"—is on active duty or call-to-active-duty status and there is a "qualifying exigency" defined as: short-notice of deployment, military events and related activities, certain childcare and related activities, financial and legal arrangements, counselling, rest and recuperation, post deployment activities and any other event that the employer and employee agree constitute a qualifying exigency, and (2) for "military caregiver leave," also known as "leave to care for a covered service member."

In Maine, an employee who is a victim of domestic violence must be allowed time off from work with or without pay to prepare for and attend court proceedings; receive medical treatment; or obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking. The employee must request the time off. Leave must also be allowed if the employee's child, parent or spouse is the victim.

### Works Councils or Trade Unions

Under federal law employees can force the employer in certain cases to recognize a union. Individuals who are involved as representatives on such bodies are protected from being subjected to certain action (e.g. dismissal) because of their activities in that role. The Maine Labor Relations Board regulates union activities in most public workplaces and some farming workplaces. The Maine Strikebreaker law stops employers from hiring strikebreakers during a labor dispute.

### Employees' Right To Strike

Under federal law groups of employees may strike even if there is not a collective bargaining agreement or formal union at the site of employment, subject to limits for public services.

### Employees On Strike

Typically employees on strike cannot be dismissed, unless the employees engage in serious misconduct whilst on strike or the strike was unlawful and unprotected. However, if employees are on an economic strike they may be permanently replaced by the employer and may be denied reinstatement if there are no open positions upon the conclusion of the strike, and until open positions materialize.

**Employers' Responsibility For Actions Of Their Employees**

Employers are responsible for the acts of their employee, except where the employee was acting outside the course of employment or for personal reasons.

# 04. Firing The Employee

**Procedures For Terminating The Agreement**

There are no required procedures for terminations unless one is provided for in a collective bargaining agreement or contract of employment.

If an employee is fired, the employee can write to his or her employer by certified letter asking for the reasons for the termination. If an employer received such a letter, within 15 days of the dismissal, the employer is obligated to advise the employee in writing as to the reasons why the employee was fired.

**Instant Dismissal**

Employment relationships are typically deemed to be "at-will", unless there is a promise by the employer that alters the "at-will" relationship. Therefore, either the employer or the employee can terminate the relationship at any time without notice.

**Employee's Resignation**

An agreement can be terminated by the employee's resignation.

**Termination on Notice**

Notice is typically not required for termination, unless a contract so provides. Under federal law workers must be given 60 days notice (or 60 days wages) before certain plant closings or mass layoffs.

**Termination By Reason Of The Employee's Age**

Termination by reason of age is generally prohibited.

**Termination By Parties' Agreement**

The parties are entirely free to agree to terminate on any grounds they desire except for discriminatory reasons proscribed by federal or state law.

**Directors Or Other Senior Officers**

There are no separate rules for firing directors or other senior officers. However, in the case of a director, termination of employment does not automatically bring to an end the board membership. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of incorporation).



**Special Rules For Categories Of Employee**

There are no special rules for categories of employees.

**Specific Rules For Companies in Financial Difficulties**

Federal law requires 60 days prior notice in the event of plant closings or mass layoffs affecting specific numbers of employees. Exceptions to the notice requirements exist when the layoffs resulted from closure of a faltering company and unforeseeable business circumstances.

**Restricting Future Activities**

The courts review restrictions on future employment activities to ensure that they are reasonable, supported by consideration, are drafted narrowly and are necessary to protect the legitimate business interests of the employer. Each case is considered on its own facts, so what might be appropriate for one employee may be unreasonable for another.

**Severance Payments**

If a business with 100 or more employees closes or relocates more than 100 miles away, the business must notify the Maine Department of Labor or employees in advance. In many instances, employees who have worked at that business for three or more years must get severance pay. If the employee has to sue to get severance pay, he or she may get the legal costs back.

**Special Tax Provisions And Severance Payments**

Severance payments to an employee who is involuntarily terminated are taxable income to the employee, and are generally subject to income tax withholding.

**Allowances Payable To Employees After Termination**

Employers are not required to pay allowances to employees after termination. However, there is an unemployment compensation tax imposed on employers.

**Time Limits For Claims Following Termination**

Time limits exist for claims following termination and depend on the nature of the claim.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

There are no specific matters which are important or unique to this jurisdiction.

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# USA - Massachusetts

# USA - Massachusetts

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Most claims can be asserted in the Superior Court although certain claims must be first presented to the appropriate administrative agency including the Massachusetts Commission Against Discrimination (most discrimination claims) and the Office of the Attorney General (wage claims).

### The Main Sources Of Employment Law

Employment arrangements are governed by general principles of contract law, but there are common law and legislative requirements which over-ride those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements, and in some instances employee handbooks form part of the contractual relationship.

### National Law And Employees Working For Foreign Companies

Federal law, state common law and state statutes apply to all individuals physically working in the state, regardless of nationality and regardless of the law governing their contract of employment. In certain narrow instances a national treaty with a foreign government may pre-empt the application of national law. The parties may, by contract, agree to apply state law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law applies to all employees working in the United States and, in some circumstances, to employees outside of the United States for United States based companies. In most cases, state law applies only when the employee is physically working in the state or when both parties have agreed in writing to the application of the laws of another state.





## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no legal requirements as to the form of the agreement. Indeed, the agreement need not be in writing.

### Mandatory Requirements

#### Trial Period

There is no requirement to have a trial period.

#### Hours of Work

"Non-exempt" employees, as defined by state and federal law, who work more than 40 hours per week must be paid overtime at a rate of time and one-half times of the regular rate. This overtime requirement does not apply to "exempt" employees including certain commissioned sales employees, computer professionals, drivers, mechanics, farm workers employed on small farms, salesmen, parts men and mechanics employed by automobile dealerships, employees of seasonal and recreational establishments, and executive, administrative, professional and outside sales employees, and other employees as described by statute. See FLSA Overtime Security Advisor, http://www.dol.gov/elaws/esa/flsa/screen75.asp.

An employee who reports to work for duty or by request must be paid for at least 3 hours.

On August 6, 2012, Massachusetts Governor Deval Patrick signed into law Senate Bill 2400—"An Act improving the quality of health care and reducing costs through increased transparency, efficiency and innovation"—which, among other things, restricts the use of mandatory overtime for hospital nurses to emergency situations.

#### Earnings

Pursuant to the Massachusetts Wage Act, Massachusetts General Laws Chapter 149: Section 148, there are minimum wage requirements. As of February 28, 2014, the minimum wage in Massachusetts is $8.00 per hour.

The minimum wage for tipped employees (employees who receive more than $20 a month in tips) is $2.63 per hour. However, for tipped employees to be paid this rate, they must be informed of the law, must receive at least minimum wage when tips and wages are combined, and all tips must be retained by the employee or distributed through a valid tip-pooling arrangement.

The Wage Act also has requirements regarding the timing of wage payments. The Wage Act requires payment of wages to employees engaged in bona fide executive, administrative or professional capacities no less often than biweekly or semi-monthly (unless the employee elects at his own option to be paid monthly). For other employees, wages must be paid as follows:

- If the employee works for five or six days in a week, he must be paid within six days of the end of the pay period during which the wages were earned.
- If the employee works seven days a week, the employee must be paid within seven days of the end of the pay period.
- If the employee has worked for less than five days, he must be paid within seven days of termination of that period.

Further, employees who voluntarily terminate must be paid in full on the next regular payday, and in the absence of a regular payday, must be paid on the following Saturday.

Employees who are involuntarily terminated must be paid in full on the day of discharge. The payment of wages on termination includes vacation or holiday wages that are due under a written or oral employment agreement.

### Holidays/Rest Periods

Employees who work in retail establishments on Sundays and certain holidays may be able to receive overtime pay. There exists no annual holiday entitlement, but work on certain holidays for certain employees must be voluntary.

Laws relating to holiday work and overtime pay are complicated and vary by employer type and holiday. These laws are summarized by the Executive Office of Labor and Workforce Development at the following website: http://www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/wage-and-hour/sunday-and-holiday-openings.html

Most employees must be given one day of rest in every seven days. Employees must receive a thirty minute meal break after six hours of working.

### Minimum/Maximum Age

Depending on their age, minors are limited in the hours during which they can be employed and the type of employment that they can hold. There is no maximumage for employment.

### Illness/Disability

Federal and state law impose specific requirements for employees with a disability or serious medical condition. Under Massachusetts law (Chapter 151B) and the federal Americans with Disabilities Act, it is illegal for an employer, an employment agency, or a labor organization (such as a union) to discriminate against someone based on his or her disability or handicap.

The Federal Family and Medical Leave Act (FMLA) provide certain employees with up to 12 weeks of unpaid, job-protected leave per year. The Massachusetts Small Necessities Leave Act mandates that certain eligible employees be permitted to take a total of 24 hours of unpaid leave during any 12-month period. These 24 hours are in addition to the 12 weeks already allowed under the Federal Family and Medical Leave Act. The 24 hours of leave may be taken by an eligible employee for any of the following purposes:

- to participate in school activities directly related to the educational advancement of a son or daughter of the employee, such as parent-teacher conferences or interviewing for a new school;
- to accompany the son or daughter of the employee to routine medical or dental appointments, such as check-ups or vaccinations; and
- to accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services related to the elder's care, such as interviewing at nursing or group homes.

### Location of Work/Mobility

None.

### Pension Plans

Federal requirements only

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

The Massachusetts Maternity Leave Act (MMLA), M.G.L. c. 149, §105D, guarantees "eligible" employees 8 weeks of unpaid leave for: giving birth, adopting a child under the age of 18, or adopting a child under the age of 23, if the child is mentally or physically disabled.

The MMLA requires that an employee on leave be restored to her previous or a similar position upon her return to employment following leave. According the guidance from the Massachusetts Commission Against Discrimination, "the Massachusetts Supreme Judicial Court has not as of the date… considered whether the MMLA's requirement of leave for females only violates the Massachusetts Equal Rights Amendment, Article CVI of the Massachusetts Constitution. Given the possibility of a successful challenge to the constitutionality of the MMLA, employers should consider providing leave to all members of their workforce who otherwise meet the eligibility requirements of the MMLA."

### Compulsory Terms

None.

### Non-Compulsory Terms

The parties are free to agree other non-compulsory provisions.

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## Types Of Agreement

There are agreements for a defined duration of employment and agreements that provide that the employment is "at-will" and is therefore terminable by either the employer or the employee at any time. Some terms of some agreements may not be enforceable depending on the facts of the case.

## Secrecy/Confidentiality

Even if there is no written employment contract or the contract is silent, terms to protect trade secrets and confidential proprietary information will be implied in all employment arrangements.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of a written agreement between the parties, ownership of IP rights is determined by state and federal statutes.

## Hiring Non-Nationals

Employers are obliged by federal law to ensure that all employees are entitled to work in the US; different requirements may apply depending on the nationality/status of the individual concerned.

## Hiring Specified Categories Of Individuals

There are restrictions on the types of work that children can be required to undertake.

## Outsourcing And/Or Sub-Contracting

Outsourcing and sub-contracting in Massachusetts is difficult. Pursuant to Massachusetts General Laws chapter 149 § 148B, there is a rebuttable presumption that a worker performing any service is an employee, unless:

- the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
- the service is performed outside the usual course of the business of the employer; and,
- the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Collective bargaining agreements may also contain restrictions on outsourcing and sub-contracting.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers can make unilateral changes to the contract, unless the contract provides that changes may only be made with the consent of both parties.

### Change In Ownership Of The Business

Federal law requires 60 days prior notice in the event of a plant closure or mass layoffs affecting specific numbers of employees. Local laws require prior notice and reemployment assistance benefits. For certain industries local laws require employees to transfer to the new owner under their existing contracts. Collective bargaining agreements or the presence of the union can require employers to follow certain procedures. Any employer that is closing their business must report to the Massachusetts Division of Employment and Training.

### Social Security Contributions

There are compulsory social security contributions that must be made by the employer and/or the employee.

### Accidents At Work

The Massachusetts Workers' Compensation Act provides for a employer-financed program to compensate employees for workplace injuries. This programme provides monetary benefits, medical care and rehabilitation services to injured workers. Most employees will be deemed to have waived their common law right to sue their employers or co-workers in tort for personal injuries.

### Discipline And Grievance

There are no rules relating to discipline and grievance procedures unless a collective bargaining agreement or a specific contractual provision provides otherwise.

### Harassment/Discrimination/Equal pay

Federal and state laws recognize harassment as an offence where it relates to certain discriminatory factors. The concept of equal pay is recognized by federal and state legislation. Employees are protected from discrimination on grounds of race, colour, religious creed, national origin, ancestry, sex, age, criminal record, disability, mental illness, retaliation, whistle blowing (in limited circumstances), sexual harassment, sexual orientation, veteran status and genetics.

### Compulsory Training Obligations

There are no compulsory training obligations.

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### Offsetting Earnings

As a general rule, no offsetting from wages is permitted without the employee's consent. The consent of the Attorney General is needed if the deductions would bring the employee's earnings below the minimum wage.

### Payments For Maternity And Disability Leave

Payments for maternity and disability leave are permitted but not compulsory. However, if disability leave is paid, maternity leave must also be paid.

### Compulsory Insurance

There exists compulsory insurance for workers' compensation (injuries) and unemployment benefits. The Massachusetts Healthcare Reform Act requires employers with 11 or more full-time employees to make a "fair and reasonable contribution" towards the cost of their employees' health coverage. Employers who do not meet this requirement will be required to pay an annual amount (up to $295) for each of their full-time employees.

Additionally, under Federal law, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act will, as of 1 January 2014, require employers with 50 or more employees who do not offer health coverage to their employees to pay $2,000 annually for a "full-time employee" (i.e. an employee working 30 or more hours per week).

### Absence For Military Or Public Service Duties

The Federal Uniformed Services Employment and Reemployment Rights Act is a Federal law that provides reemployment rights for veterans and members of the National Guard and Reserve following qualified military service. It also prohibits employer discrimination against any person on the basis of that person's past military service, current military obligations or intent to join one of the uniformed services.

Pursuant to the Federal Family and Medical Leave Act (FMLA), eligible employees may take FMLA leave 1) when that employee's son, daughter or parent - who is a "covered military member" - is on active duty or call-to-active-duty status and there is a "qualifying exigency" defined as: short-notice of deployment, military events and related activities, certain childcare and related activities, financial and legal arrangements, counselling, rest and recuperation, post deployment activities and any other event that the employer and employee agree constitute a qualifying exigency, and (2) for "military caregiver leave," also known as "leave to care for a covered service member."

An employer must pay regular employees their regular wages for the first three days, or part thereof, of juror service. Regular employees include part-time, temporary, and casual employees as long as the hours of the employee may reasonably be determined by a schedule or by custom and practice established during the three-month period preceding the term of juror service. An employer may not discharge, penalize, deny benefits to, harass, threaten, or coerce an employee because the employee has received and/or responds to a juror summons or performs any obligation related of juror service.

### Works Councils or Trade Unions

Under federal law employees can force the employer in certain cases to recognize a union. Individuals who are involved as representatives on such bodies are protected from being subjected to certain action (e.g. dismissal) because of their activities in that role.

### Employees' Right To Strike

Under federal law groups of employees may strike even if there is not a collective bargaining agreement or formal union at the site of employment, subject to limits for employees of public services.

### Employees On Strike

Typically employees on strike cannot be dismissed, unless the employee engages in serious misconduct whilst on strike or the strike was unlawful and unprotected. However, if employees are on an economic strike they may be permanently replaced by the employer and may be denied reinstatement if there are no open positions at the end of the strike.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employee except where the employee was acting outside the course of employment or for personal reasons.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no set procedures for terminating the contract of employment unless such a procedure is set out in a collective bargaining agreement or the contract of employment.

### Instant Dismissal

Employment relationships are typically deemed to be "at-will" unless there is a promise by the employer that alters the "at-will" relationship. Thus, either the employer or the employee can terminate the relationship at any time without notice.

### Employee's Resignation

An agreement can be terminated by the employee's resignation.

### Termination on Notice

Notice is typically not required for termination, unless provided for in the contract. Under federal law workers must be given 60 days' notice (or 60 days wages) before a plant closure (in certain industries) or mass layoffs.



### Termination By Reason Of The Employee's Age

Termination by reason of age is generally prohibited.

### Automatic Termination In Cases Of Force Majeure

In rare circumstances, an employment agreement can be terminated automatically because of force majeure.

### Termination By Parties' Agreement

The parties are entirely free to agree to terminate on any grounds they desire except for discriminatory reasons set out by federal or state law.

### Directors Or Other Senior Officers

There are no special rules for firing directors or other senior officers, but in the case of a director, termination of employment does not automatically bring to an end the director's board membership. Separate steps will be required to bring the directorship to an end (pursuant to the company's articles of incorporation).

### Special Rules For Categories Of Employee

There are no special rules for categories of employees.

### Specific Rules For Companies in Financial Difficulties

Federal law requires that 60 days prior notice be given to employees in the event of a plant closing or a mass layoff which affects a specific number of employees. Exceptions to this notice requirement are when the layoffs result from closure of a faltering company and unforeseeable business circumstances.

### Restricting Future Activities

The courts review restrictions on future employment activities to ensure that they are reasonable, supported by consideration, are drafted narrowly, and are necessary to protect the legitimate business interests of the employer. Each case is considered on its own facts, so what might be appropriate for one employee may be unreasonable for another. However, it should be noted that in Massachusetts, physicians, nurses and lawyers are exempt from employee noncompetition agreements. Moreover, Massachusetts prohibits the enforcement of noncompetition agreements in the broadcasting industry where (1) the employer terminates the employee, (2) the employment relationship is terminated by mutual agreement, or (3) the employee's contract expires.

### Severance Payments

Severance is not required unless the employer has a severance policy or the employee has a written contract providing for severance. There are specific rules governing the validity of a release provided for severance.

### Special Tax Provisions And Severance Payments

Severance payments to an employee, whose employment is involuntarily terminated, is treated as taxable income to the employee and is therefore generally subject to income tax.

### Allowances Payable To Employees After Termination

Employers are not required to pay allowances to employees after termination. However, there is an unemployment compensation tax imposed on employers.

### Time Limits For Claims Following Termination

Time limits exist for claims following termination and depend on the nature of the claim.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Failure to pay wages on time will in many cases result in awards of triple damages and attorneys' fees.

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# USA - Minnesota

# USA - Minnesota

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are no specialised labour courts in Minnesota. Employment disputes may be adjudicated in either federal or state courts, depending upon the legal claims involved. Unemployment law, workers' compensation, federal discrimination claims and certain other disputes are handled first in administrative agencies, with appeal or other court action available in various federal and state courts.

### The Main Sources Of Employment Law

All employment arrangements are governed by general common law principles of contract and tort law, but there are legislative requirements which over-ride those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements and common practice all form part of any contractual relationship. The main sources of statutory employment law are found in §177, § 181 and § 363A of the Minnesota Statutes.

### National Law And Employees Working For Foreign Companies

Statutory rights apply to all individuals physically working in the Minnesota, regardless of nationality, and regardless of the law governing their contract of employment. Contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law generally applies to all employees working in the United States and, in some circumstances, to employees outside of the United States who work for U.S.-based companies. Whether or not a particular employer is covered by federal law typically depends on the size of the employer.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

None.

### Mandatory Requirements

#### Trial Period

No requirements.

#### Hours of Work

Under the federal Fair Labor Standards Act ("FLSA") an employee classified as "non-exempt" who works more than 40 hours per week must be paid overtime compensation at one and one-half times the employee's regular rate of pay. Under both laws, however, employers need not pay overtime to employees classified as "exempt." In addition, the Minnesota Fair Labor Standards Act requires private employees be compensated at one and one half times the regular rate for time worked in excess of 48 hours per workweek. Public employees working more than 48 hours per workweek may be granted time off, at the rate of one-and-one-half hours for each hour worked, in lieu of monetary compensation. Where both federal and state statutes apply, the employee is entitled to application of the more favorable overtime compensation rule.

#### Earnings

Effective July 24, 2009, the federal minimum wage is $7.25 an hour.

For employees not covered by federal law, Minnesota's minimum wage laws apply. Since 2005, Minnesota law has provided a different minimum wage for three categories: large employers (those enterprises with at least $625,000 in sales or business performed); small employers; and training. The minimum wage for a "large employer" is $6.15 per hour. The minimum wage for "small employers" - employers falling below the $625,000 threshold - is $5.25 an hour. Finally, employers may pay a "training wage" of $4.90 an hour to new employees who are younger than 20 years old during their first 90 days of consecutive employment, so long as the new employee does not displace permanent or current employees.

Where both state and federal minimum-wage laws apply, the employee is entitled to the higher of the two.

Minnesota's equal pay for equal work law specifically requires employers to pay female employees the same wages as their male counterparts for work requiring equal skill, effort, and responsibility, and performed under similar working conditions.

#### Holidays/Rest Periods

The Minnesota FLSA requires that an employer allow each employee a meal break for every eight consecutive hours worked, but does not require that the meal break be a paid one so long as it is at least 20 minutes long. The Minnesota FLSA also requires an employer to allow each employee a break to use the restroom once every four hours. There are no statutes that provide for mandatory holiday allowances.

#### Minimum/Maximum Age

A minor must be at least 14 years of age to work in Minnesota, subject to some exceptions. State law also regulates the hours and types of work which employees under 18 years of age may work.

#### Illness/Disability

There are no mandatory requirements for employers to address illness or disability. However, if an employer provides its employees with paid sick leave, an employee may use personal sick leave days for absences due to illness or injury of the employee's child, spouse, sibling, parent, grandparent, or stepparent in accordance with Minn. Stat. §181.9413. The federal Family and Medical Leave Act provides that an eligible employee may take up to 12 weeks of unpaid leave for the employee's own serious health condition. The law applies to employers with 50 or more employees. To be eligible, employees must have worked for the employer for at least one year, and must have worked at least 1250 hours during the 12 months preceding the leave request.

### Location of Work/Mobility

No requirements.

### Pension Plans

No requirements.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Minnesota has a parental leave law which provides eligible employees the right to take up to 6 weeks of unpaid leave for the birth, adoption, or foster care placement of a child in addition to leaves permitted under federal law.

### Compulsory Terms

No requirements.

### Non-Compulsory Terms

Parties are free to agree to other non-compulsory terms. However, certain terms may not be enforceable if they are contrary to public policy.

## Types Of Agreement

Minnesota recognizes at-will employment, and, therefore, a Minnesota employer is free to establish an at-will relationship rather than a contractual relationship with an employee. If a contract is formed, Minnesota law does not provide different rules for different types of agreements. However, many categories of employees are protected from discrimination (see below). Collective bargaining agreements in the private sector are generally subject to the jurisdiction of the National Labor Relations Board under the federal labor law known as the National Labor Relations Act, which requires that where a union has been certified to represent employees, the union and the employer must bargain in good faith for agreement on terms and conditions of employment and other matters. In addition, certain provisions of such agreements are considered unlawful subjects for bargaining.

## Secrecy/Confidentiality

Employees have a common law duty of loyalty while employed. In addition, Minnesota's Trade Secrets Act prohibits employees from using or disclosing "trade secrets" - either during or following employment.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Minnesota Statutes 181.78 limits the extent to which employment agreements may provide that an employee shall assign or offer any of the employee's rights in an invention to the employer.

## Hiring Non-Nationals

There are no specific rules unique to Minnesota regarding hiring of non-nationals. Federal law exclusively governs the hiring of non-nationals. Under federal law, employers may hire non-nationals only if they are authorized to work in the United States; but may not discriminate against any person so authorized on the basis of his or her national origin. Authorization to work in the United States may be granted as a direct result of immigration status, or may require the non-national and/or employer to apply individually for employment authorization.



## Hiring Specified Categories Of Individuals

There are no specific rules in Minnesota about hiring any other specified categories of individuals other than non-discrimination laws.

As of January 1, 2014, Minnesota's "ban the box" law prohibits most public and private employers from asking about or requiring disclosure of an applicant's criminal record prior to a job interview. As such, written job application forms used in Minnesota typically may not include a question about criminal background. Employers may, however, still inquire about and consider relevant criminal background information in making a hiring decision, but must wait until at least the interview stage to inquire about criminal history. Certain employers that are required by federal or other Minnesota law to conduct criminal background checks for a particular job position are exempt from the "ban the box" law.

Federal and Minnesota law regulate an employer's use of background checks or consumer reports in the employment context. In addition to federal requirements, Minnesota law requires employers that pay an outside agency to obtain a background check on any individual for employment purposes to clearly disclose in writing to that individual that the report may be obtained or prepared and obtain consent to obtain the report. This disclosure must describe what the background report may include, how to request additional information, and include a box for the employee to check to request a copy of the report. If a written employment application is used, the disclosure must accompany that application. Additionally, employers generally must bear the costs of background checks.

## Outsourcing And/Or Sub-Contracting

There are no restrictions placed on outsourcing and subcontracting, unless a collective bargaining agreement contains such restrictions. In such cases, the agreement would be governed by the federal labor law as noted above

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Most employment relationships are "at-will," and in these cases employers are free to prospectively alter the terms and conditions of the employment relationship. When the relationship is governed by a contract, the employee's consent is required in order to alter the terms unless the contract expressly reserved discretion to the employer.

### Change In Ownership Of The Business

There are no specific rules which apply or specific steps which need to be followed in the event of a change of ownership in a business. Unless the employee has an employment contract which states otherwise, employment in Minnesota is at-will, and thus employees are not allowed to refuse changes in ownership of the business. If only the assets of a business are sold, however, as opposed to its stock, employees do not necessarily retain their employment. In those situations, the decision of whether to continue the employment relationships lies entirely with the new owner.

### Social Security Contributions

Federal law provides for compulsory social security contributions by both employer and employee.

### Accidents At Work

Minnesota's workers' compensation law may apply if the employee is injured while at work. Other laws may also apply to the employer's treatment of an employee as a result of the injury, including disability laws and access to leave.

Minnesota law strictly regulates applicant and employee drug or alcohol testing. Employers must have a specific form of written policy to conduct testing and must comply with certain testing consent procedures. In addition, employers may only conduct tests in one of the following five instances: (1) pre-employment testing of all job applicants for a given position after a conditional offer of employment has been made; (2) reasonable suspicion testing; (3) treatment program testing; (4) routine physical examination testing; and (5) random drug testing of "safety sensitive" positions. Employers are limited as to the employment actions that may be taken based on a first-time positive test result. Employers may discipline employees for a first positive test result, but they must offer the employee the opportunity for treatment in lieu of termination.

Minnesota law also protects the lawful use of lawful consumable products. such as alcohol and tobacco off the employer premises and during nonworking hours. An employer may not take disciplinary action for such lawful behaviour. As such, it is typically inappropriate to conduct alcohol testing on job applicants in Minnesota.



### Discipline And Grievance

Unless a collective bargaining agreement or a specific contract provision applies, state and federal law do not govern discipline or grievance procedures.

### Harassment/Discrimination/Equal pay

The Minnesota Human Rights Act (MHRA) prohibits discrimination in employment by reason of race, colour, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age. Retaliation against an employee who reports a violation of the MHRA; testifies, assists, or participates in any investigation or proceeding under the MHRA; or associates with a person or group of persons in a protected class also is prohibited.

The prohibition against discrimination based on sex includes discrimination due to pregnancy, childbirth, and disabilities related to pregnancy or childbirth. For purposes of discrimination based on sex, the term "discriminate" includes sexual harassment. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favours, sexually motivated physical contact, or other verbal or physical conduct or communication based on one's sex when either (1) submission to such conduct is made a term or condition of employment, or (2) such conduct has the purpose or effect of substantially interfering with an individual's employment, or creating an intimidating, hostile, or offensive work environment.

Under the Lawful Consumable Products Act, an individual may not be refused a job, disciplined, or discharged because of his or her use or enjoyment of lawful consumable products, as long as the use or enjoyment is during nonworking hours and takes place off the work premises.

The MHRA also establishes special requirements to obtain a release of any discrimination or retaliation claim under the MHRA. For such a release to be effective, an employee asked to release any MHRA claim must be given a fifteen day period after signing the release agreement to revoke the release of MHRA claims unless the release is of a MHRA claim that was formally asserted in a state administrative or court action.

### Compulsory Training Obligations

There are no rules relating to compulsory training obligations.

### Offsetting Earnings

Except in limited circumstances, employers may not make deductions from wages for any claimed indebtedness.

### Payments For Maternity And Disability Leave

Employers are required to provide parental and disability leave under state and federal law. This leave does not need to be paid leave. For employers with 21 or more employees at one site, Minnesota law requires up to six weeks of unpaid parental leave for the birth or adoption of a child if the employee has worked at least half-time for twelve consecutive months before the leave is to begin. After returning from leave, the returning employee generally must be reinstated to the same position or to a similar position with comparable duties.

### Compulsory Insurance

Most employers must participate in insurance plans for work-related injuries and for unemployment. Workers' compensation is administered by the Minnesota Department of Labor & Industry. The Minnesota Unemployment Insurance Program is administered by the Minnesota Department of Employment & Economic Development.

### Absence For Military Or Public Service Duties

Federal law provides leave for certain military service members, family members and caretakers. In addition, Minnesota provides paid leave for certain military activities, jury duty and court appearances, voting, and bone marrow and organ donation.

An employee elected to public office must be given leave to attend required meetings, but this time may be either paid or unpaid.

Employees may take up to 16 hours of unpaid leave to attend school conferences or activities within a 1-month period.

### Works Councils or Trade Unions

Minnesota has statutes that govern labor relations in the public and private sectors. As to the private sector, generally the state statutes will have effect only where the federal labor law, the National Labor Relations Act, does not reach. Such areas of state law coverage in the private sector in Minnesota are very limited as the federal law reaches the vast majority of private employers. The public sector is a different matter, because generally the federal labor law does not cover public employers. The state therefore regulates that sector significantly.

### Employees' Right To Strike

While private employees' right to strike exists in virtually every instance, public employees' right to strike is more limited. Those falling under the statutory definition of "essential employees" may not strike. Other public employees may strike only in certain circumstances. Where employees do not have a right to strike, they have a right to arbitration of bargaining and related matters, and other "substitute" procedural rights. The state does place some restrictions, which are generally not pre-empted by the federal labor law, on the conduct of strikes and related job actions whether they occur in the private or public sector.

### Employees On Strike

Under the federal law the employer can permanently replace striking private sector employees under certain circumscribed conditions. More generally, an employer under the federal law has an absolute right to hire and employ temporary replacements for striking workers. Workers cannot, however, be fired because they have participated in a strike or otherwise engaged in protected concerted activity.

Under Minnesota's public sector labor law, the right to replace striking workers is significantly more restricted than under the federal law applicable to the private sector.



### Employers' Responsibility For Actions Of Their Employees

Employers may be liable to third parties for injuries inflicted by their employees under two broad theories. Employers may be vicariously liable for acts committed by their employees within the scope of their employment duties. In addition, employers may be directly liable for their own negligence in failing to ascertain an employee's propensity to inflict injury.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

Unless otherwise specified in a collective bargaining agreement or employment contract, there are no specific rules relating to the specific forum for terminating the agreement or specific procedures which have to be followed.

### Instant Dismissal

Unless otherwise agreed to contractually, employment in Minnesota is at-will, meaning that the employer can terminate the employee at anytime and for any lawful reason.

Private employers in Minnesota may not terminate an individual for making a good faith report to the employer, any governmental body, or a law enforcement official of a violation, suspected violation, or planned violation of any federal, state, or common law rule; for being requested to participate in an investigation or hearing; for refusing an employer's order to perform an act the employee has an objective basis to believe violates any state or federal law; or for a good faith report of substandard healthcare.

### Employee's Resignation

An agreement can be terminated by the employee's resignation.

### Termination on Notice

There are no minimum periods of notice required. Under federal law, workers employed by a covered company must be given 60 days' notice prior to certain plant closures or mass layoffs.

### Termination By Reason Of The Employee's Age

Under the Minnesota Human Rights Act, the prohibition against employment discrimination on the basis of age generally applies to an individual who is age 18 or over and does not apply to the implementation of retirement plans (so long as a given plan is not a subterfuge to evade the anti-discrimination laws) or the application of varying insurance coverage according to an employee's age. Unlike under the federal Age Discrimination in Employment Act, Minnesota law prohibits reverse age discrimination that favors older workers over younger workers.

### Automatic Termination In Cases Of Force Majeure

Minnesota law does not provide for automatic termination of an agreement in cases of force majeure.

### Termination By Parties' Agreement

The parties are entirely free to agree to termination on any grounds they desire, except for a reason which would violate a law or public policy.

### Directors Or Other Senior Officers

There are no separate rules for firing directors or other senior officials.

### Special Rules For Categories Of Employee

There are no other categories of employees for whom special rules apply on termination.

### Specific Rules For Companies in Financial Difficulties

An employer must notify all of its employees in writing if it has filed for bankruptcy or has an involuntary bankruptcy petition filed against it. A bankruptcy court may also impose other requirements in specific cases.

### Restricting Future Activities

Courts read non-competition restrictions in employment agreements narrowly, and construe ambiguities against the employer that drafted the employment. A non-compete agreement is enforceable if the employer shows that the agreement was reasonable in light of balancing its legitimate business interests and the employee's right to work. Moreover, an employee's promise not to compete must be supported by adequate consideration.

### Severance Payments

Normal contract principles apply to severance payments included in the contract. Under Minnesota law, in order for a release of Minnesota Human Rights Act claims to be enforceable, employees must be given a period of at least 15 days after execution of the Agreement in which to rescind the Agreement.

### Special Tax Provisions And Severance Payments

Severance payments are normally taxed as wages.

### Allowances Payable To Employees After Termination

Employers are not required to contribute towards any allowances payable to employees after termination. However, most Employers are required to pay a quarterly Unemployment Insurance ("UI") tax on a certain amount of each employee's wages. The tax is deposited in the Minnesota UI Fund, which is used to pay unemployment benefits to eligible applicants who are unemployed.



### Time Limits For Claims Following Termination

Claims under the Minnesota Human Rights Act must be commenced within one year after the occurrence of the alleged unlawful practice. The limitation period for breach of an employment contract is two years. The limitation period of intentional torts is generally two years while claims based on negligence generally must be commenced within a six year period.

An involuntarily terminated employee may request in writing the reason for termination within fifteen working days of the termination. After receipt, the employer has ten working days to provide a truthful written explanation of the reason for termination. This explanation may not be used as the basis for discharge defamation.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

An employer may be liable for discharge defamation in Minnesota if it directly communicated false reasons for termination to others, or if the employee is compelled to self-publish false information to others, such as prospective employers.

Private employers must permit employees to review their personnel record once every six months upon written request, and a former employee may review the personnel record once each year following separation. Upon receipt of the request, the employer must produce the records within seven working days or, if the file is located out of state, fourteen working days. Certain Minnesota employers are required to give all new hires written notice of their personnel file rights.

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# USA - Missouri

USA - Missouri

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Certain claims may be asserted before the Missouri Department of Labor and Industrial Relations, the Missouri Commission on Human Rights, and in some instances, local agencies. Most claims may be asserted in courts of general jurisdiction, although certain claims must first be presented to the appropriate administrative agency.

### The Main Sources Of Employment Law

Common law, state statutes and state regulations are the main sources of employment law in Missouri. Major state employment statutes include the Missouri Human Rights Act (Mo. Rev. Stat. §§213.010 et seq.), the Missouri Minimum Wage Law (Mo. Rev. Stat. §§290.500 et seq.) and the Missouri Workers' Compensation Law (Mo. Rev. Stat. §§287.010 et seq.) Individual contracts (whether written or oral) and collective bargaining agreements may also govern the employment relationship.

### National Law And Employees Working For Foreign Companies

State law applies to all individuals physically working in the state. Federal law and, in some instances, a national treaty with a foreign government may also apply. The parties may contractually agree to apply a different state's law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

State law applies only when the employee is physically working in the state or when both parties have agreed in writing to the application of Missouri law.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

There are no legal requirements regarding the form of an employment agreement and employment agreements are not required.

## Mandatory Requirements

### Trial Period

There is no legal requirement to provide trial periods (also referred to as "probationary periods" or "introductory periods"). The terms of a collective bargaining agreement may apply.

### Hours of Work

There is no restriction on the number of hours employees may be required to work, except for children. However, employees who are non-exempt under state and federal wage and hour laws are entitled to overtime pay at a rate of one and one-half times the regular rate of pay for all hours worked over 40 in a workweek (Mo. Rev. Stat. §290.505). Additionally, an employer is prohibited from denying a person employment or advancement in employment for refusing to work on his or her normal day of worship (Mo. Rev. Stat. §578.115). The terms of a collective bargaining agreement may also apply.

### Earnings

All non-exempt employees must be paid the federal or state minimum wage, whichever is higher, for all hours worked (Mo. Rev. Stat. §290.502). Exempt employees must be paid certain minimum weekly salaries or fees in accordance with federal law. Missouri employers must provide at least 30 days' notice of any reduction in the wage rate (Mo. Rev. Stat. §290.100). According to the Missouri Department of Labor and Industrial Relations, this notice requirement does not apply if an employee is asked to work fewer hours or changes to a different position with different duties. The terms of a collective bargaining agreement may also apply.

### Holidays/Rest Periods

There are no statutory provisions regarding holidays and rest periods. The terms of a collective bargaining agreement may apply.

### Minimum/Maximum Age

The minimum age for most jobs is 14 years old. Children under the age of 14 are allowed to work only in certain industries. Certain federal and state rules apply to the employment of children under the age of 16 (Mo. Rev. Stat. §§294.005 et seq.). There are no maximum age limits. The Missouri Human Rights Act prohibits discrimination on the basis of age for individuals age 40 to less than 70 years of age (Mo. Rev. Stat. §213.010(1)). Federal law and the terms of a collective bargaining agreement may also apply.

### Illness/Disability

There are no statutory provisions regarding illness or disability, such as paid leave. However, federal and state law impose specific anti-discrimination and leave requirements for employees with a disability or serious medical condition. The terms of a collective bargaining agreement may also apply.

### Location of Work/Mobility

There are no statutory provisions regarding location of work or mobility.

### Pension Plans

There are no statutory provisions regarding pension plans. Federal law may apply.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

There are no statutory provisions regarding pregnancy, maternity or adoption benefits; however, state non-discrimination requirements apply. Federal leave requirements and the terms of a collective bargaining agreement may also apply.



### Compulsory Terms

There are no compulsory terms that must be included in an employment agreement.

### Non-Compulsory Terms

The employer and employee may agree to any terms, provided that the terms do not abrogate statutory rights (e.g., employees may not agree to compensation less than the minimum wage or waive their right to overtime compensation).

## Types Of Agreement

Employers and employees may enter into a variety of agreements related to the employment relationship including standard employment agreements (regarding hours, wages, benefits, etc.), confidentiality and non-disclosure agreements, non-competition agreements, non-solicitation agreements, etc. Common law and state statutes will determine the enforceability of such agreements.

## Secrecy/Confidentiality

There are rules relating to secrecy and confidentiality that are implied in the employment relationship. During the employment relationship, an employee is under a duty of loyalty and must not act contrary to the employer's interest by, for example, misappropriating trade secrets. Missouri's Uniform Trade Secrets Act regulates the misappropriation of trade secrets both during and after employment (Mo. Rev. Stat. §§417.450 to 417.467). Employers and employees may also enter into confidentiality and non-disclosure agreements.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

There are no statutory provisions regarding employee ownership of inventions and other intellectual property rights. Contractual provisions and federal law may apply.

## Hiring Non-Nationals

Missouri law requires all public employers, any business with a state contract or grant in excess of $5,000, and any business receiving state-administered or subsidized tax credits, tax abatements or loans from the state to participate in the federal E-Verify program (Mo Rev. Stat. §285.530). All employers must ensure that all employees are eligible to work in the United States in accordance with federal law.

## Hiring Specified Categories Of Individuals

There are restrictions on the types of work that children may be hired to perform. For example, children under age 16 may not be employed in hazardous or detrimental occupations (Mo. Rev. Stat. §§294.005 et seq.).

## Outsourcing And/Or Sub-Contracting

There are no provisions regarding outsourcing and/or subcontracting. The terms of a collective bargaining agreement may apply.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Changes to an employment contract are generally governed by the contractual terms and common law. In the case of collective bargaining agreements between public employers and employees that do not provide for at least a sixty-day notice of desired changes, the parties must inform the other party in writing of any specific changes desired and file a copy of such desired changes with the state board of mediation at least sixty days before the date fixed for the termination of the agreement (Mo. Rev. Stat. §295.100).

### Change In Ownership Of The Business

There are no statutory provisions regarding change in ownership of the business. Contractual provisions and federal law may apply.

### Social Security Contributions

Employers and employees are both required by federal law to make social security contributions. Employers are also required by state law to make contributions for unemployment benefits and may also be required to pay for workers' compensation insurance (Mo. Rev. Stat. §§288.010 et seq., 287.010 et seq.).

### Accidents At Work

Employee injuries occurring at work are governed by the Missouri Workers' Compensation Law (Mo. Rev. Stat. §§287.010 et seq.). Employers may also be responsible under common law for accidents caused by the acts of their employees where the employees were acting within the course and scope of their employment. Federal law may also apply.

### Discipline And Grievance

There are no statutory provisions regarding discipline and grievances. A collective bargaining agreement or other contract may apply.



### Harassment/Discrimination/Equal pay

The Missouri Human Rights Act prohibits discrimination in employment on the basis of race, colour, religion, national origin, sex, ancestry, age (40 to less than 70 years of age), or disability (Mo. Rev. Stat. §§213.010 et seq.). This provision applies to employers with six or more employees. Certain municipalities also prohibit discrimination on these and other bases.

The Missouri Equal Pay Law prohibits employers from paying females a wage rate less than the wage rate paid to male employees who perform the same quantity and quality of the same classification of work (Mo. Rev. Stat. §§290.400 to 290.450).

Employers are also prohibited from using genetic information or genetic test results to distinguish between, discriminate against, or restrict the rights or benefits of current or prospective employees (Mo. Rev. Stat. §375.1306). Employers (other than certain religious and non-profit corporations) are further prohibited from denying employment, discharging, or otherwise discriminating against any individual in compensation, terms, or conditions of employment because he or she lawfully uses alcohol or tobacco products off the employer's premises during non-work hours, unless use interferes with the duties and performance of the employee, the employee's co-workers, or overall operation of the employer's business (Mo. Rev. Stat. §290.145).

### Compulsory Training Obligations

There are no statutory provisions regarding compulsory training obligations.

### Offsetting Earnings

The following deductions from wages are prohibited if they would reduce the wages below statutory minimum: tools; equipment; uniforms; laundry or cleaning of uniforms; maintenance of tools, equipment, or uniforms; breakage or loss of tools, equipment, or uniforms; any other item required by the employer to be worn or used by the employee; or transportation furnished to the employee, if it is an incident of and necessary to the employment (8 C.S.R. §30-4.050). Deductions from wages for garnishments must also comply with state and federal requirements (Mo. Rev. Stat. § 525.030).

### Payments For Maternity And Disability Leave

There are no statutory provisions regarding payments for maternity and disability leave.

### Compulsory Insurance

Missouri employers with five or more employees must carry workers' compensation insurance with certain limited exceptions. Employers in the construction industry that have one or more employees are required to carry workers' compensation insurance (Mo. Rev. Stat. §287.030.3).

### Absence For Military Or Public Service Duties

Employers are prohibited from dissuading employees from joining the state militia or retaliating against employees who serve in the militia. Employees who are ordered to active state duty are entitled, upon being relieved from duty, to the same re-employment rights provided for members of the U.S. military (Mo. Rev. Stat. §40.490). Employers are also prohibited from terminating, demoting, or taking any other adverse employment action against a war on terror veteran due to his or her absence while deployed. A war on terror veteran is considered to have been discharged from employment if he or she is not offered the same wages, benefits, and similar work schedule upon return after deployment (Mo. Rev. Stat. §288.042). Federal law may also apply.

An employer may not discriminate, threaten, discipline, or take adverse action against an employee because of the employee's jury summons or service. The employer is not required to pay the employee for time away during jury duty. The employer cannot require or request that the employee use annual, vacation, personal, or sick leave for time spent responding to a jury summons (Mo. Rev. Stat. §494.460).

Any eligible voter is allowed 3 hours to vote in all elections unless the employee has 3 consecutive nonworking hours during which the polls are open. The employee must request a leave of absence to vote prior to Election Day, and the employer may specify which hours may be taken. Deduction from wages is prohibited if the employee votes (Mo. Rev. Stat. §115.639).

### Works Councils or Trade Unions

The Missouri Constitution affords the right to all employees to organize and bargain collectively through representatives of their own choosing (Mo. Const. Art. I §29). Federal law may also apply.

### Employees' Right To Strike

The Missouri Constitution affords the right to all employees to organize and bargain collectively through representatives of their own choosing (Mo. Const. Art. I §29). Certain public employees do not have the right to strike (Mo. Rev. Stat. §105.530). Federal law may also apply.

### Employees On Strike

The Missouri Constitution recognizes private employees' right to bargain collectively and has been held to give rise to a wrongful discharge claim where an employer discharges an employee for union activity. Federal law may also apply.



### Employers' Responsibility For Actions Of Their Employees

Under the doctrine of respondeat superior an employer may be liable for the negligent acts or omissions by an employee that are committed within the course and scope of employment. Employers may also be liable for negligent hiring and/or retention where the following elements are met: (1) the employer knew or should have known of an employee's dangerous proclivities; (2) the employee was hired (or retained in employment); (3) the employer's negligent act or omission was the proximate cause of an injury sustained by the plaintiff at the hands of the employee; and (4) the employee's misconduct was consistent with the employee's dangerous proclivity. For this claim, it is not necessary that the offending conduct occur within the course and scope of employment.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no statutory provisions regarding procedures for terminating an employment agreement. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time. An employment contract or collective bargaining agreement may specify termination procedures.

### Instant Dismissal

There are no statutory provisions regarding procedures regarding instant dismissal of an employee. Unless an employment contract with a specific term applies, the employment relationship is at-will and may be terminated at any time. An employment contract or collective bargaining agreement may contain notice requirements.

### Employee's Resignation

There are no statutory provisions regarding employee resignation. An employment contract or collective bargaining agreement may specify resignation procedures.

### Termination on Notice

There are no statutory provisions regarding termination on notice. An employment contract or collective bargaining agreement may contain notice requirements.

### Termination By Reason Of The Employee's Age

The Missouri Human Rights Act prohibits discrimination in employment on the basis of age (40 to less than 70 years of age). This provision applies to employers with six or more employees (Mo. Rev. Stat. §§213.010 et seq.). Federal law may also apply.

### Termination By Parties' Agreement

The parties are free to terminate the employment relationship on any grounds they desire, except for unlawful reasons proscribed by federal, state or local law.

### Directors Or Other Senior Officers

There are no statutory provisions regarding termination of directors and officers. An employment contract may apply and contain termination procedures. The termination of employment does not automatically terminate board membership. Separate steps, generally set forth in the bylaws or articles of incorporation/organization, are required to terminate board membership.

### Special Rules For Categories Of Employee

There are no statutory provisions regarding the termination of certain categories of employees; however, termination decisions must comply with the anti-discrimination provisions of the Missouri Human Rights Act.

### Specific Rules For Companies in Financial Difficulties

There are no statutory provisions regarding companies in financial difficulty. Federal bankruptcy law, the Employee Retirement Income Security Act, the Worker Adjustment and Retraining Notification Act, and other federal laws may apply.

### Restricting Future Activities

Contracts in restraint of trade are unlawful in Missouri, and restrictive covenants limiting individuals in the exercise or pursuit of their occupations are in restraint of trade. However, reasonable non-competition and non-solicitation agreements are permitted between employers and employees in order to protect (1) confidential or trade secret business information; or (2) customer or supplier relationships, good will, or loyalty. The agreement must be reasonable in both duration and geographic scope and must be supported by consideration (at-will employment constitutes sufficient consideration under Missouri law). Enforceability of restrictive covenants is determined on a case-by-case basis. Agreements that prohibit an employee (other than a secretarial or clerical employee) from soliciting employees of a former employer are presumed enforceable where they do not exceed 1 year in duration (Mo. Rev. Stat. §431.202). Such agreements with a term greater than 1 year lose that presumption. Agreements that prohibit disclosure of confidential information are generally enforceable. In Missouri, if a court finds that an agreement is too broad, the court has the power to modify the agreement to the extent necessary to make it reasonable.

### Severance Payments

There are no statutory provisions regarding or requiring severance payments. Severance payments are not required unless the employer and the employee have a contract providing for severance. There are specific rules governing the validity of a release provided in exchange for severance payments.



### Special Tax Provisions And Severance Payments

Severance payments are taxed in the same way as other wages. Federal law may also apply.

### Allowances Payable To Employees After Termination

Employees may be entitled to unemployment benefits after termination of employment so long as they meet certain requirements (Mo. Rev. Stat. §288.010 et seq.).

### Time Limits For Claims Following Termination

Statutes of limitation vary depending upon the nature of the claim.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

#### Service Letter

Upon receipt of an appropriate request, employers must furnish employees who have been discharged or voluntarily separated with a service letter containing (1) a description of the nature and character of the employee's work; (2) the duration of the employee's service; and (3) the true reason that the employee was discharged. This requirement applies to employers of 7 or more employees, each of whom must have been employed for at least 90 days before discharge or voluntary separation. Employee requests must be in writing, must be sent to the employer by certified mail within a reasonable period, but not later than one year after the date of separation, and must include specific reference to the state law that entitles the worker to the letter. The employer is required to issue the service letter within 45 days after receiving the request (Mo. Rev. Stat. §290.140).

#### Health Insurance Continuation

Missouri law requires employers with fewer than 20 employees to offer health insurance continuation upon a qualifying event in the same manner as continuation of coverage is required under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") (Mo. Rev. Stat. §376.428).

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# USA - New Jersey

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Disputes may be mediated, arbitrated or litigated in a state or federal court, before a state or federal agency or before private mediators or arbitrators.

### The Main Sources Of Employment Law

The main sources of employment law are statutes, regulations and common law. Additionally, employment rights may be governed by principles of contract and ordinances enacted by local government.

### National Law And Employees Working For Foreign Companies

Federal law, state common law and state statutes apply to all individuals physically working in the state, regardless of nationality and regardless of the law governing their contract of employment. Additionally, local law, such as municipal ordinances, may apply to employees who work within particular municipalities. In certain narrow instances a national treaty with a foreign government may pre-empt the application of national law. The parties may by contract agree to apply state law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law applies to all employees working in the United States and, in some circumstances, to employees working outside of the United States for U.S.-based companies. In most cases, state law applies only when the employee is physically working in the state or when both parties have agreed in writing to the application of a specific state's laws.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

There are no legal requirements as to the form of agreements in the hiring process. While some employers extend written offers of employment, the offer to hire an employee need not be in writing.

## Mandatory Requirements

### Trial Period

New Jersey does not require that employers give employees an introductory, trial or probationary period.

### Hours of Work

Federal and state wage and hour laws require that employees who work more than 40 hours per week must be paid overtime, unless their job classification meets one of the specified statutory exemptions. Employees whose job classifications do not fall within one of the statutory exemptions are classified as "non-exempt" and must be paid overtime at a rate of time and one-half of their hourly rate for all hours worked over 40 in any workweek. The overtime requirement does not apply to "exempt" employees, including executive, administrative, professional, computer, and outside sales employees who earn at least $455 per week and by virtue of their jobs can meet the specific criteria of particular statutory duties tests.

### Earnings

There are minimum wage requirements and requirements regarding the timing of wage payments. The current minimum wage in New Jersey is $8.25 per hour. Employers who fail to make timely payments of wages in accordance with the New Jersey Wage Payment Law may be subject to fines and penalties assessed by the Commissioner of Labor.

### Holidays/Rest Periods

New Jersey employers are not required by law to give employees time off for holidays. Many employers voluntarily adopt a written policy outlining eligibility for holiday pay based on criteria set by the employer.

While rest periods and meal breaks are customary for full-time employees, they are not legally mandated for most professions, except for minors under the age of 18. New Jersey law requires that minor employees be given a 30-minute meal period after five consecutive hours of work. Company policy dictates rest and meal breaks for those over the age of 18, unless a collective bargaining agreement or specific statute governing the profession requires otherwise. Employers can choose whether to provide paid or unpaid meal breaks.

### Minimum/Maximum Age

The minimum age of employment is 14. Minors between 14 and 16 years of age may be employed subject to the New Jersey Child Labor Law and the regulations promulgated thereunder. There is no maximum age of employment mandated by law for employees working in the private sector. A few public sector jobs have a mandatory retirement age.

### Illness/Disability

As a general matter, state law does not require employers in New Jersey to provide employees with paid sick time. Local municipalities, however, may adopt ordinances requiring that employers who do business in their jurisdictions provide paid sick leave to employees working in their municipality. Jersey City, New Jersey enacted such a municipal ordinance, which requires employers with operations in Jersey City to provide employees who work at least 80 hours per year in Jersey City the right to accrue up to 40 hours of paid sick time in a calendar year. This was the first ordinance of its kind in New Jersey. Many employers offer paid time off that can be used in the event of illness or disability irrespective of any legal obligation to do so. Such policies or practices are routinely set forth in the company's employee handbook.

New Jersey employees may be eligible for paid disability benefits under a private plan offered by their employer or through the state plan in accordance with New Jersey's Temporary Disability Benefits Law. Federal and state law require employers to provide reasonable accommodation to employees with a disability, unless doing so would pose an undue hardship on the employer. Employees with a disability or a serious health condition or who are caring for an immediate family member with a serious medical condition may also be eligible for leave rights pursuant to federal and state law.

### Location of Work/Mobility

New Jersey law does not impose requirements regarding the location of work. The employee's location of work and mobility can be decided and changed by the employer.

### Pension Plans

Federal law governs pension plans. Employers may or may not contribute to pension plans on behalf of employees, depending upon the terms of the pension plan.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Pregnancy is afforded protection under New Jersey's anti-discrimination law. Employers are prohibited from discriminating against employees based on pregnancy. It is unlawful for an employer to discriminate against an employee because of pregnancy with respect to terms and conditions of employment, refuse to hire an applicant because of pregnancy or discharge an employee because of pregnancy.

Employers are required to make reasonable accommodations available for female employees affected by pregnancy (which is defined to include pregnancy, childbirth or medical conditions related to pregnancy or childbirth) when such employees request an accommodation based on the advice of their physicians. Such accommodations may include:

- bathroom breaks,
- breaks for increased water intake,
- periodic rest,
- assistance with manual labor,
- job restructuring or modified work schedules, and
- temporary transfers to less strenuous or hazardous work.

Employers are not required to provide accommodations if doing so would be an undue hardship on the business operations of the employer. It is unlawful for an employer to penalize a pregnant employee who requests, or receives and uses, an accommodation.

The Family Medical Leave Act is a federal law allowing for 12 weeks of unpaid leave to eligible employees for the birth or adoption of a child. The New Jersey Family Leave Act also provides for such leave. To be eligible for leave under the New Jersey Family Leave Act, an employee must be employed in New Jersey by a covered employer (an employer with 50 or more employees anywhere worldwide). The employee also must have been employed for at least twelve (12) months with the employer and must have worked 1,000 base hours in the preceding twelve (12) months. The New Jersey Family Leave Insurance Law provides paid benefits for up to six weeks to those employees who are not eligible for paid leave under a private plan offered by their employer, subject to certain restrictions and limitations.

### Compulsory Terms

There are no compulsory terms required.

### Non-Compulsory Terms

The parties are free to agree to other non-compulsory provisions.

### Types Of Agreement

Employers can agree to employ an employee for a defined duration of time, in which case a written employment agreement is advisable. Employee handbooks can give rise to an implied agreement, unless the manual contains the proper disclaimers under Jersey law. In the absence of a written or implied contract, most New Jersey employees are employees at-will, which means that the employee or the employer can terminate the employment relationship at any time for any reason, so long as the reason is not unlawful (i.e., discriminatory, retaliatory based on the exercise of protected rights such as FMLA/NJFLA leave, whistle-blowing activity, etc.). Where employees are in a union, the collective bargaining agreement governs the terms and conditions of those employees' employment.

### Secrecy/Confidentiality

Employers can require employees to sign nondisclosure agreements to protect the secrecy/confidentiality of confidential information. Even in the absence of a nondisclosure or other agreement affording such protection, employers' trade secret information is afforded protection under common law and statute, specifically, the New Jersey Trade Secrets Act.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of a written agreement between the parties, ownership of IP rights is determined by state and federal statutes.

### Hiring Non-Nationals

Employers are obliged by federal law to ensure that all employees are eligible to work in the United States.

### Hiring Specified Categories Of Individuals

Employers need to be mindful that there are restrictions on the types of work that children can be required to undertake.

### Outsourcing And/Or Sub-Contracting

Employers may outsource work and/or engage the services of subcontractors, unless a collective bargaining agreement restricts such engagements. New Jersey employers cannot refuse to contract with an independent contractor based on his or her membership in a protected class, as such a refusal is prohibited under the New Jersey Law Against Discrimination. Depending on the factual circumstances, independent contractors may be legally entitled to certain statutory protections afforded to employees. If the workforce is unionized, collective bargaining agreements may contain restrictions on outsourcing and subcontracting.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers may make unilateral changes to the terms of the employment relationship, unless the parties have a contract, such as an employment agreement, collective bargaining agreement or some other agreement, that provides that changes may only be made with the consent of both parties.

### Change In Ownership Of The Business

Federal law, the Worker Adjustment and Retraining Notification Act ("WARN Act"), requires 60 days' prior notice in the event of a plant closure or mass layoffs affecting specific numbers of employees. New Jersey has a similar law, the Millville Dallas Airmotive Plant Job Loss Notification Act, which requires 60 days' notice in the event of a mass layoff, transfer of operations or termination of operations.

New Jersey law requires that notice be given to the affected employees, any collective bargaining representatives of those employees, the chief elected official of the municipality where the establishment is located, and the New Jersey Commissioner of Labor and Workforce Development (as well as the United States Department of Labor where required under the WARN Act). Upon receipt of the required notice from an establishment that workers will be subject to a mass layoff, transfer of operations or termination of operations, the New Jersey Department of Labor and Workforce Development shall dispatch a response team to provide information and counselling to the affected employees and facilitate with the transition and/or the possible prevention of the transfer or termination of operations. The employer is required to provide the response team with on-site access to the affected employees during work hours for the length of time determined necessary by the response team to carry out its responsibilities. Collective bargaining agreements or the presence of a union can require employers to follow certain procedures in the event of a change in ownership of the business, plant closure, transfer of operations or mass layoff.

### Social Security Contributions

The employer and employee must make compulsory Social Security contributions to the federal government.

### Accidents At Work

Federal law requires employers to keep logs of all accidents at work. State law requires employers to maintain insurance to provide compensation for workplace injuries. The New Jersey Workers' Compensation Act mandates that employers must purchase workers' compensation insurance, at no cost to the employees, to provide injured workers with monetary benefits, medical care and rehabilitation services. Most employees will be deemed to have waived their common law right to sue their employers or coworkers in tort for workplace injuries, absent certain exceptional circumstances.

### Discipline And Grievance

New Jersey has no state rules governing discipline and grievance procedures in the private sector. Unless a collective bargaining agreement or a specific contractual provision provides otherwise, discipline and grievance procedures are within the employer's discretion and are frequently set out in employee handbooks.

### Harassment/Discrimination/Equal pay

The concept of equal pay is recognized by federal and state legislation. State law prohibits retaliation against employees who ask current or former colleagues for information about the job title, occupational category, rate of compensation (including benefits), gender, race, ethnicity, military status or national origin of any other employee or former employee. In order to qualify for anti-retaliation protection, the request must be made for the purpose of (1) investigating potential discriminatory treatment concerning pay, bonuses or other compensation or benefits; or (2) taking legal action regarding discriminatory treatment concerning pay, bonuses or other compensation or benefits.

Federal and state laws prohibit discrimination in the workplace and recognize harassment as a form of discrimination. New Jersey employees are protected from discrimination on the grounds of race, creed, color, national origin, nationality, ancestry, age, sex, pregnancy, familial status, marital status, domestic partnership status, civil union status, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for military service, status as a smoker or non-smoker, and mental or physical disability.

### Compulsory Training Obligations

There are no compulsory training obligations, but employers are advised to train employees on the subjects of harassment, discrimination and retaliation in the workplace. Safety training is also advisable in certain industries.

### Offsetting Earnings

State law governs permissible deductions from employee earnings. In addition, federal and state law require the payment of at least minimum wage for all hours worked during all pay periods and offsets to employee earnings may not result in a payment of less than the hourly minimum wage for hours worked. The New Jersey Wage Payment Law specifies the permitted deductions/offsets to earnings. Deductions other than those permitted are unlawful.

### Payments For Maternity And Disability Leave

Employers may offer paid maternity or disability leave pursuant to a private plan, but are not required to do so. In the event an employer does not offer benefits under a private plan, employees may be eligible for paid state leave benefits. Pregnant employees who are disabled during their pregnancy can apply for disability benefits under the New Jersey Temporary Disability Benefits Law. After the birth or adoption of a child, eligible employees can apply for six weeks of paid leave benefits under New Jersey's Family Leave Insurance Law, subject to certain limitations.



### Compulsory Insurance

There are compulsory insurance requirements under state law for workers' compensation (for work-related injuries and illnesses) and unemployment benefits. Additionally, under federal law, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act, require employers with 50 or more full-time equivalent employees to provide health insurance coverage to full-time employees. Companies with between 50 to 100 full-time employees have until 2016 to provide such coverage. Companies with greater than 100 full-time employees must comply with the compulsory insurance mandates in 2015. Employers who fail to provide such coverage may face a $2,000 penalty per employee. Employers may also be subject to a $3,000 penalty if the coverage offered by the employer is "unaffordable" or does not meet certain minimum standards required by law.

### Absence For Military Or Public Service Duties

The Federal Uniformed Services Employment and Reemployment Rights Act is a federal law that provides reemployment rights for veterans and members of the National Guard and Reserve following qualified military service. Employers generally are required to keep the job open for those on military service. While employers are not required to pay employees on military leave, when those employees return, the employer is required to restore the benefits that they would have had had they not been called to military duty. Both federal and state law prohibit employer discrimination against any person on the basis of military service.

State law requires that employers allow unpaid time for jury service leave and prohibits retaliation against employees for jury duty service.

Additionally, employees may be eligible for leave under the Federal Family and Medical Leave Act ("FMLA") when the employee's son, daughter or parent—who is a "covered military member"—is on active duty or call-to-active-duty status and there is a "qualifying exigency" defined as: short-notice of deployment, military events and related activities, certain childcare and related activities, financial and legal arrangements, counselling, rest and recuperation, post-deployment activities and any other event that the employer and employee agree constitute a qualifying exigency, and (2) for "military caregiver leave," also known as "leave to care for a covered service member."

### Works Councils or Trade Unions

Under federal law employees can force the employer to recognize a union by demonstrating that a majority of similarly-situated employees support a union, usually by an election. Individuals who are involved in activities to promote a union are protected from being subjected to adverse employment actions, such as dismissal, because of their activities in that role.

### Employees' Right To Strike

Under federal law groups of employees may strike, even if there is not a collective bargaining agreement or formal union at the site of employment, subject to limits for employees who provide public services.

### Employees On Strike

Typically, employees on strike cannot be fired unless the employees engage in serious misconduct while on strike or the strike was unlawful and unprotected. However, if employees are on an economic strike, they may be permanently replaced by the employer and may be denied reinstatement if there are no open positions available at the end of the strike.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible under agency principles for acts of employees within the scope of their employment or conducted with the apparent authority of the employer. Employers are not responsible for employees' actions outside the scope of their employment.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

Unless specified in a collective bargaining agreement or contract of employment, there are no procedures required for terminating an employee's employment. Following termination, employers are required to pay an employee's earned wages in the payroll cycle immediately following the date of the employee's separation of employment. Employers should also pay employees any accrued, but unused, paid time in that same payroll cycle, only if pursuant to an agreement, company policy or practice.

### Instant Dismissal

Employment relationships are typically deemed to be "at-will" unless there is an express or implied promise by the employer that alters the "at-will" relationship. An "at-will" employment relationship can be terminated by the employer or the employee at any time, as long as the employer is not terminating the employee's employment for an unlawful reason (i.e., a discriminatory or retaliatory reason). A collective bargaining agreement or an employment contract can alter the "at-will" nature of the employment relationship.

### Employee's Resignation

At-will employees are free to resign at any time. For employees with employment contracts, the notice requirements set out in the contract should be followed.



### Termination on Notice

Notice is not typically required for termination, unless specifically required by a written contract. Under federal and state law, 60 days' notice is required in the event of certain plant closures, termination of operations, transfer of operations or mass layoffs.

### Termination By Reason Of The Employee's Age

Generally employment cannot be terminated because of the employee's age.

### Automatic Termination In Cases Of Force Majeure

In rare circumstances, an employment agreement can be terminated automatically because of force majeure.

### Termination By Parties' Agreement

The parties are entirely free to agree to terminate on any grounds they desire except for discriminatory or retaliatory reasons prohibited by federal and state law.

### Directors Or Other Senior Officers

There are no special rules for firing directors or other senior officers. If the individual has an employment agreement, the termination provisions in the contract should be followed. In the case of a director, termination of employment does not automatically bring to an end the director's board membership. Separate steps, set out in the company's by-laws or articles of incorporation, will need to be taken to bring the directorship to an end.

### Special Rules For Categories Of Employee

There are no special rules requiring certain categorizing of employees. However, federal and state wage and hour laws classify employees as exempt or non-exempt from overtime pay for hours worked over 40 based on certain statutory exemptions and criteria.

### Specific Rules For Companies in Financial Difficulties

Federal law requires that 60 days' prior notice be given to employees in the event of a plant closing or a mass layoff which affects a specific number of employees, unless the layoffs result from closure of a faltering company or unforeseeable business circumstances. New Jersey law requires 60 days' notice in the event of a mass layoff, transfer of operations or termination of operations, unless the termination of operations (but not a transfer of operations or mass layoff) is necessitated by a fire, flood, natural disaster, national emergency, act of war, civil disorder, industrial sabotage or other very limited circumstances, including decertification of a healthcare facility from participation in Medicare and Medicaid programs or revocation of its licence.

### Restricting Future Activities

Employers and employees are free to contractually agree to restrict future activities (except for those related to the practice of law). In evaluating the enforceability of such post-employment restrictions, courts will review the nature and scope of restrictions to ensure that they are reasonable and supported by consideration (entered into at the inception of employment or through continued employment). New Jersey courts will look at the scope and duration of the restrictions in evaluating whether they are reasonable and thereby enforceable. New Jersey does subscribe to the blue pencil doctrine, which enables the court at its discretion to rewrite an unreasonable post-employment restriction so that it is reasonable. Each case is considered on its own facts, so what might be appropriate for one employee may be unreasonable for another.

### Severance Payments

Employers are not required to provide severance pay to separated employees, unless the employer has a severance policy or the employee has a written contract providing for severance pay. There are specific rules governing the validity of releases given in exchange for severance pay.

### Special Tax Provisions And Severance Payments

Severance payments are taxable income to the employee.

### Allowances Payable To Employees After Termination

Employers are not required to pay allowances to employees after termination; however, employers typically reimburse employees for legitimate business-related expenses incurred during the course of employment with the company pursuant to company policy. Depending upon the circumstances surrounding the employee's separation of employment, the employee may be eligible for unemployment compensation benefits.

### Time Limits For Claims Following Termination

There are time limits for filing claims after termination, and the time limit varies depending on the nature of the claim. For example, discrimination claims brought under the New Jersey Law Against Discrimination must be filed within two years, absent certain circumstances. Defamation claims must be filed within one year. The length of the statute of limitations depends on the nature of the cause of action asserted.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Like some other states in the U.S., New Jersey has its own Family Leave Act. Paid leave benefits under the Temporary Disability Benefits Law and the Family Leave Insurance Law are unique to New Jersey. New Jersey is known for affording anti-discrimination protection to many protected classes. See Section 3, Harassment/Discrimination/Equal Pay. Employers conducting business in New Jersey should be advised that the penalties for failure to comply with the notice requirements in the event of a mass layoff, transfer of operations or termination of operations are stiffer under New Jersey law than federal law.

Employers with New Jersey operations and/or employees working in New Jersey are required to post and distribute certain notices at the time of hire and periodically thereafter. Employers can access such notices via the following link:

http://lwd.dol.state.nj.us/labor/employer/content/employerpacketforms.html

The New Jersey Security and Financial Empowerment Act, commonly known as the "NJ SAFE Act," allows an eligible employee to take 20 days of unpaid leave during a 12-month period in the event the employee or the employee's child, parent, spouse, domestic partner or civil union partner is a victim of domestic violence or sexual assault. This law applies to New Jersey employers with 25 or more employees.

To be eligible for leave under the NJ SAFE Act, an employee must work for the employer for at least 12 months and have worked 1,000 hours or more during the preceding 12-month period. Unpaid leave under the NJ SAFE Act must be taken within one year of the incident of domestic violence or sexual assault and may be taken intermittently with employer approval in intervals of no less than one day. The purpose of the law to is allow employees who are assault victims or are caring for family members who are victims to have time to engage in the following activities associated with the incident without fear of losing their jobs: (1) seeking medical attention for, or recovering from, physical or psychological injuries; (2) obtaining services from victim assistance programs; (3) receiving psychological or other counseling; (4) relocating or taking other steps to increase the safety of themselves or the victim; (5) seeking legal assistance; and (6) participating in civil or criminal court proceedings related to the incident of domestic or sexual violence.

If the need for leave under the NJ SAFE Act is foreseeable, employees are required to give written notice to the employer as far in advance as is reasonable and practical under the circumstances. Employers may request documentation supporting the need for leave. Employees can satisfy this requirement by providing a copy of any applicable restraining order; a letter from the prosecutor; documentation of the conviction of the assailant; medical documentation of the victim; a certification from a certified Domestic Violence Specialist or Rape Crisis Center employee; or a certification or other documentation from a social worker, clergy member, shelter worker or other professional who assisted the victim.

Employers are required to display a conspicuous notice of employees' rights under the NJ SAFE Act in a form prescribed by the Commissioner of Labor and Workforce Development and use other appropriate means to inform employees of such rights.

The NJ SAFE Act prohibits retaliation against employees for the exercise of rights granted by the Act.

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# USA - New York

# USA - New York

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are no specialized labor courts in New York. Labor and employment litigation can take place, depending upon the nature of the matter, in one or more of the following forums: federal and state courts; Equal Employment Opportunity Commission; New York State Division of Human Rights; New York City Commission on Human Rights, as well as various other specialized agencies, e.g., National Labor Relations Board for traditional labor matters and the Occupational Safety and Health Review Commission for safety and health issues, and the National Mediation Board for traditional labor matters in the airline and railroad industries.

### The Main Sources Of Employment Law

The main sources of employment law in New York are Federal and state statutory law together with the common law.

### National Law And Employees Working For Foreign Companies

Persons working in New York are subject to both federal and New York state law as well as local laws where they exist, as they do, for example, in New York City.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Americans employed by American companies, but who work outside the United States, are nonetheless subject to federal law and possibly New York state law in certain circumstances.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

New York is an employment "at will" state, which means that the employment is for no specific term and is subject to termination at the will of either party at any time for any or no reason, with or without notice. This can be modified by express agreement only. With the exception of high level executives and other key personnel, there are usually no employment agreements providing for a fixed term of employment or modifying the employment "at will" status of employees. Collective bargaining agreements provide another exception, and usually contain "just cause" disciplinary provisions subject to arbitration.

Although there is no obligation to have an employment agreement, employers must notify new employees of their rates of pay, including overtime pay rates, and their regular pay date at the time of hire. However, employees who are paid on a commission basis must have the terms of the commission arrangement reduced to writing in accordance with prescribed statutory requirements.

### Mandatory Requirements

#### Trial Period

Trial periods are not a mandatory requirement for employees in New York.

#### Hours of Work

There are no statutory prescribed hours of work. However, all employees must receive notice in writing of their hours of work, and employment beyond certain benchmarks is discouraged by requiring premium or overtime payments, usually at least one and one-half times an employee's regular rate of pay. Exempt employees, ie those who fit the statutory description of executive, administrative or professional employees, are not subject to overtime requirements and can be paid on a salary basis.

#### Earnings

Federal and state law prescribe minimum wage requirements, which include additional remuneration for overtime (1.5 times the regular hourly rate), except for those employees properly characterized as exempt in one of the categories noted above. Hours worked beyond 40 hours per week constitute as overtime. The current federal minimum hourly wage is $7.25. New York's hourly minimum wage is $8.00, and it will increase to $8.75 and $9.00, respectively, on December 31 2014 and 2015. Legislation has been introduced in Congress to increase the federal minimum wage to $10.10 over a three year period, but nothing has been passed at the time of this writing. There are special provisions for waiters and waitresses who receive tips and also for outside salespersons paid on commission.

### Holidays/Rest Periods

Employees are not entitled to holiday leave. For certain levels of employees, meal and rest periods are specified as mandatory. Meal periods should last at least 30 minutes. Employees must be provided with 24 hours of consecutive time off in each week. Effective April 1, 2014, New York City requires New York City employers to grant employees five paid sick leave days per year with certain specified exceptions.

### Minimum/Maximum Age

The permissible minimum age of an employee depends on the industry and the nature of the job. An employer in New York cannot discriminate against any employee over the age of 18 on the basis of age no matter how old the employee is. There is no maximum age provided for.

### Illness/Disability

Federal, state, and New York City laws prohibit discrimination on the basis of disability, provided the individual can perform the essential functions of the job. It is also improper to discriminate based upon a perception of disability.

### Location of Work/Mobility

There are no mandatory requirements or restrictions relating to an employee's place of work. Where the employee is to work and whether or not they may be required to travel for work, is a matter to be decided between the employee and his or her employer

### Pension Plans

There is no requirement for an employee to have a pension plan, but federal law (principally Employee Retirement Income Security Act and Internal Revenue Code, but there are others) regulates such plans when they exist.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Pregnancy and childbirth are treated in line with disability legislation and are therefore subject to the laws of discrimination concerning disability. Employees who have been employed for at least one year may be entitled to up to 12 weeks unpaid leave in connection with the birth of a child under the Family Medical Leave Act. To the extent that an employer provides benefits beyond what is medically necessary, such policies must apply evenly to men and women.

### Compulsory Terms

There are no compulsory terms provided for under federal and state law.

### Non-Compulsory Terms

The parties are free to agree to other non-compulsory provisions.

## Types Of Agreement

As previously noted, employment is "at will" in the absence of any agreement to the contrary. Agreements restricting employment rights might take the form of an individual employment agreement, a collective bargaining agreement, or an independent contractor agreement (this latter type of agreement is actually intended to avoid an employment relationship and must be carefully drafted, but it could nonetheless set specific terms, for example, for the engagement of a consultant).



## Secrecy/Confidentiality

There are strong and enforceable common law fiduciary obligations that an employee owes to his employer. Such obligations include a prohibition against employees engaging in any activity detrimental to the interests of his employer, e.g., revealing trade secrets, working for a competitor. Sometimes these obligations are set out in an employment agreement or in what might be referred to as a Confidentiality Agreement that deals solely with this subject. Because New York has strong common law protections in this area, it is important not to inadvertently compromise those protections with an imperfect confidentiality agreement.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally, employers own or, at the very least, have a "shop right" to any invention or intellectual property developed by an employee during the course of his or her employment, especially if the employee is hired for the purpose of developing such things. In addition, if the invention or other intellectual property is developed during working time or with the employer's information, equipment, or materials it is more likely that the employer will be deemed to own such an invention or intellectual property.

## Hiring Non-Nationals

Employers are entitled to hire non-nationals provided that hiring is done in accordance with the detailed federal requirements involving immigration laws and work visas. It is the obligation of the employer, subject to penalties, to assure that anyone hired is lawfully permitted to work in the United States. Such hiring requirements may be more complex where the employment will involve the United States Government, whether directly or indirectly. Those lawfully entitled to work cannot be discriminated against because of their national origin.

## Hiring Specified Categories Of Individuals

Federal, state, and local laws prohibit discrimination against various protected categories of individuals. Generally speaking, employment opportunities are to be available to all qualified persons on equal terms.

## Outsourcing And/Or Sub-Contracting

There are no statutory or common law restrictions imposed on employers outsourcing and / or sub-contracting. However, in a union setting a collective bargaining agreement might impose such restrictions.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employment in New York is generally "at will" and, as such, changes in the employment relationship or employment terms can be made in the absence of contractual commitments. However, if there is a formal contract, then the contract should specify how changes should be made and such terms would have to be followed.

### Change In Ownership Of The Business

Since employees can be dismissed at will in the absence of an agreement to the contrary, there is no right to continued employment with a new owner of the same business (subject to the caveat that all hiring decisions are subject to applicable antidiscrimination laws). An exception exists in New York City for building service workers under certain conditions specified in the City's Administrative Code when the owner of a building changes the commercial cleaning services company in a building.

### Social Security Contributions

Social security contributions are mandated by federal law for the federal retirement program.

### Accidents At Work

Where there is an accident at work, the Occupational Safety and Health Act may require that an investigation is carried out. Investigation under the Act is more likely if the accident resulted in a fatality (in which case, under certain circumstances, there could be a criminal prosecution) and/or multiple hospitalizations (which under appropriate circumstances could also lead to criminal prosecution). Fatalities and hospitalization of three or more employees from a work-related incident must be reported to the Occupational Safety and Health Administration (OSHA) within eight hours of the occurrence. In addition, injuries suffered at work are subject to the Workers Compensation Law, which provides for payments to the injured employee based upon the nature of the injury. In the absence of evidence that an employer took specific actions intended to harm the employee, the availability of compensation through Workers' Compensation is the employee's exclusive remedy, and there can be no independent lawsuit by the employee for damages. However, this will not insulate third parties (e.g., equipment manufacturers) from suits, for example for products liability.

### Discipline And Grievance

Although there is no requirement to have such procedures in place, it obviously makes good business sense to have a procedure where problems are brought to light and dealt with before they adversely affect productivity or lead to union organizing. Most collective bargaining agreements do have such procedures.



### Harassment/Discrimination/Equal pay

Harassment and discrimination on the basis of specified characteristics (which are established by federal law, but supplemented by New York State and City law) are prohibited by federal, state and, in New York City, by local law. In addition, retaliation against an employee who complains about suspected discrimination is prohibited. Men and women who perform the same work under the same conditions must be paid equally.

### Compulsory Training Obligations

Compulsory training obligations exist under OSHA in a variety of circumstances, including, for example, in connection with the employment of individuals in hazardous jobs or where they will be exposed to hazardous or toxic substances. Although not otherwise required, training in furtherance of antidiscrimination and anti-harassment policies enhances an employer's defense against such claims.

### Offsetting Earnings

There can be no deductions from an employee's pay except for certain statutorily specified reasons that are generally for the employee's benefit, and then only pursuant to a signed written authorization. Otherwise, an employer must sue an employee to recoup monies that might be owed to the company by the employee.

### Payments For Maternity And Disability Leave

The employer is not obliged to pay employees who are absent from work due to maternity or other disability. However, employers' policies must be non-discriminatory.

### Compulsory Insurance

The only insurances that an employer is compelled to maintain are workers' compensation, which is intended to provide recompense for workplace injuries and illnesses, and unemployment insurance, which is intended to provide a limited safety net for employees who are separated from their jobs through no misconduct of their own. In addition, where an employer has voluntarily adopted a health insurance plan for its employees, it must provide an opportunity for separated employees to continue such insurance at their own expense for a temporary period of time in cases where the separation is not due to employee misconduct.

### Absence For Military Or Public Service Duties

Absence for military or public service duties is governed by federal and state law. The law provides that generally unpaid leave be provided and that the individual be restored to his job or a comparable job upon returning to work. There is also a federal requirement to provide unpaid leave to persons related to those called to active military service, as well as those who return from service and require care or assistance.

There is a requirement to provide leave and limited compensation to employees who are summoned to jury duty service.

### Works Councils or Trade Unions

There are no works councils. Unions presently represent about seven or eight percent of the private sector workforce in the United States.

### Employees' Right To Strike

The employees' right to strike is protected by federal law. The employees' right to strike can be prohibited by a collective bargaining agreement. Such a collective bargaining agreement may provide that the disputes must be expressly or implicitly resolved in accordance with a grievance and arbitration procedure that ends in binding arbitration. Courts are divested of jurisdiction to enjoin a strike that is not in violation of a contractual prohibition unless there is violence and or serious property damage. A refusal to work under abnormally dangerous conditions relative to the job at issue is not considered a strike.

### Employees On Strike

In an economic strike, i.e., one motivated by legitimate differences over the outstanding issues properly the subject of negotiation; the employer has the right to hire a permanent replacement for a striking employee. The replaced employees who do wish to return to work must be placed on a preferential rehire list and offered any openings for which they are qualified that become available.

If a strike is in protest over an employer's unfair labor practices, then the striking employees

have a right to return to their jobs upon request to do so, and the employer incurs backpay liability in the event it improperly denies such an employee the right to return to work. The distinction between economic and unfair labor practice strikes is one that might not be readily apparent or finally resolved without years of litigation.

### Employers' Responsibility For Actions Of Their Employees

Employers are generally responsible for the actions of their employees that are performed within the course of their duties and responsibilities for the employer.



# 04. Firing The Employee

### Procedures For Terminating The Agreement

Employment is "at will" and can be terminated by either party at any time with or without notice for any lawful or no reason, unless the parties have circumscribed these rights by contract.

### Instant Dismissal

Instant dismissal is permissible, in the absence of a contractual restriction.

### Employee's Resignation

An employee is free to resign without restriction, in the absence of an agreement to the contrary.

### Termination on Notice

Providing notice is not required unless provided for by agreement.

### Termination By Reason Of The Employee's Age

An employer cannot terminate the employment relationship by reason of the employee's age where the employee is above 18. This naturally does not preclude termination for other legitimate reasons.

### Automatic Termination In Cases Of Force Majeure

Employees can be automatically terminated in cases of force majeure, in the absence of agreement to contrary.

### Termination By Parties' Agreement

Termination by the parties' agreement is only applicable where there is a contract of employment. Parties may terminate by agreement but as per the terms of the agreement.

### Directors Or Other Senior Officers

Directors and other senior officers would normally have an employment agreement with restrictions on termination and notice, among other things, in order to induce high level personnel to work for a particular employer. In the absence of such an agreement, the same employment at will principles will apply.

### Special Rules For Categories Of Employee

There are restrictions on an employer's ability to enter into a non-competition agreement in the broadcast industry in New York. Commission salespersons must have the terms on which commissions are earned in a written agreement.

### Specific Rules For Companies in Financial Difficulties

There are no specific rules that apply to employees of a company in financial difficulties. However, a formal bankruptcy proceeding could impact on contract rights, including those in a collective bargaining agreement. Also, to the extent that a company in financial distress might close down a facility or have a mass layoff of employees, an employer may be required to provide advance notice or pay in lieu thereof under appropriate circumstances.

### Restricting Future Activities

Non-competition, non-solicitation, and confidentiality restrictions following the end of an employee's employment are permissible. There are common law fiduciary obligations, and those may be supplemented by contract. Restrictions on competition must have a legitimate, protectable business interest justification and must be reasonable, in both geographic scope and duration. Greater restrictions may be imposed in connection with the sale of a business and its good will.

### Severance Payments

Severance payments are not required. However, under certain circumstances, sixty days notice of a plant closing or mass layoff is required, as previously noted, and the failure to do so obligates the employer to pay the employees for that time period.

### Special Tax Provisions And Severance Payments

Severance payments are generally treated as ordinary income to the employee and as a business expense to the employer.

### Allowances Payable To Employees After Termination

Allowances are not payable to the employees after termination. However, accrued but unused benefits, e.g., paid vacation, must be paid.

### Time Limits For Claims Following Termination

There are various statutes of limitations for making claims, depending upon the nature of the claim and the forum in which the claim is made. Such time limits, however, are generally keyed to the date of the occurrence giving rise to the claim and not to the termination date of employment.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction

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# USA - Ohio

USA - Ohio

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Federal courts have jurisdiction over disputes involving federal statutes and inter-state disputes of more than $75,000. State courts have jurisdiction over all other lawsuits. In addition, state and federal agencies, such as the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Commission, the Ohio Civil Rights Commission and the State Employment Relations Board investigate charges of employer misconduct.

### The Main Sources Of Employment Law

Ohio is a common law jurisdiction. Employment contracts are governed by case law but there are various statutes that also govern employment relationships. These include federal statutes such as Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), and the Family Medical Leave Act (FMLA), as well as state statutes such as Ohio's Civil Rights Law (ORC 4112), and Ohio's Minimum Fair Wage Standards (ORC 4111).

### National Law And Employees Working For Foreign Companies

The statutory rights under federal and state law will apply to all individuals physically working in Ohio, regardless of their nationality, and regardless of the law governing their contract of employment.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Title VII, the ADEA and the ADA apply to U.S. citizens working in another jurisdiction.

# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Most U.S. and Ohio employees are employed at will and not subject to a contract of employment. Thus, there is no legal requirement as to the form of an employment agreement. However, there are federal and state laws governing certain terms and conditions of employment.

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide trial periods.

#### Hours Of Work

State and federal law both provide that non-exempt employees must be paid 1½ times their regular rate of pay for all hours worked in excess of 40 hours in a workweek.

#### Earnings

While the federal minimum wage is $7.25 per hour, Ohio's minimum wage is $7.95 per hour as of 2014. Most non-exempt employees in Ohio must be paid the higher rate.

#### Holidays / Rest Periods

There are no required holidays or rest periods.

State and federal law place restrictions on employing individuals under 18 years old. There is no mandatory retirement age.

#### Illness/Disability

State and federal law prohibit discrimination against individuals with disabilities. The federal Family and Medical Leave Act of 1993 requires covered employers to provide eligible employees with up to 12 weeks of unpaid job-protected leave to care for their own serious health condition or to care for a spouse, child or parent with a serious health condition or for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty in support of a contingency operation. It also entitles eligible employees to take up to 26 weeks of job-protected leave in a "single 12 - month period" to care for a covered servicemember with a serious injury or illness. Ohio law requires most employers to provide workers' compensation benefits (including leave when appropriate) for on-the-job injuries.

#### Location Of Work/Mobility

There are no mandatory requirements regarding work location and mobility.

#### Pension Plans

Pension plans are not mandatory, but certain plans are regulated by the Employee Retirement Income Security Act (ERISA) of 1974.

#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The federal Family and Medical Leave Act of 1993 requires covered employers to provide eligible employees with up to 12 weeks of unpaid job-protected leave because of the birth of a child and to care for the newborn child or because of the placement of a child with the employee for adoption or foster care.

#### Compulsory Terms

There are no compulsory terms for employment agreements.

#### Non-Compulsory Terms

Parties are free to bargain for and agree to terms of employment.



### Types Of Agreement

There are no different rules for different types of agreements.

### Secrecy/Confidentiality

The Ohio Uniform Trade Secrets Act governs the protection of trade secrets. A trade secret is proprietary information that derives independent economic value from not being generally known. Employees may not disclose trade secrets without their employer's consent. Employers may also enter into contractual confidentiality agreements with employees.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally, employers own intellectual property created by their employees as part of their employment or created using the employer's information, equipment or materials.

### Hiring Non-Nationals

Employers should be aware that foreign nationals must be authorized to work in the U.S. and whether such employment is restricted in any way. U.S. laws, rules, and regulations governing the work authorization of foreign nationals are complex. Basically, U.S. Citizenship and Immigration Services (USCIS) regulations establish three classes of foreign nationals who are allowed to work in the U.S.: (1) aliens authorized to work incident to their immigration status, (2) aliens who are permitted to work for a specific employer incident to their status, and (3) aliens who must apply for and obtain permission from the USCIS in order to accept employment in the U.S.

### Hiring Specified Categories Of Individuals

Federal contractors have certain affirmative action obligations with respect to minorities, women, U.S. veterans, and persons with disabilities under Executive Order 11246. Federal and state law prohibit employers from discriminating in terms and conditions of employment based on: race, religion, national origin, colour, gender, age (40 and over), disability, ancestry, or genetic information.

### Outsourcing And/Or Sub-Contracting

There are no specific rules regarding outsourcing or sub-contracting unless covered by a collective bargaining agreement.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Common law contract principles apply to contract changes made by either party. Thus, an employer may not change any terms of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change). Any change of terms to which the employee does not consent will amount to a breach of contract.

### Change In Ownership Of The Business

There are no general rules pertaining to changes in business ownership. However, if the employees are organized in a collective bargaining unit, the successor owner may be required to bargain with the employees' representative.

### Social Security Contributions

Both employees and employers must make social security contributions. Employers are not required to contribute toward allowances payable to employees during their employment.

### Accidents At Work

Federal Occupational Safety and Health Act (OSHA) of 1970 governs when work accidents are reportable. The handling of work-related injuries is governed by state Workers' Compensation law which, in most cases, prevents employees from suing employers directly.

### Discipline And Grievance

There are no laws mandating a discipline or grievance process for private sector employees who are not part of a collective bargaining unit. If employees belong to a collective bargaining unit, then the terms of the collective bargaining agreement govern discipline and grievance procedures.

### Harassment/Discrimination/Equal pay

Federal and state law prohibit employers from discriminating in terms and conditions of employment based on: race, religion, national origin, colour, gender, age (40 and over), disability, ancestry, or genetic information.

Harassment is a form of employment discrimination. Harassment is unwelcome conduct based on race, colour, sex, religion, national origin, disability, and/or age. Harassing conduct becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.



The Equal Pay Act of 1963 in Section 206 requires that men and women be given equal pay for equal work in the same establishment. The jobs must be substantially equal, but do not have to be identical. Job content, not a job title, determines whether jobs are substantially equal.

State and federal law prohibit discrimination against individuals who are age 40 or older.

### Compulsory Training Obligations

There are no compulsory training obligations.

### Offsetting Earnings

Federal and Ohio law permit offsets. Generally, the offsets require the employee's approval and may not reduce the employee's pay to less than the minimum wage.

### Payments For Maternity And Disability Leave

Under the FMLA, payments for maternity and disability leave are not required. However, employers may choose to pay employees their sick leave or disability benefits while the employees are on FMLA leave. This way, employees can be prevented from taking 12 weeks unpaid leave in addition to whatever sick leave they may be entitled to under their employment agreement.

### Compulsory Insurance

Liability insurance is not compulsory.

### Absence For Military Or Public Service Duties

Under the federal Uniformed Services Employment and Reemployment Act, employees are generally entitled to reinstatement following military leave.

### Works Councils or Trade Unions

The National Labor Relations Act of 1935 governs dealings with unions. See discussion of Collective Bargaining rights in U.S. Federal law section.

### Employees' Right To Strike

See discussion of Collective Bargaining rights in U.S. Federal law section.

### Employees On Strike

See discussion of Collective Bargaining rights in U.S. Federal law section.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of their employees except when the employees are acting outside the scope of their employment.

# 04. Firing The Employee

Note that in the U.S., most employees are not subject to a contract but are at-will. The entries below address at-will employees. To the extent that an employee has a contract with the employer, the terms of the agreement, including those related to termination, are governed by contract law.

### Procedures For Terminating The Agreement

There are no required procedures for terminating an individual employment relationship. Nevertheless, an employer who engages in a "mass layoff" or "plant closing" must follow the advance notice and disclosure procedures in the federal Worker Adjustment and Retraining Notification Act of 1989.

### Instant Dismissal

Employers and employees may terminate their at-will employment relationship at any time and for any reason.

### Employee's Resignation

Likewise, employees may resign at any time.

### Termination on Notice

No minimum notice period is required to terminate an employment agreement.

### Termination By Reason Of The Employee's Age

Except in very limited cases where a mandatory retirement age is required by law, an employer may not terminate an employee because of the employee's age if the employee is over the age of 40.

### Automatic Termination In Cases Of Force Majeure

Ohio contract law recognizes the Force Majeure doctrine.

### Termination By Parties' Agreement

The at-will relationship may be terminated by either party for any reason or for no reason. No court or regulatory body approval is needed for the termination to be effective.

### Directors Or Other Senior Officers

There are no special rules for firing directors or senior officers.

### Special Rules For Categories Of Employee

Besides the anti-discrimination laws, there are no special rules for categories of employees.



### Specific Rules For Companies in Financial Difficulties

There are no special employment laws for companies in financial difficulties.

### Restricting Future Activities

Contractual agreements restricting future activities must be reasonable in scope, geographic limitation and time in order to be enforceable in court. Typical clauses include those designed to restrict an employee from joining a competitor, setting up competition or soliciting customers.

### Severance Payments

There are no laws requiring severance payments. However, when an employer seeks a release of claims from a former employee over the age of 40, the Older Workers' Benefit Protection Act of 1990 requires severance pay or other consideration in exchange for a specific release of ADA claims, 21 days to consider the release (45 days for group terminations), and a 7 day revocation period.

### Special Tax Provisions And Severance Payments

Severance payments are subject to tax in the normal way.

### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

#### Federal

Employees must file a charge alleging discrimination with the Equal Employment Opportunity Commission ("EEOC") within 300 days after the unlawful discriminatory practices alleged in the charge were committed. The employee's right to sue in federal court is contingent upon filing a charge of discrimination with the EEOC. A suit in federal court alleging violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act and / or the Age Discrimination in Employment Act must be filed within 90 days of receipt of the EEOC's Dismissal and Notice of Rights. Suits alleging violation of the federal Equal Pay Act ("EPA") must be filed in federal or state court within 2 years (3 years for wilful violations) of the alleged EPA underpayment.

#### State

Employees must file a charge alleging discrimination with the Ohio Civil Rights Commission within 6 months after the unlawful discriminatory practices alleged in the charge were committed. Employees must file a lawsuit alleging violation of the Ohio Civil Rights law within 6 years after the unlawful discriminatory practices alleged in the suit were committed. The employee's right to sue alleging violation of state law is not contingent upon filing a charge of discrimination with the Ohio Civil Rights Commission.

# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

As emphasized herein, employment relationships in Ohio are at-will. The at-will relationship may be terminated by either party for any reason or for no reason.

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# USA - Oregon

# USA - Oregon

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employment-related claims can be asserted in state or federal courts or administrative agencies, including the Oregon Bureau of Labor and Industries (BOLI) and federal Equal Employment Opportunity Commission (EEOC). Certain claims based on federal law must first be filed with the EEOC. A person is not required to file a complaint with BOLI before filing a state law civil lawsuit. However, a complainant who files a civil suit waives the right to file a complaint with BOLI with respect to matters alleged in the suit.

### The Main Sources Of Employment Law

The main sources of employment law in Oregon are: Federal and Oregon statutes, regulations and judicial and administrative interpretations of those statutes and regulations; Federal and Oregon common law principles of contract and tort law; individual employment contracts (written or oral); and collective bargaining agreements. Employee handbooks have also been found to form binding covenants between an employer and employee under certain circumstances.

### National Law And Employees Working For Foreign Companies

Federal laws and Oregon state laws apply to all people who physically work in Oregon.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law applies to most employees working in the United States and, in some circumstances, to employees outside of the United States for United States-based companies or government agencies. They may apply to employees working elsewhere for Oregon-based companies depending on the circumstances.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There is no legal requirement for a written employment agreement or that it be in any specific form. However, certain provisions in an employment agreement may be subject to statutory requirements, such as non-competition agreements.

### Mandatory Requirements:

#### Trial Period

There is no legal obligation to provide trial or probationary periods to employees. Trial periods are not recommended, as they may create implied contracts that undermine at-will employment.

#### Hours Of Work

Generally, hours of work are not regulated. There are laws, however, that restrict the number of hours and times that minors may work. Also, employees who work more than 40 hours in a week must be paid overtime unless they are exempt. Maximum hours of work in certain industries are also regulated by federal and Oregon law. For example, employees in mills, factories and manufacturing establishments are limited to working 10 hours per day. Employees in sawmills, planing mills, shingle mills, and logging camps are limited to eight hours per day of work.

#### Earnings

Oregon has a minimum wage indexed to inflation that is adjusted every January. Non-exempt minors must also be paid at least minimum wage. There is no separate minimum wage rate for minors. Oregon law provides that tipped employees are entitled to the full minimum wage for every hour worked.

#### Holidays / Rest Periods

There is no legal requirement for employees to receive or take holidays or vacations. This is a private matter to be agreed on between the employer and employee. Many employers choose to provide full time employees with a certain number of unpaid personal days or vacation days per year. The number of personal days or vacation days available to an employee commonly increases with the number of years of employment.

Rest and meal breaks are required for most employees, unless they are exempt. Employees must receive a 10 minute paid rest break for every work period of four hours (or major portion thereof) and a 30 minute unpaid meal break for every work period of six to eight hours.

#### Minimum/Maximum Age

Children under 14 are generally prohibited from employment. Employers who employ minors must follow Oregon's child labour laws, in addition to other employment laws. Those seeking to employ minors must apply for an Annual Employment Certificate from the state. There are no maximum age limits and employers may not discriminate against employees who are over 18 years of age.

#### Illness/Disability

Numerous federal and Oregon laws pertain to ill and injured workers, including the Family and Medical Leave Act of 1993, Oregon Family Leave Act of 1995, Americans with Disabilities Act of 1990, Oregon's "mini ADA," state and federal anti-discrimination laws, and workers' compensation laws.

#### Location Of Work/Mobility

Oregon law requires employers to pay employees for travel time between work locations in certain circumstances. This requirement is set forth in the law and may not be changed or eliminated by contract.

#### Pension Plans

Oregon law does not require a pension plan. The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for retirement and health benefit plans in private employment. ERISA does not require the employer to establish a plan. If an employer chooses to establish a plan, however, ERISA requires the plan to meet certain minimum standards such as regularly providing participants with information about the plan, setting minimum standards for participation, vesting, benefit accrual and funding, and requiring accountability of plan fiduciaries.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

Pregnancy discrimination is prohibited by statute in Oregon. Federal and state laws provide up to 12 weeks of unpaid maternity and paternity leave for certain employees. Up to 12 weeks of leave may also be taken to care for a newly adopted child. Oregon law provides an additional 12 weeks of unpaid leave if there is a pregnancy-related disability and an additional 12 weeks for sick child leave. Parental leave must generally be taken as one continuous block of time and must be completed within one year after the birth, adoption, or placement of the child. Intermittent leave or reduced schedules must be permitted as necessary for pregnancy disability or prenatal care.

### Compulsory Terms

None.

### Non-Compulsory Terms

The parties are free to agree upon terms, but some provisions may not be enforceable as a matter of public policy. If a statute or regulation requires a particular term or condition of employment, the parties may not agree to a less favourable term or condition.

### Types Of Agreement

Employment agreements may be express (oral or in writing) and may sometimes be implied by the employer's policies, handbook or practices.

### Secrecy/Confidentiality

Oregon's trade secret and unfair competition laws limit an employee's ability to disclose trade secrets and confidential information. Additionally, non-competition, non-disclosure, and non-solicitation agreements may preclude employees from using confidential information, provided the statutory requirements for such agreements are satisfied. An employee's obligation to protect trade secrets and confidential information generally continues after the employment has ended.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of a written agreement between the parties, ownership of IP rights is determined by federal law. Generally, an employer owns work created by an employee during employment or with information or "know how" belonging to an employer.

### Hiring Non-Nationals

Federal law controls the hiring of non-nationals. Employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Federal law prohibits employers from discriminating against citizens or aliens authorized to work in the United States on the basis of national origin or citizenship status.

### Hiring Specified Categories Of Individuals

There are restrictions on the types of work that minors can be required to undertake. Entities that contract with the federal government may be required to have affirmative action programs.



### Outsourcing And/Or Sub-Contracting

Outsourcing and/or subcontracting may be governed by terms of a collective bargaining agreement and thus considered an unfair labour practice if done without bargaining. Oregon has laws strictly defining the circumstances under which a worker qualifies as an independent contractor. Generally, independent contractors are not subject to the requirements of Oregon's employment laws and regulations. For example, independent contractors are not subject to minimum wage and overtime requirements whereas non-exempt employees must be paid minimum wage and overtime.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Employers are generally free to modify the terms and conditions of employment unless there is a written agreement that provides otherwise, in which case the employee must generally consent and additional consideration must be provided. If consent is required but not given, any change to the terms or conditions of employment will generally be found unenforceable.

### Change In Ownership Of The Business

Unless there is a contract or collective bargaining agreement, there are generally no specific employment-related rules governing a change in the ownership of a business. Successor employers are not generally required to hire the former employer's workforce, although various restrictions may apply where the successor employer is considered an alter ego of the former employer. If a successor employer hires some or all of the predecessor employer's employees, employees may generally be subjected to new or different terms and conditions of employment upon hire by the successor employer.

### Social Security Contributions

Employers and employees are required to make social security contributions. The employer and employee social security tax rates are currently 6.2% of the employee's wages and subject to change annually.

### Accidents At Work

Oregon's workers' compensation laws provide medical and leave benefits to employees who are injured at work. Oregon employers are required to ensure that subject workers are covered by workers' compensation insurance.

Under the Oregon Safe Employment Act of 1973 (OSEA), Oregon employers are also required to provide a safe and healthy work environment for their employees. Employers must use devices, safeguards, and practices that are reasonably necessary to make employment and the place of employment safe and healthful. Employers are subject to civil and criminal penalties for violations of the OSEA.

Leave laws and disability laws may also be applicable.

### Discipline And Grievance

Discipline and grievances are governed by the employer's policies, any employment agreement or collective bargaining agreement. Most employer policies provide for discipline up to and including termination of employment for violations of employment policies, insubordination, or other employee misconduct. Progressive discipline policies may be viewed as creating a contractual right to continued employment on the part of the employee.

### Harassment/Discrimination/Equal pay

Federal and Oregon state laws prohibit direct and indirect discrimination and harassment based on the employee's membership in a protected class (age, religion, race, gender, disability, sexual orientation, etc.). Oregon and federal Equal Pay Acts prohibit discrimination in pay based on gender.

### Compulsory Training Obligations

There are no compulsory training obligations placed upon the employer or the employee. However, if the employer requires the employee to attend training, the employer must pay the employee at least minimum wage for the training time.

### Offsetting Earnings

An Oregon statute prohibits employers from making deductions from an employee's wages except in limited circumstances set forth in the statute. In addition, federal Fair Labor Standards Act of 1938 may apply.

### Payments For Maternity And Disability Leave

Pregnancy and disability leave are unpaid, unless the employer's policies provide otherwise. An employee may generally use accrued vacation leave, sick leave, or other paid leave that the employer offers during the period of pregnancy or disability leave, in accordance with the employer's policy.



### Compulsory Insurance

Employers must generally maintain workers' compensation insurance and unemployment insurance. Certain employers could be fined $2,000 (for not offering health insurance) to $3,000 (for not offering affordable health insurance) per employee for failing to provide "minimum essential coverage" to their employees under the newly enacted federal Patient Protection and Affordable Care Act. Small businesses with 50-99 full-time equivalent employees will need to start insuring workers by 2016. Those with a 100 or more will need to start providing health benefits in 2015.

### Absence For Military Or Public Service Duties

Employees who take leave for military duty are protected by federal law and have reinstatement rights. Employers are also prohibited from discriminating against an employee who is absent from work for jury duty, to vote in an election, or to testify in certain proceedings. Volunteer fire-fighters are also entitled to leave in order to perform their duties. Employees also have leave to serve in state legislature and testify before legislature.

### Works Councils or Trade Unions

Relations between private employers and unions are regulated by the federal National Labor Relations Act of 1973. Labour relations in the public sector are governed by the state Public Employee Collective Bargaining Act of 1973.

### Employees' Right To Strike

The National Labor Relations Act or the Public Employee Collective Bargaining Act of 1973 controls an employee's right to strike.

### Employees On Strike

Employees on strike are generally protected and cannot be terminated, unless the employees engage in serious misconduct while striking or the strike was unlawful and unprotected. However, if employees are on an economic strike they may be permanently replaced by the employer and may be denied reinstatement if there are no open positions upon the conclusion of the strike, and until open positions materialize.

### Employers' Responsibility For Actions Of Their Employees

Employers may be vicariously liable for the actions of their employees unless the employee was acting outside the course and scope of employment.

# 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no requirements related to the procedure for terminating employment, unless specified in a contract or a collective bargaining agreement. Oregon law dictates when final pay must be given to an employee. In general, if the employee quits without notice, the final pay check is due within five days; if the employee gives at least 48 hours' notice, the check is due on the last day worked; if the employee is terminated, the check is due the next business day.

### Instant Dismissal

Employment in Oregon is generally "at will," meaning that the employer or the employee may terminate the employment relationship at any time, for any reason, with or without notice – subject to state and federal discrimination and labor laws and any employment contract.

### Employee's Resignation

See "instant dismissal," supra.

### Termination on Notice

Absent a contract between the employer and the employee to the contrary, employees may generally be terminated without prior notice. However, notice may be required before certain plant closings or mass layoffs.

### Termination By Reason Of The Employee's Age

Federal and state discrimination laws prohibit termination based on age except in very limited and unusual instances.

### Automatic Termination In Cases Of Force Majeure

Yes, however such instances are very rare.

### Termination By Parties' Agreement

The parties are free to terminate on any grounds they desire except for reasons prohibited by federal or state anti-discrimination laws. Also, the terms of an employment agreement or collective bargaining agreement may require specific terms and conditions for termination, including that an employer have "just cause" for termination.

### Directors Or Other Senior Officers

Termination of employment does not automatically bring an end to board membership. A company's articles of incorporation will usually govern the steps needed to terminate board membership.

### Special Rules For Categories Of Employee

None



### Specific Rules For Companies in Financial Difficulties

Employees who lose their jobs due to closure of a business may qualify for payments from Oregon's Wage Security Fund.

### Restricting Future Activities

Non-competition agreements are enforceable in Oregon in very limited circumstances as set forth in state statute. Non-solicitation and non-disclosure agreements may also restrict an employee's future activities.

### Severance Payments

Oregon does not require an employer to provide severance pay.

### Special Tax Provisions And Severance Payments

Severance payments are subject to taxation and are generally treated as wages.

### Allowances Payable To Employees After Termination

Employees who are terminated through no fault of their own and who are available to work and actively seeking work may be entitled to receive unemployment compensation.

### Time Limits For Claims Following Termination

If an employee wishes to pursue state law claims with BOLI, the complaint must generally be filed within one year. If the claim being pursued is a federal claim, the complaint must be filed or "cross-filed" within 300 days. If there is no requirement to file a complaint with an administrative agency, the time limits for filing suits in federal or state court are governed by the statute under which claim is made. The statute of limitations for contract claims is six years.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

Oregon is one of the few states in the United States to have a "medical marijuana" law. The law specifically states that employers are not required to accommodate medical marijuana in the workplace.

Oregon law also provides for:

1. leave for the victims of crime;
2. the prohibition on genetic screening and brain wave testing;
3. protection from discrimination based on expunged juvenile record;
4. the prohibition of polygraph exams;
5. leave to donate bone marrow;
6. leave for victims of domestic violence;
7. the legal use of lawful tobacco products on off-duty hours;
8. Veterans Day holiday for veterans;
9. restrictions on employer access to employees' social media;
10. employment protection for interns;
12. leave for death of a family member;
13. reasonable unpaid rest periods for employees to express breastmilk; and
14. the prohibition of background checks.

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# USA - Pennsylvania

# USA - Pennsylvania

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Certain claims can be asserted before the state Department of Labor & Industry. Most claims can be asserted in courts of general jurisdiction although certain claims, such as discrimination claims, must be first presented to the appropriate administrative agency.

### The Main Sources Of Employment Law

Employment arrangements are governed by general common law principles of contract law, but there are common law and legislative requirements which over-ride those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements, and in some instances employee handbooks can form part of the contractual relationship.

### National Law And Employees Working For Foreign Companies

Federal law, state common law and state statutes apply to all individuals physically working in the state, regardless of nationality, and regardless of the law governing their employment contract, although in certain narrow instances a national treaty with a foreign government may pre-empt the application of national law. The parties may by contract agree to apply the law of another state in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law applies to all employees working in the United States and, in some circumstances, to employees outside of the United States for United States based companies. State law applies only when the employee is physically working in the state or when both parties have agreed in writing to the application of the laws of another state.



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

There are no requirements as to the form of an agreement to hire. The employment agreement can therefore be written or oral.

### Mandatory Requirements:

#### Trial Period

There are no mandatory trial periods.

#### Hours Of Work

The state does not impose maximum working hours on employers, but a "non-exempt" employee, as defined by federal or state statute, who works more than 40 hours per week must be paid overtime. The overtime requirement does not apply to "exempt" employees, including executive, professional, administrative and outside sales employees who earn at least $455 per week and other employees as described by statute.

#### Earnings

In Pennsylvania minimum wage requirements are applicable to all employees.

Failure to pay timely wages may in many cases result in an employer being required to pay the unpaid wages, a penalty of 25% of the amount unpaid and attorneys' fees of the employee. Most employers are required to pay the higher of federal minimum wage or the state minimum wage. The current federal minimum wage is $7.25 per hour and Pennsylvania's is $7.15 per hour. Certain employees such as farm workers and domestic workers in a personal home are exempt from minimum wage requirements. The minimum wage is set by the legislature and revised from time to time by an amendment to the applicable federal or state statute.

#### Holidays / Rest Periods

Employees are not entitled to holiday leave. Most employees are not legally guaranteed rest or meal periods. However, various compulsory daily rest periods are established for certain professions. For example, a 30 minute rest period or meal break is required for every five hours of work for seasonal farm workers. 43 P.S. § 1301.207. Firefighters must receive at least one 24 hour period of rest per week. 43 P.S. § 481.

#### Minimum/Maximum Age

The normal minimum age is 14 (which can be varied in certain cases). Different rules (e.g. on working time) apply to children or young workers. There is no maximum working age.

#### Illness/Disability

Employees are not entitled to paid leave due to illness. However, it is common for all but small employers to provide some paid time off for employees who are absent from work due to illness.

Federal and state law impose specific requirements to accommodate employees with a disability, including providing unpaid leave in certain circumstances. Federal law also requires certain employers to provide unpaid leave to eligible employees with a serious medical condition, who are caring for an immediate family member with a serious medical condition or who are caring for an injured military service member. Employees may have the right to use accrued paid time off during unpaid leave. In some states other than Pennsylvania, employees may be eligible to receive disability insurance or paid leave under state law.

#### Location Of Work/Mobility

There are no requirements concerning an employee's location of work or mobility. Employers can require employees to work in different locations at any time.

#### Pension Plans

Requirements relating to pension plans are established by federal law.

#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

There are non-discrimination and leave requirements for pregnancy. Federal law mandates unpaid leave requirements for parents after the birth or adoption of a child and state law requires that fathers and mother receive the same leave to care for a child following the birth or adoption of a child.

| Compulsory Terms | Non-Compulsory Terms |
| --- | --- |
| State law mandates that employees must be advised as to when they will be paid and that employees must be paid for hours worked. | The parties are free to agree to any specific terms, although some terms, which are less favourable than those provided by the state or federal law, may not be enforceable. |

### Types Of Agreement

There are oral agreements and written agreements. Where employees are in a union, the collective bargaining agreement governs the terms and conditions of those employees' employment.

There are agreements for a specific term of employment, agreements for part time employment and agreements that provide that the employment is "at-will" and, thus, is terminable at any time. Some terms of some agreements may not be enforceable depending upon the facts of each particular case.

### Secrecy/Confidentiality

Whether or not an employee has a written contract or is under an express secrecy/confidentiality clause, the employee is under an implied duty to protect trade secrets and confidential proprietary information of the employer.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of a written agreement between the parties, ownership of IP rights is determined by federal statute.

### Hiring Non-Nationals

Employers are obliged by federal law to ensure that all employees are entitled to work in the US; different requirements may apply depending on the nationality/status of the individual concerned.

### Hiring Specified Categories Of Individuals

There are restrictions on the types of work that children can be required to undertake.

### Outsourcing And/Or Sub-Contracting

There are no restrictions on outsourcing or sub-contracting unless a collective bargaining agreement contains such restrictions.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

The employer can unilaterally change the terms of employment unless there is a contractual provision, often found in collective bargaining agreements that changes may only be made with the consent of both parties.

### Change In Ownership Of The Business

Federal law requires that employers give employees 60 days prior notice (or 60 days pay) in the event of plant closings or mass layoffs which affect specific numbers of employees. Local laws require that in certain industries employees transfer to the new employer under their existing contracts. Collective bargaining agreements or the presence of the union also can provide that the employer complies with other requirements when there is a change in the ownership of a business.

### Social Security Contributions

There are mandatory social security contributions which must be made by both the employer and the employee.

### Accidents At Work

Federal law requires employers to keep logs of all accidents at work. State law requires employers to maintain insurance to provide compensation for workplace injuries. Such compensation is designed to provide injured workers with monetary benefits, medical care and rehabilitation services. Most employees will be deemed to have waived their common law right to sue their employers or co-workers in tort for personal injuries.

### Discipline And Grievance

There are no mandatory requirements for discipline and/or grievance procedures unless a collective bargaining agreement or a specific contractual provision applies.

### Harassment/Discrimination/Equal pay

Federal and state laws recognize harassment as an offence where it relates to certain discriminatory factors. Employees are protected from discrimination and harassment on grounds of sex, age, national origin, race, colour, religion, disability, familial and veteran status. The concept of equal pay is recognized by federal and state legislation. Local ordinances prohibit discrimination based on sexual orientation and gender identity.

### Compulsory Training Obligations

There are no required training obligations.

### Offsetting Earnings

State law prohibits deducting employee debts from employee earnings unless there is a specific written authorization by the employee for such a deduction. In addition, federal and state law require the payment of at least minimum wage for all hours worked during all pay periods and offsets for employee debts may not result in a payment of less than minimum wage.

### Payments For Maternity And Disability Leave

There are no mandated payments for disability leave but if an employer provides paid disability leave it must treat maternity leave the same as disability leave and pay pregnant employees whilst on maternity leave to the extent they are unable to work.

### Compulsory Insurance

There is compulsory workers compensation and unemployment insurance. Employers pay for workers compensation insurance. Employers and taxpayers pay for unemployment insurance.

### Absence For Military Or Public Service Duties

Federal law establishes the requirements for military leave. Employers generally are required to keep the job open for those on military service. While employers are not required to pay employees on military leave, when those employees return, the employer is required to restore the position and benefits that they would have had had they not been called to military duty. There are no requirements for public service leave.

### Works Councils or Trade Unions

Under federal law employees can force the employer to recognize a union by petitioning for and winning an election by majority vote. Individuals who are involved in activities to promote a union are protected from being subjected to adverse employment actions such as dismissal because of their activities in that role.

### Employees' Right To Strike

Under federal law groups of employees may strike, even if there is not a collective bargaining agreement or formal union at the site of employment, subject to limits for employees who provide public services.

### Employees On Strike

Typically, employees on strike cannot be fired unless the employees engage in serious misconduct whilst on strike or the strike was unlawful and unprotected. However, if employees are on an economic strike they may be permanently replaced by the employer and may be denied reinstatement if there are no open positions at the end of the strike until appropriate positions materialize.



### Employers' Responsibility For Actions Of Their Employees

Employers' are responsible for actions of their employees within the scope of their employment and actions which the employer appeared to authorize. Employers are not responsible where the employee was acting outside the course of employment or for personal reasons.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no required procedures for terminating employment unless such procedures are specified in a collective bargaining agreement or a contract of employment.

### Instant Dismissal

Employment in Pennsylvania is generally "at will" meaning the employer can dismiss the employee at any time for any or no reason and with or without prior notice, as long as the employer is not terminating the employee's employment for a discriminatory reason. A collective bargaining agreement or an employment contract can alter the "at will" nature of the employment relationship.

### Employee's Resignation

An employee can resign at any time for any or no reason with or without prior notice to the employer although some employment contracts provide for a financial penalty if the employee does not provide the notice specified in the contract.

### Termination on Notice

As is noted above, employees can be dismissed at any time except for discriminatory reasons, unless a collective bargaining agreement or an employment contract requires advance notice. In addition, under federal law, workers must be given 60 days' notice or 60 days' wages before certain plant closures or mass layoffs.

### Termination By Reason Of The Employee's Age

Generally employment cannot be terminated because of the employee's age if the employee is 40+ years old.

### Automatic Termination In Cases Of Force Majeure

Although generally employment can be terminated in cases of force majeure, such occasions are rare.

### Termination By Parties' Agreement

The parties can agree to terminate employment at any time by agreement.

### Directors Or Other Senior Officers

There are no specific requirements for the dismissal of a director or senior officer unless a requirement is set out in an employment agreement. Termination of the employment of a director generally does not automatically end the director's board membership. Separate steps, set out in the company's by-laws or articles of incorporation, may need to be taken to bring the directorship to an end.

### Special Rules For Categories Of Employee

There are no special rules for certain categories of employees relating to termination, other than those already discussed above.

### Specific Rules For Companies in Financial Difficulties

Federal law requires 60 days prior notice in the event of a plant closings or mass layoffs affecting specific numbers of employees. Exceptions to the notice requirements exist when the layoffs resulted from closure of a faltering company and unforeseeable business circumstances.

### Restricting Future Activities

The parties can agree to restrictions on future activities. State law requires that such agreements must be supported by consideration, such as entering into employment, or receiving a promotion with a bonus or salary increase. Post termination, courts will review the restrictions to ensure that they are reasonable and are drafted narrowly. Each case is considered on its own facts, so what might be appropriate for one employee may be unreasonable for another.

### Severance Payments

Severance is not required unless the employer has a severance policy or the employee has a written contract providing for severance. There are specific rules governing the validity of a release provided for severance.

### Special Tax Provisions And Severance Payments

There are no special tax provisions relating to severance payments. Severance payments are subject to tax in the normal way. Federal law imposes a penalty tax on certain deferred compensation payments.

### Allowances Payable To Employees After Termination

There are no allowances that the employer is required to pay to the employee after termination of employment. However, there is an unemployment compensation tax imposed on employers.

### Time Limits For Claims Following Termination

There are time limits for claims following termination. The time limits vary depending on the claim. Discrimination claims must generally be brought within 300 days under federal law and within 180 days under state law.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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# USA - Tennessee

USA - Tennessee

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Federal courts have jurisdiction over disputes involving federal statutes and inter-state disputes of more than $75,000. State courts have jurisdiction over all other lawsuits. In addition, state and federal agencies, such as the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Commission, the Tennessee Civil Rights Commission, and the State Employment Relations Board investigate charges of employer misconduct.

### The Main Sources Of Employment Law

Tennessee is a common law jurisdiction. Employment contracts are governed by case law, but there are various statutes that also govern employment relationships. These include federal statutes such as Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), and the Family Medical Leave Act (FMLA), as well as state statutes such as Tennessee's Civil Rights Law.

### National Law And Employees Working For Foreign Companies

The statutory rights under federal and state law will apply to all individuals physically working in Tennessee, regardless of their nationality, and regardless of the law governing their contract of employment.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), and the Americans With Disabilities Act (ADA) all apply to U.S. Citizens working in another jurisdiction. Tennessee's Human Rights Act applies to employees of Tennessee employers that employ eight or more employees in the state.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

Most U.S. and Tennessee employees are employed at will and not subject to a contract of employment. Thus, there is no legal requirement as to the form of an employment agreement. However, there are federal and state laws governing certain terms and conditions of employment.

## Mandatory Requirements:

### Trial Period

No mandatory trial period is required.

### Hours Of Work

Federal law requires compensation of non-exempt employees at 1.5 times their regular rate of pay for all hours worked in excess of 40 hours per week. Additionally, Tennessee law limits the number of hours that minors (under age 18) can perform work.

### Earnings

Tennessee has adopted the federal minimum wage rate of $7.25 per hour worked.

### Holidays / Rest Periods

No mandatory holidays for private employers in Tennessee. Tennessee law requires employers in most cases to provide a thirty-minute rest period for every six consecutive hours worked. This rest period cannot be required to take place in the first or last hour worked.

### Minimum/Maximum Age

In Tennessee, employers cannot employ minors aged 16 or 17 during school hours or between the hours of 10 p.m. and 6 a.m., Sunday through Thursday preceding a school day. Employers cannot employ minors aged 14 or 15 during school hours or after 7 p.m. or before 7 a.m. if the next day is a school day. Tennessee also limits the total number of hours all minors (individuals under age 18) can work. State and federal law prohibit discrimination against individuals who are age 40 and older.

### Illness/Disability

Tennessee and federal law prohibits discrimination against employees with disabilities. The Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees with up to twelve (12) weeks of unpaid leave for their own serious health condition, or to care for a spouse, child or close family member with a serious health condition, or to care for a newly-born or recently adopted child. Tennessee law requires most employers to provide workers' compensation benefits (including leave when appropriate) for on-the-job injuries.

### Location Of Work/Mobility

There is no mandatory requirement for an employer to set out an employee's location of work. An employer can require an employee to move work location at any time.

### Pension Plans

Certain pension plans are regulated by the Employee Retirement Income Security Act (ERISA), a federal law.

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees with up to twelve (12) weeks unpaid job-protected leave because of the birth of a child and to care for that newborn child, or because of the placement of a child with the employee for adoption or foster care. The federal Pregnancy Discrimination Act prohibits discrimination in employment due to an employee's pregnancy. In Tennessee, qualified employees are entitled to up to four (4) months of unpaid leave for pregnancy, childbirth and care of a newborn. Tennessee employers are required to provide unpaid break time and privacy for female employees who are nursing an infant to express breast milk, unless doing so would unduly disrupt the employer's operations.



### Compulsory Terms

There are no compulsory terms.

### Non-Compulsory Terms

Parties are free to negotiate non-compulsory terms.

## Types Of Agreement

Tennessee courts will enforce both oral and written employment agreements.

## Secrecy/Confidentiality

In Tennessee, former employees have a general duty of loyalty to not disclose confidential or proprietary information or trade secrets belonging to their former employer. Parties in Tennessee can also negotiate and agree to stricter confidentiality agreements, which will be enforced by Tennessee courts.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally, employers own intellectual property created by their employee as part of their employment or created using the employer's information, equipment, or materials.

## Hiring Non-Nationals

Employers should be aware that foreign nationals must be authorized to work in the U.S. and whether such employment is restricted in any way. U.S. laws, rules, and regulations governing the work authorization of foreign nationals are complex. Basically, U.S. Citizenship and Immigration Services (USCIS) regulations establish three classes of foreign nationals who are allowed to work in the U.S.: (1) aliens authorized to work incident to their immigration status, (2) aliens who are permitted to work for a specific employer incident to their status, and (3) aliens who must apply for and obtain permission from the USCIS in order to accept employment in the U.S. Tennessee law states that it is unlawful for any person, unless granted an exemption by the U.S. Department of Labor, to knowingly employ or refer to others for employment, an individual who has entered the U.S. illegally.

## Hiring Specified Categories Of Individuals

Federal contractors have certain affirmative action obligations with respect to minorities, women, U.S. veterans, and persons with disabilities under Executive Order 11246. In Tennessee, employers cannot employ minors during certain hours.

## Outsourcing And/Or Sub-Contracting

No specific rules, unless covered by a collective bargaining agreement.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

Common law contract principles apply to contract changes made by either party. Thus, an employer may not change any terms of the employee's contract without the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for an appropriate period of time after being made aware of the change). Any change of terms to which the employee does not consent will amount to a breach of contract.

### Change In Ownership Of The Business

There are no general rules pertaining to changes in business ownership. However, if the employees are organized in a collective bargaining unit, the successor owner may be required to bargain with the employees' representative.

### Social Security Contributions

Both employees and employers must make social security contributions. Employers are not required to contribute toward allowances payable to employees during their employment.

### Accidents At Work

Both the Occupational Safety and Health Act (OSHA) and the Tennessee Occupational Safety and Health Act (TOSHA) apply to workplace accidents and reporting obligations. The laws also establish protective standards for workplaces in Tennessee. The Tennessee Workers' Compensation statutes provide an exclusive remedy from the employer for an employee who is injured during the course and scope of his or her employment.

### Discipline And Grievance

There are no laws on discipline or grievance procedures for private sector employers who are not bound by a collective bargaining agreement.

### Harassment/Discrimination/Equal pay

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), and the Tennessee Human Rights Act (THRA) all prohibit employers from discriminating on the basis of race, sex, religion, national origin, color, age (over 40), disability or ancestry. The Genetic Information Nondiscrimination Act (GINA) prohibits discrimination based on an individual's genetic information.

### Compulsory Training Obligations

No specific laws.



### Offsetting Earnings

Federal and state laws allow an employer to offset an employee's debts against earnings. Additionally, in Tennessee an employer may offset any pay received by an employee for jury duty performed while on leave from work.

### Payments For Maternity And Disability Leave

Under the FMLA, payments for maternity and disability leave are not required. However, employers may choose to pay employees their sick leave or disability benefits while the employees are on FMLA leave. This way, employees can be prevented from taking 12 weeks unpaid leave in addition to whatever sick leave they may be entitled to under their employment agreement.

### Compulsory Insurance

Every Tennessee employer with five or more employees must carry workers compensation insurance.

### Absence For Military Or Public Service Duties

The federal Uniform Services Employment and Reemployment Rights Act (USERRA) sets forth the requirements for military leave.

### Works Councils or Trade Unions

Employees have rights for collective bargaining and acting in concert under the National Labor Relations Act (NLRA), a federal law.

### Employees' Right To Strike

See discussion of collective bargaining in the U.S. Federal Law Section.

### Employees On Strike

See discussion of collective bargaining in the U.S. Federal Law Section.

### Employers' Responsibility For Actions Of Their Employees

Generally, an employer is accountable for the actions of its employee unless the employee was acting outside the scope of his or her employment.

# 04. Firing The Employee

Note that in the U.S., most employees are not subject to a contract, but are at-will. The entries below address at-will employees. To the extent that an employee has a contract with the employer, the terms of the agreement, including those related to termination, are governed by contract law.

### Procedures For Terminating The Agreement

In Tennessee, employees are at-will, meaning they can be terminated at the will of either the employer or the employee for any lawful cause, or for no cause at all. If there is an employment contract in place, then general principles of contract law will apply to terminating that agreement.

### Instant Dismissal

See above. An employer can terminate the employment at any time and for any reason not in conflict with the above. Additionally, Tennessee law requires an employer to furnish a completed separation agreement form to a terminated employee (this form assists the employee in filing for unemployment compensation benefits).

### Employee's Resignation

A voluntary resignation can serve to terminate the employment relationship.

### Termination on Notice

No advance notice of termination is generally required, unless mandated by the parties' employment agreement. However, under federal and state law employers of a certain size must provide advance notice of any mass layoff or plant closing.

### Termination By Reason Of The Employee's Age

Generally not allowed, except in limited cases where retirement is required by law or pursuant to a bona fide occupational qualification under the Age Discrimination in Employment Act (ADEA).

### Automatic Termination In Cases Of Force Majeure

Yes, under the principles of termination described in the preceding sections.

### Termination By Parties' Agreement

The at-will relationship may be terminated by either party for any reason or for no reason. No court or regulatory body approval is needed for the termination to be effective.

### Directors Or Other Senior Officers

No specific rules.



### Special Rules For Categories Of Employee

Employees who are represented by a labor union or are part of a collective bargaining agreement may only be terminated pursuant to the terms of that bargaining agreement.

### Specific Rules For Companies in Financial Difficulties

If applicable, the notice requirement required for certain employers for mass layoffs or plant closings (see above) may be waived.

### Restricting Future Activities

Non-competition agreements are not favored in Tennessee but may be enforced if deemed reasonable under the facts of the case. Non-solicitation agreements (e.g. for current employees or customers) may likewise be enforced.

### Severance Payments

No specific rules requiring severance payments. However, such payments would be taxable as regular income.

### Special Tax Provisions And Severance Payments

See above.

### Allowances Payable To Employees After Termination

There are no allowances payable to employees after termination.

### Time Limits For Claims Following Termination

#### Federal

Employees must file a charge alleging discrimination with the Equal Employment Opportunity Commission ("EEOC") within 300 days after the unlawful discriminatory practices alleged in the charge were committed. The employee's right to sue in federal court is contingent upon filing a charge of discrimination with the EEOC. A suit in federal court alleging violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act and/or the Age Discrimination in Employment Act must be filed within 90 days of receipt of the EEOC's Dismissal and Notice of Rights. Suits alleging violation of the federal Equal Pay Act (EPA) must be filed in federal or state court within 2 years (3 years for wilful violations) of the alleged EPA underpayment. Suits for claims of unpaid overtime or violations of minimum wage under the Fair Labor Standards Act (FLSA) must be filed within two years (three years for wilful violations) of the alleged violation.

#### Tennessee

An employee has one year to file a lawsuit alleging discrimination under the Tennessee Human Rights Act (THRA). That employee may file a charge with the Tennessee Human Rights Commission but is not required to do so prior to filing suit under the THRA. Filing a charge with the THRC does not toll the one-year statute of limitations on filing a lawsuit alleging discrimination under the THRA. An employee injured at work has one year to file a workers' compensation claim in Tennessee.

# 05. General

**Specific Matters Which Are Important Or Unique To This Jurisdiction**

1. Employers in Tennessee may mandate that employees receive their pay through direct bank deposit.
2. Tennessee is a right to work state, meaning an employee cannot be denied employment because of affiliation or non-affiliation with a labor union.
3. Employees who work with hazardous materials are protected by "right to know" laws.
4. Tennessee employees are entitled to paid jury duty leave and voting leave (although pay for jury duty leave may be offset by any amount the employee received from the jury duty).
5. Employees who smoke are protected from discharge from employment as long as he/she complies with all applicable employer policies regarding smoking during times at which the employee is working.
6. In Tennessee, an employee cannot be terminated for absences caused by attending military training.

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# USA - Texas

# USA - Texas

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The State of Texas does not have specialized labour courts. Instead, employment disputes can be litigated in state and federal courts located in Texas.

### The Main Sources Of Employment Law

Relevant Texas statutes are located in the Texas Labor Code and include the following: Chapter 21 of the Texas Labor Code (commonly referred to as the Texas Commission on Human Rights Act ("TCHRA")), the Texas Workers' Compensation Act, the Texas Payday Law, and the Texas Unemployment Compensation Act. In many instances, federal law will govern an employment matter on which Texas law remains silent.

The TCHRA prohibits employers with 15 or more employees from discriminating against individuals on the basis of race, color, disability, religion, sex, national origin, or age, and further prohibits employers from retaliating against individuals for engaging in protected activity. The TCHRA also prohibits discrimination or retaliation by employment agencies and labor organizations. The TCHRA is enforced by the Texas Workforce Commission's civil rights division, and persons who believe a violation of the Act has occurred must file a complaint with the Commission no later than 180 days after the date the alleged unlawful practice occurred.

The Texas Workers' Compensation Act provides a statutory framework for employers to elect to provide workers' compensation coverage or risk being subject to civil suit in the event of an employee's injury. Under the Act, workers' compensation insurance may be provided through a licensed insurance company or employers may choose to self-insure. An employer who opts out of the statutory framework cannot obtain an enforceable pre-injury waiver of the right to sue the employer for on-the-job injuries.

The Texas Payday Law provides that, unless an employee agrees in writing to accept payment of wages in kind or another form, wages must be paid to an employee who renders services for the employer. An employee who feels that she has not been paid all wages earned may file a complaint with the Texas Workforce Commission no later than 180 days after the date the claimed wages became due for payment.





The Texas Unemployment Compensation Act provides a fund to provide monetary assistance for unemployed or partially unemployed individuals who qualify for assistance.

United States federal law, however, remains a principal source of employment law in Texas, as do general principles of common law and contract law.

### National Law And Employees Working For Foreign Companies

Federal law and treaty governs whether United States federal law will apply to employees of foreign companies. Employees who work in the United States or its territories are protected by the United States civil rights laws whether they work for a domestic or foreign employer. One exception to the rule occurs when the employer is not a United States employer and is subject to a treaty or other binding international agreement that permits the company to prefer its own nationals for certain positions. See, e.g., Convention of Establishment between United States and France, 11 U.S.T. 2398, T.I.A.S. No. 4625, Article VI (1959) (France); Treaty of Friendship, Commerce, and Navigation, 8 U.S.T. 2217, T.I.A.S. No. 3947 (1956) (Korea); Treaty of Friendship, Commerce and Navigation, 4 U.S.T. 2063, T.I.A.S. No. 2863, Article VIII (1953) (Japan).

### National Law And Employees Of National Companies Working In Another Jurisdiction

A national company with a presence in multiple states often must analyze which state's law governs a particular employment matter. Texas law provides that the law of the state/union with the most significant relationship to the particular substantive issue will be applied to resolve that issue. In most instances, parties may contractually agree as to what law will apply to employment-related disputes.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Texas has no formal legal requirements as to the form of agreement upon the commencement of employment, and many Texas employees do not have a written employment agreement.

A Texas employee who is hired for an indefinite period of time is known as an "at-will" employee.

### Mandatory Requirements:

Trial Period

Texas has no mandatory requirements relating to trial or probationary periods of employment.

### Hours Of Work

Texas has no mandatory requirements relating to hours of work, except there are laws regarding the number of work hours that employees of the State of Texas must work. Full-time employees of the State of Texas must work forty (40) hours per week. Tex. Gov't Code Ann. § 658.001-.002. Employees of the State of Texas who are not subject to the Fair Labor Standards Act must receive compensatory time for hours worked in excess of forty (40) per week. Id. § 659.016. A private employer should refer to the federal Fair Labor Standards Act for requirements concerning overtime, minimum wage requirements, and other wage issues including employees who are exempted from overtime pay requirements.

### Earnings

The Texas Minimum Wage Act applies to employees who are not covered by federal minimum wage rules. Employers must follow the law that grants the greatest benefit to the employee. The Texas Minimum Wage Act mandates that employers pay employees the federal minimum wage provided for in section 6 of the Fair Labor Standards Act ("FLSA"). Exempt from this requirement are persons covered by the FLSA, as well as certain (i) employees of religious or charitable organizations, (ii) domestic servants, (iii) inmates, (iv) youth and students,(v) professional or executive employees, (vi) public officials, (vii) family members, (viii)dairy farmers, and (ix) employees of seasonal recreational establishments.

### Holidays / Rest Periods

The Texas Payday Law requires that if an employer enters into a written agreement with the employee regarding vacation pay, or has a written policy regarding the same, the employer must adhere to that agreement or policy. Further, accrued, unused vacation pay may have to be paid at termination if required by the employer's policy.

### Minimum/Maximum Age

Texas law provides for a minimum age of 14 (subject to certain, limited exceptions). The Texas Labor Code includes child labor laws that – in most cases – reflect the federal child labor laws. Where federal and state child labor laws differ, the more restrictive regulation is applicable. There are no statutory rules relating to maximum age, except that Texas law explicitly allows compulsory retirement programs for certain classes of employees who are over 65, when a number of additional requirements are met.

### Illness/Disability

The Texas Payday Law requires that if an employer enters into a written agreement with the employee regarding sick leave pay, or has a written policy regarding the same, the employer must adhere to that agreement or policy. As with federal law, Texas law (Texas Labor Code Chapter 21) states that if an employee with a disability can perform the essential functions of the job position with or without a reasonable accommodation, the employer cannot refuse to hire the employee because of the underlying disability. In addition, the employer may be required to provide a reasonable accommodation to assist an employee in completing the hiring process. By way of example, an employer may be required to provide a sign language interpreter for a deaf applicant during an interview.

### Location Of Work/Mobility

Texas has no mandatory requirements relating to location of work/mobility.

### Pension Plans

Texas has no mandatory requirements relating to pension plans.

### Parental Rights (Pregnancy/Maternity/ Paternity/Adoption)

Texas has no mandatory requirements relating to parental rights (pregnancy/ maternity/ paternity/ adoption). An employer with 50 or more employees may be subject to the federal Family and Medical Leave Act, which may provide for unpaid leave if an eligible employee adopts or gives birth.

### Compulsory Terms

There are no other compulsory terms which must be included in an employment agreement.

### Non-Compulsory Terms

The parties are free to agree to other non-compulsory provisions in an employment agreement.



## Types Of Agreement

The following agreements may be entered between an employer and employee in Texas.

Non-Competition Agreement – Pursuant to Section 15.50 of the Texas Business and Commerce Code, an employer may require that its employees sign agreements that will limit their post-termination ability to compete with the employer. These agreements can become complicated, and employers should retain Texas counsel to make certain that the agreement is enforceable and reasonable.

Non-Solicitation Agreement – An employer may enter into an agreement that limits an employee's post-termination ability to solicit co-workers and/or customers to benefit competitors. These non-solicitation agreements should comply with the Texas Business and Commerce Code.

Confidentiality Agreement – An employer may enter into an agreement that restricts an employee's ability to use or disclose confidential information/trade secrets both during and after employment. NOTE: The Texas Uniform Trade Secrets Act also creates employee obligations to maintain an employer/former employer's confidential information.

Arbitration Agreement – Under the federal Arbitration Act and/or the Texas Arbitration Act, an employer may require employees to resolve disputes via arbitration rather than via litigation. There is a substantial body of case law concerning enforcement of employer/employee arbitration agreements.

## Secrecy/Confidentiality

Texas common law was the primary source of protection for business trade secrets until Texas enacted the Texas Uniform Trade Secrets Act ("TUTSA") (effective September 1, 2013). TUTSA is patterned on the Uniform Trade Secrets Act, which has been adopted by at least 46 other states. TUTSA provides a statutory definition for "trade secrets" and creates the legal standards for pursuing claims of misappropriation of trade secrets. In addition, TUTSA determines the equitable and legal relief available to litigants including damages, attorneys' fees, exemplary damages, and injunctive relief.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Federal law generally governs the ownership of inventions and other intellectual property rights, but the Texas Trademark Act and Texas common law provide additional protections. Generally, the Texas Trademark Act permits registration of trademarks with the Texas Secretary of State which is similar to United States federal law under the Lanham Act. In fact, the Texas Act was recently revised with the intention of making the Texas Act substantially consistent the Lanham Act. In addition, Texas common law recognizes various causes of action that provide protection to intellectual property rights, including claims for misappropriation, "palming off" (i.e., common law trademark infringement), and unfair competition.

### Hiring Non-Nationals

Texas has no laws regarding the hiring of non-nationals. Federal immigration law governs the hiring of non-nationals.

### Hiring Specified Categories Of Individuals

Texas child labor laws set out in the Texas Labor Code provide certain rules regarding the employment of individuals 15 years old and under. Specifically, the Labor Code makes it unlawful for any person to employ a child less than 14 years of age. Generally, children aged 14 or 15 may be employed, but they are restricted from working more than 8 hours in one day or 48 hours in one week. Moreover, a person cannot employ a child aged 14 or 15 who is enrolled in school to work between the hours of 10 p.m. and 5 a.m. on days followed by a school day or between the hours of midnight and 5 a.m. on days not followed by a school day.

### Outsourcing And/Or Sub-Contracting

Generally, Texas has no specific rules regarding outsourcing and/or sub-contracting. However, the Texas Labor Code has certain requirements for "staff leasing" companies, and dictates that staff leasing companies share certain employment obligations with the client company. See Chapter 91 of the Texas Labor Code.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

When an employee is an employee-at-will, an employer can change the terms of employment at any time, and if the employer provides the employee unequivocal notice of the change and the employee continues employment, he/she is deemed to have accepted the change in conditions of employment. If, however, the employee is not an at-will employee, the parties typically must consent to any changes to the employment agreement.

### Change In Ownership Of The Business

There are no specific rules which apply when there is a change in ownership of the business.

### Social Security Contributions

Federal law governs social security contributions.



### Accidents At Work

The Texas Workers' Compensation Act applies to employees who are injured while on the job. The Act provides a statutory framework for employers to elect to provide workers' compensation coverage or risk being subject to civil suit in the event of an employee's injury. Under the Act, workers' compensation insurance may be provided through a private insurance carrier or employers may choose to self-insure. Employees entitled to workers' compensation benefits are entitled to full medical benefits with no time or monetary limitations. In addition, employers are prohibited from retaliating against employees who have filed for workers' compensation benefits.

### Discipline And Grievance

Texas has no specific rules governing the discipline of employees and/or employee grievances.

### Harassment/Discrimination/Equal pay

The TCHRA prohibits discrimination, harassment, and unequal pay in employment based on race, color, disability, religion, sex, national origin, or age, and further prohibits employers from retaliating against individuals for engaging in protected activity. "Employer" is defined in the TCHRA as an entity employing 15 or more employees. The TCHRA also prohibits discrimination or retaliation by employment agencies and labor organizations. The TCHRA is enforced by the Texas Workforce Commission's civil rights division, and persons who believe a violation of the Act has occurred must file a complaint with the Commission no later than 180 days after the date the alleged unlawful practice occurred.

### Compulsory Training Obligations

In general, Texas has no compulsory training obligations.

### Offsetting Earnings

The Texas Payday Law permits employers to offset earnings against an employee's debts if authorized by the employee in writing.

### Payments For Maternity And Disability Leave

Texas law does not provide for paid maternity or disability leave.

### Compulsory Insurance

Texas law does not mandate that employers provide insurance for their employees.

### Absence For Military Or Public Service Duties

While federal law governs absences for military duty, Texas law does provide some protection for employees who engage in other public service duties. For example, under the Texas Civil Practice and Remedies Code, employees must be provided time off to serve as jurors, and it is unlawful for an employer to terminate an employee because the employee serves as a juror. Also, under the Texas Election Code, employees must be given time to vote without any penalty if voting polls are not open for two consecutive hours outside the employee's work day.

### Works Councils or Trade Unions

Texas is a right-to-work state. Therefore, denial of employment on the basis of membership or non-membership of a union is prohibited. The Texas Labor Code provides some rules regarding basic labor union activities. Most labor disputes, however, will be governed by federal law.

### Employees' Right To Strike

Labor disputes are generally governed by federal law.

### Employees On Strike

Labor disputes are generally governed by federal law.

### Employers' Responsibility For Actions Of Their Employees

This area of employment practice is governed by Texas common law. Under Texas common law, an employer can generally be held liable for the acts of its employees under a theory of vicarious liability, respondent superior, negligent hiring, supervision, and/or retention, or vice-principal liability. Employers are generally not liable for the acts of an off-duty employee. There are, however, exceptions to this general rule. Exceptions include when the employee commits a tort on the employer's premises, or with the employer's property. In certain circumstances, an employer may also be liable for the actions of an independent contractor.

## 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no rules or specific procedures relating to the specific form for terminating an at-will employee. If an employee is not an employee-at-will, however, the employer should review any contract for special procedures and any limitations on termination. Likewise, if an employee is covered by a collective bargaining agreement, the employer should review the CBA.

### Instant Dismissal

An employer can terminate an agreement by instant dismissal. As Texas is an "at-will" employment state, an employer may terminate the employment relationship for a good reason, bad reason, or no reason at all, so long as that reason is not discriminatory or otherwise unlawful. If an employee is not an employee-at-will, however, the terms of the employment agreement will govern termination of employment.

### Employee's Resignation

An agreement can be terminated by the employee's resignation.



### Termination on Notice

The parties can terminate an agreement on notice. There is no minimum period of notice required under Texas law.

### Termination By Reason Of The Employee's Age

An agreement generally cannot be terminated by reason of the employee's age because age discrimination is prohibited by the Texas Commission on Human Rights Act (as well as the federal Age Discrimination in Employment Act). Except for limited exceptions, Texas law prohibits compulsory retirement programs.

### Automatic Termination In Cases Of Force Majeure

Under Texas law, an employment agreement can automatically be terminated in cases of force majeure.

### Termination By Parties' Agreement

Employment can be terminated by the parties' agreement.

### Directors Or Other Senior Officers

There are no separate rules for firing directors or other senior officers.

### Special Rules For Categories Of Employee

Unless pursuant to a collective bargaining agreement, there are no other categories of employee for whom special rules apply on termination.

### Specific Rules For Companies in Financial Difficulties

The federal Bankruptcy Code governs, and, in certain circumstances, the federal Worker Adjustment and Retraining Notification Act may require advance notice prior to a mass layoff or plant closure.

### Restricting Future Activities

Under Texas common law and the Texas Business and Commerce Code, there are rules about clauses that restrict future activities. Specifically, the Texas Business and Commerce Code provides that provisions in employment contracts restricting an employee's right to compete after termination are enforceable provided they are ancillary to or part of an otherwise enforceable agreement at the time the agreement is made and contain reasonable limitations that do not impose a greater restraint than necessary to protect the goodwill or other business interest of the promisee. Thus, any restrictions preventing competition must be reasonable as to duration, geographic scope, and scope of activity restrained. Additionally, based on a recent Texas Supreme Court case, it appears that it will now be easier to enforce certain non-compete agreements in Texas. However, this continues to be a developing area of Texas law, and employers may want to consult Texas counsel when determining whether a non-compete agreement is enforceable and/or reasonable.

### Severance Payments

Unless specified under company policy or contract, no rules apply in relation to severance payments. The Texas Payday Law provides that, if company policy or contract provides for a particular severance payment, employers must comply with that policy or contract. However, to obtain a release of potential claims under the federal Age Discrimination in Employment Act, the employer needs to comply with the Older Workers' Benefit Protection Act.

### Special Tax Provisions And Severance Payments

Federal tax law governs the treatment of severance payments.

### Allowances Payable To Employees After Termination

Employers are not required to contribute toward any allowances payable to employees after termination.

### Time Limits For Claims Following Termination

There are time limits for certain claims following termination. Claims under the TCHRA must be brought within two years of filing a complaint with the Texas Workforce Commission – Civil Rights Division (a complaint must be made to the Texas Workforce Commission – Civil Rights Division within 180 days of the alleged discriminatory act). It should be noted, however, that a claim must be brought within 60 days of the employee's receipt of a right-to-sue letter from the Commission. A workers' compensation retaliation claim under the Texas Workers' Compensation Act must be brought within two years. A claim for unpaid wages under the Texas Payday Law must be brought within 180 days of the date that the wages claimed became due for payment. Any claim for breach of an employment contract must generally be brought within four years of the breach.



# 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Employers should note that Texas has its own "COBRA" law which supplements federal law on this subject. The Small Employer Health Insurance Availability Act requires health benefit continuation rights for employees (and their beneficiaries) of company health plans if the company has two to 50 employees. The state law is similar to the federal COBRA law, but with a shorter continuation period of only six months following the employee's separation from employment. If the employee is covered by COBRA, the employee's six months of entitlement to coverage begins after the federal period expires.

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# USA - Washington DC

# USA - Washington DC

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are no specialised labour courts in the District of Columbia.

### The Main Sources Of Employment Law

Employment arrangements are governed by general principals of contract law, but there are common law and legislative requirements which override those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements and common practice all form part of any contractual relationship.

### National Law And Employees Working For Foreign Companies

Federal law, common law, and District of Columbia statutory protections apply to all individuals physically working in the District, regardless of nationality, and regardless of the law governing their contract employment. The parties may by contract agree to apply different state law in some circumstances.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law generally applies to all employees working in the United States and, in some circumstances, to employees outside of the United States who work for U.S.-based companies.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

None.

## Mandatory Requirements:

### Trial Period

There is no mandatory trial period.

### Hours Of Work

Under the District of Columbia's overtime law and the federal Fair Labor Standards Act an employee classified as "non-exempt" who works more than 40 hours per week must be paid overtime compensation at one and one-half times the employee's regular rate of pay. Under both laws, however, employers need not pay overtime to employees classified as "exempt."

### Earnings

Effective July 24, 2009, the federal minimum wage is $7.25 an hour. The minimum wage for employees in the District of Columbia is automatically set at $1.00 per hour greater than the federal minimum wage. At the time this edition went to press, these rates have been the target of recent political activity advocating to raise them substantially.

### Holidays / Rest Periods

The District of Columbia does not require employers to provide vacation or holiday leave, and, unlike many states, the District of Columbia does not mandate rest and/or meal breaks for employees. Under the federal Fair Labor Standards Act, generally a break of less than twenty minutes to eat a meal must be paid.

### Minimum/Maximum Age

A minor must be at least 14 years of age to work in the District of Columbia, subject to some exceptions. The District of Columbia also regulates the hours and types of work which employees under 18 years of age may work.

### Illness/Disability

There are no mandatory requirements for employers to address illness or disability in a formal employment agreement. The District of Columbia does, however, require certain employers to provide paid leave to qualifying employees in connection with the illness of an employee or the employee's covered family member.

The amount of leave required by this law varies depending upon the size of the employer. Qualifying employees must be employed for at least 90 days and spend at least 50 percent of the employee's time working in the District of Columbia. Similarly, the federal Family and Medical Leave Act provides that an eligible employee may take up to 12 weeks of unpaid leave for the employee's own serious health condition. The law applies to employers with 50 or more employees. To be eligible, employees must have worked for the employer for at least one year, and must have worked at least 1250 hours during the 12 months preceding the leave request.

### Location Of Work/Mobility

No requirements.

### Pension Plans

No requirements.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Under the District of Columbia Family and Medical Leave Act eligible employees may take up to 16 weeks of unpaid family leave for the birth, adoption, or foster care placement of a child, as well as to care for the employee's family member with a serious health condition. The law applies to employers with 20 or more employees in the District of Columbia. To be eligible, employees must have worked for the employer for at least one year, and must have worked at least 1000 hours during the 12 months preceding the leave request.

### Compulsory Terms

No requirements.

### Non-Compulsory Terms

Parties are free to agree to other non-compulsory terms. However, certain other terms may not be enforceable if they are contrary to public policy.



## Types Of Agreement

The District of Columbia does not provide different rules for different types of individual employment agreements. Collective bargaining agreements in the private sector are generally subject to the jurisdiction of the National Labor Relations Board under the federal labor law known as the National Labor Relations Act, which requires that where a union has been certified to represent employees, the union and the employer must bargain in good faith for agreement on terms and conditions of employment and other matters. In addition, certain provisions of such agreements are considered unlawful subjects for bargaining.

## Secrecy/Confidentiality

Typically, issues relating to confidentiality and trade secret protection are addressed in written employment agreements or employee policies. In the absence of such agreements, employer's trade secret information may be afforded protection under common law. The District of Columbia has adopted the Uniform Trade Secrets Act.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of a written agreement between the parties, ownership of IP rights are determined by federal law.

## Hiring Non-Nationals

There are no specific rules unique to the District of Columbia regarding hiring of non-nationals. Federal law exclusively governs the hiring of non-nationals. Under federal law, employers may hire non-nationals only if they are authorized to work in the United States; but may not discriminate against any person so authorized on the basis of his or her national origin. Authorization to work in the United States may be granted as a direct result of immigration status, or may require the non-national and/or employer to apply individually for employment authorization.

## Hiring Specified Categories Of Individuals

There are restrictions on the types of work that children can be required to undertake.

## Outsourcing And/Or Sub-Contracting

There are no restrictions placed on outsourcing and subcontracting, unless a collective bargaining agreement contains such restrictions. In such cases, the agreement would be governed by the federal labor law as noted above.

# 03. Maintaining The Employment Relationship

### Changes To The Contract

The employment relationship is presumed to be on an "at-will" basis, the terms of which employers are free to change on a prospective basis. If the employment relationship is subject to a written contract, the consent of both parties may be necessary in order to make changes to the terms.

### Change In Ownership Of The Business

The District of Columbia does not have any rules modifying employers' obligations under the Federal WARN Act. Employees are not allowed to refuse a change in ownership of the business unless the employee has a contractual right to object to the change.

### Social Security Contributions

Federal law provides for compulsory social security contributions by both employer and employee.

### Accidents At Work

Workers' compensation and other laws may apply.

### Discipline And Grievance

Unless a collective bargaining agreement or a specific contract provision applies, state and federal law do not govern discipline or grievance procedures. Employers are free to adopt such policies as they see fit.

### Harassment/Discrimination/Equal pay

The District of Columbia Human Rights Act (DCHRA) prohibits discrimination in employment based upon race, color, religion, national origin, sex, age (18 or older), marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, gender identity or expression, genetic testing, or genetic information, source of income, status as a victim of an intrafamily offense, or place of residence or business. Retaliation against an employee who reports a violation of the DCHRA, or participates in any investigation under the DCHRA is also prohibited.

### Compulsory Training Obligations

There are no rules relating to compulsory training obligations.

### Offsetting Earnings

Except in limited circumstances, such as a court-ordered deduction for payment of outstanding child support obligations, employers may not make deductions from wages for a claimed indebtedness.



### Payments For Maternity And Disability Leave

There are no requirements for employers to make payments for maternity or disability leave, except for leave qualifying under the District of Columbia's Accrued Sick and Safe Leave Act.

### Compulsory Insurance

Employers must participate in insurance plans for work-related injuries and for unemployment.

### Absence For Military Or Public Service Duties

Federal law provides leave for certain military service members, family members, and caretakers.

### Works Councils or Trade Unions

Under federal law, employees can force an employer in certain circumstances to recognize a union. Individuals who engage in concerted activities are protected from retaliation.

### Employees' Right To Strike

Under federal law, groups of employees may strike even if there is not a collective bargaining agreement or a formal union at the site of employment, subject to limits for public services.

### Employees On Strike

Under federal law, an employer can hire and employ temporary replacements for striking workers. The employer also has a somewhat more limited right to permanently replace striking workers. Workers cannot, however, be fired because they have gone on strike or otherwise engaged in protected concerted activity.

### Employers' Responsibility For Actions Of Their Employees

Employers may be vicariously liable to third parties for acts committed by employees within the scope of their employment duties. In addition, employers may be directly liable for their own negligence in failing to ascertain an employee's propensity to inflict injury.

# 04. Firing The Employee

### Procedures For Terminating The Agreement

Unless otherwise specified in a collective bargaining agreement or employment contract, there are no specific rules relating to the specific forum for terminating the agreement or specific procedures which have to be followed.

### Instant Dismissal

Employment is presumed to be on an "at- will" basis unless there is a collective bargaining agreement or an employment agreement that provides for employee protection(s) against instant dismissal.

### Employee's Resignation

An agreement can be terminated by the employee's resignation.

### Termination on Notice

No minimum period of notice is required unless specified in a written employment agreement or collective bargaining agreement. Under federal law workers must be given 60 days' notice prior to certain plant closures or mass layoffs.

### Termination By Reason Of The Employee's Age

Employers are generally forbidden from terminating employees by reason of the employee's age, except in very limited circumstances.

### Automatic Termination In Cases Of Force Majeure

Agreements may be automatically terminated in cases of force majeure. However, such instances are very rare and unlikely to apply in all but the most exceptional circumstances.

### Termination By Parties' Agreement

The parties are free to agree to terminate on any grounds they desire, except for a reason which would violate a law or public policy.

### Directors Or Other Senior Officers

There are no separate rules for firing directors or other senior officials. However, in the case of a director, termination of employment does not automatically bring an end to board membership.

### Special Rules For Categories Of Employee

There are no other categories of employees for whom special rules apply on termination.

### Specific Rules For Companies in Financial Difficulties

There are no specific rules in the District of Columbia which apply when a business gets into financial difficulties. However, a bankruptcy court may impose requirements in specific cases.

### Restricting Future Activities

Employers and employees may enter into non-competition agreements where, in return for consideration, an employee agrees to limit his or her post-employment activities for a reasonable period of time within a certain geographic area.



### Severance Payments

Severance payment is not required. When severance is offered, it is frequently made as part of an agreement which includes the employee's waiver of all legal claims against the employer.

An employer who discharges an employee must generally pay the employee's earned wages no later than the next working day following the discharge. When an employee quits or resigns, the employer generally must pay the employee's earned wages upon the next regularly scheduled payday or within seven days of quitting or resigning, whichever is earlier.

### Special Tax Provisions And Severance Payments

Severance payments are normally taxed as wages.

### Allowances Payable To Employees After Termination

Only as taxes paid to the unemployment compensation fund.

### Time Limits For Claims Following Termination

The time limits vary depending upon the nature of the claim. Claims under the DCHRA must be commenced within one year after the occurrence of the alleged unlawful act. The limitation period for breach of contract is three years. The limitations period for intentional torts is generally one year.

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## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no other specific matters which are important or unique to the District of Columbia.

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Certain employment claims may be brought before various federal, state, or local agencies, such as the federal EEOC, the Washington Human Rights Commission, or municipal agencies (with jurisdiction) such as the Seattle Office of Civil Rights.

Employment disputes can be brought in state court or federal court. To bring certain claims under federal law, a complaint must be brought before the federal employment or labour agency, such as the federal Equal Employment Opportunity Commission. There is no requirement that state claims be brought before a state employment agency before a lawsuit is filed, though many employees bring their claims first before state employment agencies, such as the Washington State Human Rights Commission.

Employees and employers may agree to have employment disputes adjudicated in private arbitration, though there are restrictions on the validity and terms of those agreements. Arbitration agreements may be unenforceable if they contain provisions that reduce the time in which an employee may bring a claim under the statute, impose prohibitive arbitration costs on an employee, reduce or eliminate categories of damages an employee could recover, designate a venue outside of the state, and/or shift attorneys' fees and costs in a manner inconsistent with Washington statutes. Mandatory confidentiality provisions in arbitration agreements are also generally deemed unconscionable by the Washington courts.

### The Main Sources Of Employment Law

The main sources of employment law are federal and Washington state statutes, regulations, agency interpretations, and judicial interpretations. Additional restrictions on employment conditions can be created by agreement between employers and employees, or by collective bargaining agreements between labour unions and employers. Employee handbooks can sometimes create binding agreements between employers and employees.

### National Law And Employees Working For Foreign Companies

Federal and Washington state law will apply to all people who work in Washington state, regardless of the employer's or the employee's nationality.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law applies to all employees working in the United States. In some circumstances, U.S. federal law applies to non-national employees of United States-based companies. Washington state law typically does not apply to employees working outside of Washington for companies based in Washington state, unless the employer and employee agree that it does.

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# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Most employment in Washington state is "at-will" employment, so there is no requirement for a written employment agreement. For employers and employees who choose to enter into an employment agreement, there are no requirements as to the form of such an agreement, other than common-law contract principles, including offer, acceptance and consideration.

### Mandatory Requirements:

#### Trial Period

There is no mandatory trial period.

#### Hours Of Work

There are no mandatory hours of work and no restrictions on the number of hours per day or per week an employee can be required to work. However, there are restrictions on the hours that workers under age 18, discussed below, and certain occupations such as nurses, truck drivers, and mine workers can work. Employees who are not exempt from federal or state wage laws must be paid overtime for any time worked in excess of 40 hours in a workweek.

#### Earnings

As of January 1, 2014, Washington state's minimum wage is $9.32 per hour. Washington state's minimum wage is automatically adjusted each year to correspond with inflation. Workers who are 14 or 15 years old may be paid 85% of the adult minimum wage, or $7.92.There are additional "living wage" and local government minimum wage requirements in Bellingham and the City of SeaTac.

#### Holidays / Rest Periods

There are no required holidays for employees. Employers are required by Washington state law to provide employees with paid rest breaks of 10 minutes for each 4 hours worked and unpaid meal breaks during each workday.

#### Minimum/Maximum Age

The minimum age for workers is 14, except under narrow special circumstances. There are restrictions on the hours and types of work for workers under the age of 18, and additional restrictions on the hours and types of work for workers under the age of 16. There is no maximum age for workers.

#### Illness/Disability

There are requirements for employers regarding employing employees with illnesses or disabilities, which are described in further detail in Harassment / Discrimination / Equal Pay below.
Under federal and state law, certain types of paid or unpaid job-related leave may be required, including leave related to serious illness or injury, sickness of family member, or domestic violence toward employee or the employee's family member.

#### Location Of Work/Mobility

There are no restrictions on the location of work or on a worker's mobility, nor is there a requirement to identify the normal place of work. Under some circumstances, employees must be paid for time spent going to and from work sites or between work sites.

#### Pension Plans

There are no required pension plans. If an employer has a pension or retirement plan, it is governed by federal law.

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#### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

Federal and Washington state law prohibit discrimination based on pregnancy. Under Washington state law, employers must give unpaid, job-protected leave to women who are unable to work due to pregnancy or childbirth. Under federal and Washington state law, employers must give certain employees unpaid, job-protected leave for the birth or adoption of a child or placement of a foster child. Under Washington state law, if an employer provides paid maternity or paternity leave for the birth of a child, it must provide the same leave for the adoption of a child. Under Washington state law, an employer must provide the same leave for all genders.

#### Compulsory Terms

There are no other terms that must be included in an employment agreement, if an employer and employee enter into an agreement.

#### Non-Compulsory Terms

Generally, employers and employees may agree to any terms or conditions of employment, provided that the terms do not violate other laws or public policy.

### Types Of Agreement

Employment in Washington State is "at-will" employment unless the employer and employee agree otherwise. "At-will" employment means that the employer or employee may terminate the employment relationship at any time with or without cause and without prior notice, subject to state and federal discrimination laws. An employer and employee may enter into an oral or written employment agreement. Employment agreements may, under certain circumstances, be implied by actions an employer takes or by policies or written promises that employer makes in offer letters, a policy manual or employee handbook.

Written or oral employment agreements can cover a variety of subjects including length of employment, signing bonuses, and bonus structure. Typically, such agreements are used for high-level executives. If the workplace is unionized, a collective bargaining agreement may also address cover certain workplace issues.

### Secrecy/Confidentiality

Washington has adopted the Uniform Trade Secrets Act, which many states have adopted. Under Washington's trade-secret statutes, employees must keep an employer's trade secrets confidential during and after employment. In addition, employers and employees may enter into express agreements that create broader confidentiality obligations on employees.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

Federal law generally governs ownership of intellectual-property rights. Employers and employees may agree that employee inventions are owned by the employer, but such agreements must comply with the Washington state statute that limits the assignment to certain types of inventions and requires the employer to provide notice that the assignment does not apply to other types of inventions.

### Hiring Non-Nationals

Federal law requires employers to verify that employees are eligible to work in the United States. Employers are subject to penalties for employing people who are not authorized to work in the United States. Under state law, domestic employers may have to provide a disclosure statement to foreign workers they employ.

### Hiring Specified Categories Of Individuals

Federal, Washington state and municipal discrimination laws prevent an employer from discriminating based on protected characteristics. In addition, there are some restrictions on the work that employees under the age of 18 or under the age of 16 can perform.

### Outsourcing And/Or Sub-Contracting

Generally, Texas has no specific rules regarding outsourcing and/or sub-contracting. However, the Texas Labor Code has certain requirements for "staff leasing" companies, and dictates that staff leasing companies share certain employment obligations with the client company. See Chapter 91 of the Texas Labor Code.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

If employment is at will, the employer may change the terms and conditions of employment. If there is an oral, written, or implied employment contract (or a collective bargaining agreement between an employer and a labour union), the terms of that contract will govern whether and how changes to the contract may be made.

### Change In Ownership Of The Business

There are no specific laws governing how the change in ownership of a business affects the employment relationship. Generally, the structure of the transaction will determine whether there is a continuing employment relationship.

### Social Security Contributions/Other Contributions

Employers and employees must each make contributions to the federal social security program. The employer must withhold the employee's contribution from the employee's pay.

In addition, employers must participate in the Washington state workers' compensation program, either by making payments to the state workers' compensation administrative agency or by self-insuring for workplace injuries. Payments for this may not be withheld from employees' compensation.

Employers must also pay taxes for the Washington state unemployment benefits program. Payments for this may not be withheld from employees' compensation.

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### Accidents At Work

Federal and Washington state law requires that employers maintain a safe workplace.

Employers must participate in the Washington state workers' compensation program, either by making payments to the state workers' compensation administrative agency or by self-insuring for workplace injuries.

### Discipline And Grievance

There are no federal or Washington state laws on employee discipline or grievance. Employers may have policies describing discipline. Collective bargaining agreements between labour unions and employers might also govern employee discipline and grievances.

### Harassment/Discrimination/Equal pay

Federal, Washington state and certain municipal laws prohibit discrimination based on protected characteristics such as race, color, gender, sex, religion, creed, national origin, sexual orientation, veteran or military status, marital status, pregnancy, HIV, AIDS, or Hepatitis C status, disability, or use of a service animal by a person with a disability. Discrimination is prohibited in advertising, interviewing, hiring, terms and conditions of employment, and termination of employment.

Federal and Washington state law also prohibit harassment based on such protected characteristics.

Federal and Washington state law also prohibit employers from retaliating against employees who report discrimination or harassment.

Federal and Washington state law explicitly require equal pay based on gender or sex.

Federal and Washington state law also require employers to provide reasonable accommodations to employees with a disability. Washington state law broadly defines "disability" as the presence of a sensory, mental, or physical impairment that is medically cognizable or diagnosable, that exists as a record or history, or that is perceived to exist whether or not it exists in fact.

If an employer is found guilty of discrimination and / or harassment then under Washington state law, damages are payable which can include front and back pay, emotional distress, and attorneys' fees and costs. Emotional distress is variable, but can be substantial. Under federal law, damages vary based on the statutory authority but can include front pay, back pay, emotional distress, and punitive damages, but compensatory and punitive damages are capped at US$50,000 to US$300,000, based on the number of employees of the company.

### Compulsory Training Obligations

There are no compulsory training obligations. However, employers who provide training for employees, supervisors, and managers regarding discrimination and harassment lower the risk of liability for discrimination and harassment.

### Offsetting Earnings

Employers may only offset earnings or make deductions from employees' earnings for specific reasons authorized by federal or Washington state statute.

### Payments For Maternity And Disability Leave

There is no requirement that an employer pay an employee for maternity or disability leave. Many employers provide some type of paid disability leave. If an employer does provide some type of paid disability leave then they must provide the same type of paid leave for pregnancy.

### Compulsory Insurance

Employers must participate in the Washington state workers compensation program and the Washington state unemployment program.

### Absence For Military Or Public Service Duties

Under federal and Washington state law, members of the military are provided with job-protected leave related to military service. Employers may not discriminate against employees based on military or veteran status.

Employers must provide employees time off to vote in public elections.

An employer must provide leave for jury service. The time off for jury service is generally unpaid, unless the employee is an "exempt" employee who does any work during the workweek which they are on jury service.

Employees who are volunteer fire fighters, reserve officers, or civil air patrol members are entitled to unpaid leave to fulfil their duties.

### Works Councils or Trade Unions

Under federal law, employees may organize or choose to be represented by a labour union. Union activity is governed by federal law.

### Employees' Right To Strike

Under federal law, employees may strike, subject to the restrictions of federal law. There are limitations on the right of some public employees (e.g., teachers) to strike.

### Employees On Strike

Under federal law, typically employers may not terminate employees who are on strike. An employer's obligation to reinstate workers whose positions have been filled is subject to certain restrictions under federal law.

### Employers' Responsibility For Actions Of Their Employees

Employers are typically responsible for the conduct of their employees while acting within the scope of their employment.


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# 04. Firing The Employee

### Procedures For Terminating The Agreement

There are no specific laws governing terminating employment agreements, unless the employment agreement or collective bargaining agreement includes such limitations.

### Instant Dismissal

If an employee is employed at will, then the employer may dismiss the employee at any time without notice (subject to discrimination and retaliation laws). If a covered employer is engaging in a mass lay-off (50 or more employees in connection with a plant closing, 50-499 employees who make up at least 33% of an employer's active workforce, or 500 or more employees), then the employer typically must give 60 days' notice of the mass layoff. If the employer and employee have an agreement, or if the employer and a labour union have a collective bargaining agreement, then termination must be done in accordance with the agreement or collective bargaining agreement.

### Employee's Resignation

An employee may resign at any time without notice.

### Termination on Notice

If the employer and employee have an agreement, or if the employer and a labour union have a collective bargaining agreement, then termination must be done in accordance with the notice requirements in the agreement or collective bargaining agreement.

### Termination By Reason Of The Employee's Age

Federal and Washington state law only forbid age discrimination against people who are age 40 or older. These laws do not protect workers under the age of 40, Employers may not dismiss, refuse to hire, or deny an employee assignments and promotions because of the employee's age. It is also unlawful to harass an employee because of that person's age.

Washington law does permit employers to establish reasonable age limits with respect to candidates for positions of employment, which positions that require extraordinary physical effort, endurance, condition or training, subject to the approval of the executive director of the Washington state human rights commission or the director of labor and industries through the division of industrial relations.

### Automatic Termination In Cases Of Force Majeure

If the employment is at will, then the employer or employee may terminate regardless of the reason, including force majeure.

### Termination By Parties' Agreement

If the employer and employee have an agreement, or if the employer and a labour union have a collective bargaining agreement, then termination must be done in accordance with the agreement or collective bargaining agreement.

### Directors Or Other Senior Officers

There are no special rules for the termination of senior officers. Directors are not employees simply because they are directors. Therefore if a director is dismissed as an employee, they will remain as a director unless removed as a director under the provisions of the business entity's bylaws.

### Special Rules For Categories Of Employee

There are no special rules for terminating any particular category of employees.

### Specific Rules For Companies in Financial Difficulties

Companies in financial difficulty must comply with federal bankruptcy laws. Such companies may have obligations under federal bankruptcy laws to continue employment agreements, continue voluntary employee benefits, or comply with plant closing or mass layoff obligations.

### Restricting Future Activities

Covenants not to compete are enforceable in Washington state to the extent that they are supported by consideration, are implemented to protect a business purpose, are reasonable in geographic scope, and are reasonable in duration. Continued employment alone is not sufficient consideration for a non-competition covenant entered into after the employment relationship has begun.

### Severance Payments

There is no requirement under Washington state law for severance payments. Employers may voluntarily pay severance to dismissed employees, or may have a severance plan that applies to all employees. If an employer offers a severance payout, the employer may require that the employee sign a release. A release that relates to certain claims, including age discrimination claims under federal law, requires a notice and waiver period, along with specific statutory language.

### Special Tax Provisions And Severance Payments

Severance payments are generally taxed in the same way as wages.

### Allowances Payable To Employees After Termination

Absent a written agreement to the contrary, there is no requirement for employers to pay employees after termination, including cashing out any accrued but unused vacation or sick leave. Employees who are dismissed may qualify for state unemployment benefits. Employers pay taxes for these unemployment benefits, and their taxes may be increased based on a history of high unemployment claims.



### Time Limits For Claims Following Termination

The time limits for claims following termination vary by the type of claim. For example, the time limit to bring claims before state agencies, such as Labor & Industries or the Human Rights Commission can be between one to six months. The time limit for claims brought in the state or the federal court may be between two years and four years depending on the type of claim and whether or not the conduct is wilful. Claims based on a written contract have a time limit of six years.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

In 1998, Washington became one of the few states enacting legislation permitting the use of "medical marijuana." In 2011, the Washington Supreme Court held that the state's "medical marijuana law" does not provide a private cause of action for discharge of an employee who uses medical marijuana, either expressly or impliedly, nor does the law create a clear public policy that would support a claim for wrongful discharge in violation of such a policy. Nor does the law require employers to accommodate an employee's off-site use of medical marijuana.

The Washington Law Against Discrimination excludes religious not-for-profit organizations from its definition of "employer," which would seem to place those entities beyond the law's reach. However, the Washington Supreme Court has ruled that the definition of "employer" may be unconstitutional as applied to secular positions that are unrelated to the organization's religious beliefs.

### Social Media

An employer may not require employees or applicants to disclose login information for their personal social networking accounts or access those accounts in the employer's presence. Employers are also prohibited from requiring employees or applicants to add persons to the list of contacts associated with their personal social networking accounts or alter privacy settings to enable the employer to view the accounts. An employer may not retaliate against employees or applicants for refusing to comply with these prohibited requests/practices.

If an employer is conducting certain investigations, the employer may demand access to the content of an employee's personal social networking accounts, but is still prohibited from requesting login information.

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# USA - West Virginia



## USA - West Virginia

**Robert Hust**
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## 01. General Principles

### Forums For Adjudicating Employment Disputes

Employment disputes are adjudicated in state and federal court. The West Virginia Division of Labor of the Department of Commerce administers and enforces state labor laws. The commissioner of labor is responsible for investigating, mediating and/or arbitrating labor disputes. The West Virginia Human Rights Commission investigates complaints alleging discrimination in employment.

### The Main Sources Of Employment Law

The main sources are federal and state legislation and regulations, and court decisions. Collective bargaining agreements and individual contracts also are enforceable.

### National Law And Employees Working For Foreign Companies

Federal and state law will apply to people who work within the territory but for a foreign company.

### National Law And Employees Of National Companies Working In Another Jurisdiction

All federal employment laws apply to U. S. citizens working in every state. The West Virginia Human Rights Act applies only to West Virginia employers that employ twelve or more workers in the state for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

Unless the parties agree otherwise, U.S. and West Virginia employees are employed at-will and not subject to a contract of employment. However, there are federal and state laws governing certain terms and conditions of employment and providing protection from termination for employees under certain circumstances.

## Mandatory Requirements:

### Trial Period

There is no legal obligation to provide trial or probationary periods.

### Hours Of Work

State and federal law both provide that non-exempt employees must be paid 1 ½ times their regular rate of pay for all hours worked in excess of 40 hours in a workweek.

### Earnings

The state minimum wage is $7.25 per hour. The state minimum wage rate applies to all employers with six or more workers at one location or establishment. The state statute also provides a list of employees who are exempt from the state minimum wage requirements. These individuals include: golf caddies; shoe shiners; bowling alley pin setters; outside salespersons; the employer's immediate family members; newspaper carriers; those in a bona fide professional, executive, or administrative capacity; on-the-job trainees; camp employees; agricultural workers; students working part-time; fire-fighters; federal employees; certain employees of state legislature; and employees who are 62 years of age or older who are receiving social security benefits.

Tips can be counted for up to twenty percent of minimum wage. Therefore, employers may pay service employees that receive gratuities/tips a reduced minimum wage rate of $5.80 per hour as long as their hourly rate plus tips equals $7.25 per hour. Companies that fall under the federal Fair Labor Standards Act may pay the federal tip credit of $2.13 per hour.

The regulations allow for reasonable deductions from wages for board and lodging.

Employers must pay employees at least every two weeks.

### Holidays / Rest Periods

West Virginia has a statutory prohibition against working on Sunday; however, it is relatively inoperative. Only public employers are required to provide holidays. Additionally, West Virginia employers must provide a 20 minute meal break to employees if their workday lasts six or more hours. Employers must count rest periods less than 20 minutes as time worked. When an employee is required to work 24 or more consecutive hours, the employer and employee may agree on a meal and sleeping schedule of no more than eight hours to be deducted from the work day. If the parties do not enter into an agreement then sleeping and meal time is counted as work time. If the employee's meal or sleep time is interrupted by a call to duty then the time must be counted as hours worked.

### Minimum/Maximum Age

State and federal law place restrictions on employing individuals under 18 years old. Work permits are required for minors under the age of 16. Minors between the ages of 14 and 15 may not be employed during school hours while school is in session. West Virginia generally will not grant work permits to minors under the age of 14. Employers must provide minors with a 30 minute meal period for every five hours of continuous work.

State and federal law prohibit discrimination against individuals who are age 40 or older.



### Illness/Disability

State and federal law prohibit discrimination against individuals with disabilities. The federal Family and Medical Leave Act requires covered employers to provide eligible employees with up to 12 weeks of unpaid job-protected leave to care for their own serious health condition or to care for a spouse, child, or parent with a serious health condition or for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty in support of a contingency operation. It also entitles eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered servicemember with a serious injury or illness.

### Location Of Work/Mobility

There are no mandatory requirements relating to an employee's location of work/mobility.

### Pension Plans

Pension plans are not mandatory. If a pension plan is provided, it is regulated by the federal Employee Retirement Income Security Act (ERISA).

### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The federal Family and Medical Leave Act requires covered employers to provide eligible employees with up to 12 weeks of unpaid job-protected leave because of the birth of a child and to care for the newborn child or because of the placement of a child with the employee for adoption or foster care. The federal Pregnancy Discrimination Act of 1978 prohibits discrimination or harassment because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

### Compulsory Terms

No requirements.

### Non-Compulsory Terms

No requirements.

## Types Of Agreement

All employees are at-will unless a contract exists between the parties establishing the duration of employment. The state does not have different rules for different types of agreements (e.g. fixed term, unlimited term, part-time, agency work, etc.).

## Secrecy/Confidentiality

West Virginia state law governs the protection of trade secrets. Employers may require employees to enter into confidentiality agreements protecting against the disclosure of trade secrets and proprietary information as a condition of their employment.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

Generally, employers own intellectual property created by their employees as part of their employment or created using the employer's information, equipment, or materials.

### Hiring Non-Nationals

There are federal requirements specifying the rules for hiring non-nationals. Employers should be aware that foreign nationals must be authorized to work in the U.S. and whether such employment is restricted in any way. U.S. laws, rules, and regulations governing the work authorization of foreign nationals are complex. Basically, U.S. Citizenship and Immigration Services (USCIS) regulations establish three classes of foreign nationals who are allowed to work in the U.S.: (1) aliens authorized to work incident to their immigration status, (2) aliens who are permitted to work for a specific employer incident to their status, and (3) aliens who must apply for and obtain permission from the USCIS in order to accept employment in the U.S.

West Virginia state law also provides that it is unlawful for any employer to knowingly employ, hire, recruit or refer, either for himself or herself or on behalf of another, for private or public employment within the state, an unauthorized worker who is not duly authorized to be employed by law. Employers are required to verify a prospective employee's legal status or authorization to work prior to employing the individual or contracting with the individual for employment services.

### Hiring Specified Categories Of Individuals

Federal contracts have certain affirmative action obligations under Executive Order 11246. One requirement for federal contractors who have 50 or more employees and $50,000 or more in government contracts is to develop a written affirmative action program which helps the contractor identify and analyze potential problems in the participation and utilization of women and minorities in the contractors' workforce. Federal and state law prohibit employers from discriminating in terms and conditions of employment based on: race, religion, national origin, color, gender, age (40 and over), disability, or ancestry.

Employers who provide care to children, elderly, and/or disabled individuals may utilize the state's Central Abuse Registry to screen prospective employees.

### Outsourcing And/Or Sub-Contracting

In order for contractors to bid on West Virginia public authorities' contracts for public improvements, private contractors and their subcontractors must implement and maintain a written drug-free workplace policy.



# 03. Maintaining The Employment Relationship

### Changes To The Contract

Contract principles would apply to contract changes made by either party. Changes typically require additional consideration.

### Change In Ownership Of The Business

There are no specific rules which apply when there is a change in the ownership of the business.

### Social Security Contributions/Other Contributions

Employers and/or employees must make social security contributions.

### Accidents At Work

Federal Occupational Safety and Health Act (OSHA) governs when work accidents are reportable. The handling of work-related injuries is governed by the state's workers' compensation law which, in most cases, not only prevents employees from suing employers directly, but also provides employees specific rights with respect to termination.

### Discipline And Grievance

There are no laws mandating a discipline or grievance process for private sector employees who are not part of a collective bargaining unit governed by the West Virginia Labor-Management Relations Act or the National Labor Relations Act.

### Harassment/Discrimination/Equal pay

Federal and state law prohibit employers from discriminating in terms and conditions of employment based on: race, religion, national origin, color, gender, age (40 and over), disability/blindness, ancestry, or genetic information. West Virginia also prohibits discrimination based on an employee's voting choices, political activities and use of tobacco products outside the workplace.

In addition, West Virginia provides specific anti-discrimination protections for employees who are off work due to a work-related injury.

### Compulsory Training Obligations

There are no compulsory training obligations.

### Offsetting Earnings

Federal and West Virginia law permit offsets. Generally, the offsets require the employee's approval and may not reduce the employee's pay to less than the minimum wage. West Virginia law prohibits employers from deducting the cost of uniforms. The cost of uniforms and their cleaning must be paid by the employer.

### Payments For Maternity And Disability Leave

West Virginia does not require employers to provide paid maternity and/or disability leave.

### Compulsory Insurance

There is no requirement.

### Absence For Military Or Public Service Duties

The federal Uniformed Services Employment and Reemployment Act governs military leave and reinstatement following such leave. West Virginia statutes also cover members of the state military forces who are ordered to active state duty. The West Virginia statute provides the same protection to state military forces as the federal provisions.

### Works Councils or Trade Unions

The West Virginia Labor-Management Relations Act and the federal National Labor Relations Act (NLRA) apply.

### Employees' Right To Strike

The West Virginia Labor-Management Relations Act allows private sector employees to strike; however, strikes are prohibited for 60 days after the party seeking to modify or terminate the contract serves notice on the other party or until the contract expires, which ever is later. If employees strike during the 60 days period they lose their "employee" status. See also discussion of Collective Bargaining rights in U.S. Federal law section.

### Employees On Strike

See discussion of Collective Bargaining rights in U.S. Federal law section. In West Virginia strikes are prohibited for 60 days after the party seeking to modify or terminate the contract serves notice on the other party or until the contract expires, which ever is later. If employees strike during the 60 days period they lose their "employee" status.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the actions of employees committed within the scope of their employment. Employers are not liable for acts committed outside the course of an employee's employment.



## 04. Firing The Employee

In the U.S., most employees are not subject to a contract, but are at-will. To the extent that an employee has a contract with the employer, the agreement would be governed by contract law and, in some cases, the federal National Labor Relations Act (NLRA). The termination of employees who are part of a collective bargaining unit is typically addressed in the collective bargaining agreement.

### Procedures For Terminating The Agreement

There are no rules relating to the specific form for terminating the employment relationship. The termination of actual employment contracts are governed by contract law.

An employer who engages in a "mass layoff" or "plant closing" must follow the procedures in the federal Worker Adjustment and Retraining Notification Act. These procedures generally require advance notice of the layoff.

### Instant Dismissal

Employers and employees may terminate their at-will employment relationship at any time and for any reason, as long as the termination is not discriminatory, retaliatory or a breach of public policy.

### Employee's Resignation

At-will employees may resign from their employment at any time.

### Termination on Notice

No minimum notice is required to terminate employment in the absence of a specific contract provision.

### Termination By Reason Of The Employee's Age

Employers cannot terminate an employee based on the employee's age. Employees are protected under federal and state age discrimination laws. Employers may base an employment decision on an employee's age in very limited cases where mandatory retirement is required by law.

### Automatic Termination In Cases Of Force Majeure

Employment can be terminated automatically in cases of force majeure.

### Termination By Parties' Agreement

The at-will relationship may be terminated by either party for any reason or for no reason. Employers may not terminate the employment relationship for reasons that would violate the laws prohibiting discrimination.

### Directors Or Other Senior Officers

There are no special rules for firing directors or other senior officers.

### Special Rules For Categories Of Employee

The collective bargaining agreement controls termination of employees who are part of the collective bargaining unit.

### Specific Rules For Companies in Financial Difficulties

The federal WARN Act requires advance notice of certain plant closings or mass layoffs.

### Restricting Future Activities

West Virginia allows agreements which restrict future activities. Such agreements must be reasonable in scope, geographic limitation, and time.

### Severance Payments

There are no federal or state laws requiring severance payments.

Involuntarily terminated employees must be paid their final wages no later than the next regular payday or within four (4) business days of termination, whichever comes first. Employees who resign must be paid on the next regular payday or on the employee's last day of employment if the employee provided one pay period's notice.

### Special Tax Provisions And Severance Payments

There are no special tax provisions related to severance payments.

### Allowances Payable To Employees After Termination

Employers are not required to contribute towards any allowances payable to employees after termination. However, wages include all fringe benefits accrued at the time of termination that are capable of calculation and payable directly to an employee. Accrued payable benefits (vacation time) must be paid upon termination in the same fashion as earned wages.



### Time Limits For Claims Following Termination

#### State

Employees must file a charge alleging discrimination with the West Virginia Human Rights Commission within 365 days after the unlawful discriminatory practices alleged in the charge were committed. Employees must file a lawsuit alleging violation of the West Virginia Civil Rights Act within two years after the unlawful discriminatory practices alleged in the suit were committed. The employee's right to sue alleging violation of state law is not contingent upon filing a charge of discrimination with the West Virginia Human Rights Commission.

#### Federal

Employees must file a charge alleging discrimination with the Equal Employment Opportunity Commission ("EEOC") within 300 days after the unlawful discriminatory practices alleged in the charge were committed. The employee's right to sue in federal court is contingent upon filing a charge of discrimination with the EEOC. Suit in federal court alleging violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act and/or the Age Discrimination in Employment Act must be filed within 90 days or receipt of the EEOC's Dismissal and Notice of Rights. Suits for unpaid wages or alleging violation of the federal Equal Pay Act ("EPA") must be filed in federal or state court within 2 years (3 years for wilful violations) of the alleged EPA underpayment.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

West Virginia has a variety of specific statutes, as well as case law, which protect employees from discrimination, including those employees on leave for a work-related injury, and which provide employees specific protection to their privacy and benefits. In addition, drug-testing requirements and prohibitions vary by industry.

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# USA - Wisconsin




## USA - Wisconsin


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## 01. General Principles

### Forums For Adjudicating Employment Disputes

There are no specialised labour courts in Wisconsin. Employment disputes may be adjudicated in either federal or state courts, depending upon the legal claims involved. Unemployment law and workers' compensation disputes are handled first in the administrative agencies. Decisions of the administrative agencies may be appealed to the state courts.

### The Main Sources Of Employment Law

All employment arrangements are governed by general common law principles of contract law, but there are statutory requirements which over-ride those general principles in some instances. Individual contracts (whether written or oral), collective bargaining agreements and common practice all form part of the contractual employment relationship.

### National Law And Employees Working For Foreign Companies

Statutory rights of Wisconsin apply to all individuals physically working in Wisconsin, regardless of nationality and regardless of the law governing their contract of employment. Contractual law may also apply in appropriate cases.

### National Law And Employees Of National Companies Working In Another Jurisdiction

Federal law generally applies to all employees working in the United States and, in some circumstances, to employees outside of the United States who work for U.S.-based companies.

# 02. Hiring The Employee

## Legal Requirements As To The Form Of Agreement

Agreements can be oral or written, but oral contracts must terminate within one year in order to be recognized by Wisconsin courts.

## Mandatory Requirements:

### Trial Period

Trial periods are not mandatory in Wisconsin.

### Hours Of Work

Wisconsin law mirrors federal law, which requires overtime to be paid at a rate of one-and-a-half times the regular rate of pay for all hours that an employee classified as "non-exempt" works in excess of 40 hours per week. The state overtime law applies to most Wisconsin employers, including state and local units of government, but not necessarily to each individual worker.

### Earnings

Effective July 24, 2009, the federal minimum wage is $7.25 an hour.

Wisconsin also maintains minimum wage restrictions, requiring $5.90 an hour for "Opportunity Employees," or employees not yet 20 years old who have been employed for 90 or fewer consecutive days from the date of hiring, and $7.25 an hour for "Non-Opportunity Employees." In addition, tipped employees in Wisconsin may be paid less -$2.13 for "Opportunity Employees" and $2.33 per hour for "Non-Opportunity Employees." Wisconsin law also provides special wage and hour requirements for certain disabled workers.

### Holidays / Rest Periods

Wisconsin does not require an employer to provide employees with rest periods or holiday allowance. However, an employer in Wisconsin must provide minors who work six or more hours with a 30-minute meal period scheduled as close as possible to normal meal times. The Wisconsin Administrative Code recommends, but does not require, a similar policy for employees over the age of 18. In addition, Wisconsin law provides that all employees in certain occupations, including factories and mercantile establishments, must receive 24 consecutive hours of rest in each calendar week.

### Minimum/Maximum Age

Wisconsin child labor law provisions apply to employees under the age of 18. The minimum age for employment depends on the occupation. Some occupations or fields of employment prohibit the employment of minors altogether, but generally the minor must be at least 14 years of age to begin working. The Wisconsin Department of Workforce Development regulates the number of hours and times of day that minors may work. Work permits must be obtained before anyone under the age of 18 years is allowed to work in any job, with the exception of agriculture and domestic service work.

### Illness/Disability

There are no mandatory requirements for employers to address illness or disability in an employment agreement. However, the Wisconsin Family Leave Act (WFLA) requires employers of 50 or more employees to permit qualified employees to take unpaid family or medical leave for designated numbers of weeks per calendar year under certain circumstances. The federal Family and Medical Leave Act provides that eligible an employee may take up to 12 weeks of unpaid leave for the employee's own serious health condition. The law applies to employers with 50 or more employees. To be eligible, employees must have worked for the employer for at least one year, and must have worked at least 1250 hours during the 12 months preceding the leave request.

State and federal law prohibit discrimination on the basis of disability and require reasonable accommodation of qualified disable individuals.

### Location Of Work/Mobility

There are no specific requirements placed on the employer or employee with regards to the location of work or mobility of the employee.

### Pension Plans

There are no pension plan requirements in Wisconsin.



### Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

The federal Famil and Medical Leave Act requires employers to provide unpaid parental leave under certain conditions. The Wisconsin Family Leave Act (WFLA) requires employers of 50 or more employees to permit employees to take up to six weeks of unpaid leave in a twelve-month period for the birth or adoption of a child.

### Compulsory Terms

There are no compulsory terms of employment in Wisconsin.

### Non-Compulsory Terms

Parties are free to agree to other non-compulsory terms. However, certain other terms may not be enforceable if they are contrary to public policy.

## Types Of Agreement

Wisconsin law does not provide different rules for different types of agreements. However, many categories of employees are protected from discrimination (see below). Collective bargaining agreements in the private sector are generally subject to the jurisdiction of the National Labor Relations Board under the federal labor law known as the National Labor Relations Act, which requires that where a union has been certified to represent employees, the union and the employer must bargain in good faith for agreement on terms and conditions of employment and other matters. In addition, certain provisions of such agreements are considered unlawful subjects for bargaining.

## Secrecy/Confidentiality

For information that is confidential in nature and is highly-sensitive, but does not rise to the level of a trade secret, a non-disclosure agreement is permissible. In Wisconsin, a two-year restriction generally appears reasonable. If confidential information includes a formula, pattern, compilation, program, device, method, technique, or process, it is likely to be a "trade secret," and a covenant is not necessary. The Trade Secrets Act protects such materials from disclosure.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

There are no specific rules in Wisconsin about ownership of inventions or other intellectual property rights.

## Hiring Non-Nationals

There are no specific rules unique to Wisconsin about hiring non-nationals. Federal law exclusively governs the hiring of non-nationals. Under federal law, employers may hire non-nationals only if they are authorized to work in the United States; but may not discriminate against any person so authorized on the basis of his or her national origin. Authorization to work in the United States may be granted as a direct result of immigration status, or may require the non-national and/or employer to apply individually for employment authorization.

## Hiring Specified Categories Of Individuals

There are no specific rules in Wisconsin about hiring specified categories of individuals.

### Outsourcing And/Or Sub-Contracting

There are no restrictions placed on outsourcing and subcontracting, unless a collective bargaining agreement contains such restrictions. In such cases, the agreement would be governed by the federal labor law as noted above

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

Most employment relationships are "at-will" and in these cases employers are free to prospectively alter the terms and conditions of the employment relationship. When the relationship is governed by a contract, the employee's consent is required in order to alter the terms.

### Change In Ownership Of The Business

There are no specific rules that apply or specific steps that need to be followed in the event of a change of ownership in a business. If only the assets of a business are sold, as opposed to its stock, employees do not necessarily retain their employment. Rather, whether to continue employment in an asset transaction is within the new owner's control.

### Social Security Contributions

Federal law provides for compulsory social security contributions from both the employer and the employee in the form of taxes paid by both the employer and employee, with the employee's half withheld from the employee's wages.

### Accidents At Work

Workers' compensation law may apply if the employee is injured while at work. Other laws may also apply to the employer's treatment of an employee as a result of the injury, including disability laws and access to leave.

### Discipline And Grievance

Unless a collective bargaining agreement or a specific contract provision applies, state and federal law do not govern discipline or grievance procedures.



### Harassment/Discrimination/Equal pay

The Wisconsin Fair Employment Act (WFEA) prohibits discrimination based on age, race, creed, religious observance or practice, colour, disability, marital status, sex, sexual orientation, national origin, ancestry, arrest record, conviction record, military service, membership in the National Guard, state defence force or any reserve component of the military forces of the United States or Wisconsin, the use or non-use of lawful products off the employer's premises during non-working hours, or declining to participate or participating in any communication about religious or political matters. Additionally, employees may not be terminated based on the results of any lie detector or genetic test. Retaliation for exercising rights under the WFEA is forbidden.

Sex discrimination includes discrimination against a woman on the basis of pregnancy, childbirth, maternity leave or related medical conditions, and includes discriminatory actions concerning fringe benefit programs covering illnesses and disability. Sexual discrimination also includes sexual harassment, which is defined as "unwelcome sexual advances, unwelcome requests for sexual favours, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature."

### Compulsory Training Obligations

There are no rules relating to compulsory training obligations.

### Offsetting Earnings

Employers generally may not make deductions from wages except as authorized by statute. For example, an employer may not withhold or otherwise deduct funds from an employee's final pay for faulty workmanship or lost, stolen, or damaged property, without the employee's written consent.

### Payments For Maternity And Disability Leave

There are no statutory requirements for an employer to provide an employee with paid maternity or disability leave.

### Compulsory Insurance

Wisconsin law does not require an employer to offer health insurance benefits to its employees, although coverage must be offered to all "eligible employees" and their dependents if an employer purchases a group health benefit plan from an insurer. Most employers must participate in state-administered insurance plans for work-related injuries and for unemployment.

### Absence For Military Or Public Service Duties

Federal law provides that employers must allow employees to take leave where an employee is a specific military service member. In certain circumstances leave should also be afforded to employees whose, family member(s) is required to go on military service. Employees who are required to care of someone who has been injured as a result of military service should be afforded leave. Wisconsin law also provides leave for jury duty, court appearances, and voting time under certain circumstances.

### Employees' Right To Strike

Private workers in Wisconsin generally have the right to strike or take other work based actions if contract negotiations with an employer reach a stalemate.

### Employees On Strike

Under federal law, the employer can hire and employ temporary replacements for striking workers. The employer also has a somewhat more limited right to permanently replace striking workers. Workers cannot, however, be fired because they have been on strike or otherwise engaged in protected concerted activities.

### Employers' Responsibility For Actions Of Their Employees

Employers may be vicariously liable to third parties for acts committed by their employees within the scope of their employment duties. In addition, employers may be directly liable for their own negligence in failing to ascertain an employee's propensity to inflict injury.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

Unless otherwise specified in a collective bargaining agreement or employment contract, there are no specific rules relating to the specific forum for terminating the agreement or specific procedures which have to be followed.

### Instant Dismissal

In the absence of contractual, statutory, or public policy limitations, an employer has the right to end the employment relationship with or without cause and without notice at any time.

### Employee's Resignation

An agreement can be terminated by the employee's resignation.

### Termination on Notice

There are no minimum periods of notice required, and even contractual notice requirements for employees are not enforced under Wisconsin law. However, under both federal and Wisconsin law, workers must be given 60 days' notice prior to certain plant closures or mass layoffs.

### Termination By Reason Of The Employee's Age

The prohibition against employment discrimination on the basis of age applies only to discrimination against an individual who is age 40 or over and does not apply to the implementation of retirement plans (so long as a given plan is not a subterfuge to evade the anti-discrimination laws) or the application of varying insurance coverage according to an employee's age.



### Automatic Termination In Cases Of Force Majeure

Wisconsin law does not provide for automatic termination of an agreement in cases of force majeure.

### Termination By Parties' Agreement

The parties are free to agree to termination on any lawful grounds.

### Directors Or Other Senior Officers

There are no separate rules for firing directors or other senior officials.

### Special Rules For Categories Of Employee

There are no other categories of employees for whom special rules apply on termination.

### Specific Rules For Companies in Financial Difficulties

There are no specific rules which apply when a business gets into financial difficulties. However, a bankruptcy court may impose requirements in specific cases under the broad powers granted to such courts under federal law.

### Restricting Future Activities

Restrictive covenants in an employment contract are lawful and enforceable when limited to a specific geographic area and time, and when reasonably necessary to protect the employer.

### Severance Payments

Normal contractual principles apply to severance payments included in the contract.

### Special Tax Provisions And Severance Payments

Severance payments are normally taxed as wages.

### Allowances Payable To Employees After Termination

There are no allowances payable by the employer to the employee after termination. Although most employers are required to pay a quarterly Unemployment Insurance ("UI") tax on a certain amount of each employee's wages. The tax is deposited in the Wisconsin UI Fund, which is used to pay unemployment benefits to eligible applicants who are unemployed.

### Time Limits For Claims Following Termination

Claims under the Wisconsin Fair Employment Act must be commenced within 300 days after the occurrence of the alleged unlawful practice. The limitation period for breach of contract is six years. The limitations period of intentional torts is generally three years.

# 05. General

## Specific Matters Which Are Important Or Unique To This Jurisdiction

### Criminal Records

Under the WFEA, an employer is limited in the extent it may inquire about the criminal records of job applicants or use such criminal records in employment decisions. Generally, an employer may not ask a prospective employee about a historical arrest record except for pending charges. An employer may not terminate an existing employee based on a conviction record or refuse to hire an applicant based solely on the arrest or conviction record. Similarly, employers may not take other adverse employment actions – such as failure to promote or compensate – based on an arrest or conviction record.

### Personnel Records

State law requires that employers keep wage and hour records, workers' compensation records, and records relating to new hires. Whatever records an employer generates, state law requires that those records be kept for at least one year while any discrimination complaint is pending. Wage and hour records must be kept for at least three years

There are no other specific matters which are important or unique to Wisconsin.

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# Venezuela

# Venezuela

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## 01. General Principles

### Forums For Adjudicating Employment Disputes

The Employment Tribunal has exclusive jurisdiction for all claims. There are different rules to determine the venue, which apply depending on the choice of the employee, which relate to: the place of performance of services, the place where the employment relationship terminated, the place where the agreement was signed and the domicile of employer. However, those claims involving underage employees should be brought in the Childhood and Adolescent Protection Court.

### The Main Sources Of Employment Law

With the exception of public employment and members of the armed forces, all employment law is under the scope of the Organic Labor Law of Men and Women Workers (OLLMWW), its regulations (ROLL), and some other special regulations. In addition, some principles of contract law stated under the Civil Code apply, but the interpretation of such principles varies because of the protection of the employee as the weak party in the contract.

In matters of Social Security, there are special regulations and some contributions are required from both the employer and employee. Since the enforcement of the Constitution of the Bolivarian Republic of Venezuela (CRBV) and the Organic Labour Procedure Law (OLPL) case law from the Constitutional or Social Chamber of the Supreme Court of Justice is considered to provide precedents which have to be followed.

### National Law And Employees Working For Foreign Companies

Pursuant to the provisions under Section 2 of the OLLMWW, Venezuelan Labour Law provisions are public policy and are applicable to both Venezuelan and non-nationals when the work is performed and agreed upon in Venezuela. The parties cannot agree to subject the employment contract to any other law.

### National Law And Employees Of National Companies Working In Another Jurisdiction

According to case law, rights under national law will apply to all national individuals whose contract was concluded in Venezuela even if the employee is to work in several jurisdictions (including Venezuela).



## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

Employment contracts may be made both in writing and orally. If made in writing, the employment contract must state the name, nationality, age, marital status, residence and domicile of the contracting parties, services to be performed, contract duration, tasks to be performed and length of ordinary work day. In addition, it is mandatory to make two copies of the written contract, one of which shall be delivered to employee.

### Mandatory Requirements

#### Trial Period

A trial period is optional for the parties. If a trial period is provided for in a written employment contract it cannot be for longer than 30 continuous days. During the trial period, the employment contract may be terminated without any reason, except for any rights accrued in proportion to the time of service.

#### Hours of Work

Save for some exceptions, workdays may not exceed the following: day shift (between 5:00 a.m. and 7:00 p.m.) 8 hours a day or 40 hours a week maximum; night shift (between 7:00 p.m. and 5:00 a.m.) 7 hours a day or 35 hours a week maximum, and mixed shift (comprises both periods but does not exceed 4 night hours) 7 and a half hours a day or 37½ hours a week maximum.

#### Earnings

There is a minimum salary fixed by the National Executive, which companies must comply with. In addition, the employer is obligated to distribute amongst its workers a minimum of 15% of the net profits obtained as of the close of its fiscal year (a minimum limit of 30 days' salary and a maximum of 120 days' salary).

#### Holidays/Rest Periods

The worker has at least 2 consecutive days of rest per week. After 1 year of continuous employment the worker shall be entitled to a paid rest period of 15 working days plus one additional day as from the second year up to a maximum of 30 days. This entitlement also includes a vacation bonus equal to 15 days regular salary plus one additional day as from the second year up to a maximum of 30 days. There are also statutory holidays which must be observed.

#### Minimum/Maximum Age

The minimum age to enter employment is 16 (this may vary in special cases by authorization from child and adolescent protection authorities). There are no maximum age limits, but the employer may be eligible for tax benefits when employing persons older than 60.

#### Illness/Disability

There is quite a detailed regulatory framework for illness and disability contained in several legal instruments. In general, where an employee suffers from an illness or disability which is partially related to his job then the employee is entitled to 3 days' paid leave. On the fourth day of leave, payment is covered by the Venezuelan Institute of Social Security (VISS).

If such illness/disability is a consequence of the services performed or due to employer's negligence, other compensations shall be paid to the employee ranging from double the sick days' salaries up to 8 years' salary, according to the gravity of disability/illness.

#### Location of Work/Mobility

The location of work must be specified in written contracts and whether there are any restrictions on the employee's mobility. However, if the workplace is located 30 km from the nearest town, the employer shall provide free transportation to the worker from his house to the workplace and vice versa. Half of that travel time is computed as work time. In addition, employers engaging more than 500 workers to perform services in uninhabited places more than 50 km from the nearest town shall provide housing for the workers.

### Pension Plans

There is no legal obligation to offer pension plans to employees. The exception to this is the old age and disability pensions granted by the VISS. Both the employer and the employee have to contribute to the VISS Funds in proportion to the salary earned by the employee. In order to be entitled to an old age pension, a male employee must be 60 years of age and a female employee must be 55 years of age and have at least 750 weeks of credited contributions.

In some cases, public or private entities establish retirement pension plans in Collective Bargaining Agreements.

### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

The OLLMWW prohibits the employer from requiring candidates to undergo a pregnancy test as part of the recruitment process. During pregnancy employees are protected from dismissal. This protection extends from the beginning of pregnancy until two years following childbirth. Pregnant employees are entitled to prenatal maternity leave of 6 weeks and postnatal maternity leave of 20 weeks.

Male employees may not be dismissed for two years after the birth of their child. Male employees are also entitled to 14 calendar days' paternity leave.

In the case of adoption, a female employee adopting a child younger than 3 years of age is entitled to 26 weeks' leave and a male employee is entitled to a 14 days' paternity leave. Both employees are protected from dismissal for two years after the adoption.

### Compulsory Terms

For fixed term or fixed project contracts it is necessary to specify the work to be performed and the time of service which is being contracted. In written contracts, the mandatory requirements set forth above for the contract to adopt the form of an employment contract shall be met.

There are certain Workplace Safety and Health regulations which must be strictly complied with upon engagement of the employee. Such requirements include notifying the employee of any risks associated with the work, requiring employees to undergo medical examinations to rule out any occupational diseases and to make a job description and analysis of the job's activities.

### Non-Compulsory Terms

The parties may freely agree upon any term not contradicting OLLMWW or ROLL's regulations, provided that such provisions shall be more advantageous to the worker.

## Types Of Agreement

Employment contracts may be stipulated in several forms: fixed term, indefinite duration or fixed project. The compulsory terms may vary according to the type of contract and there are some provisions to be complied with in connection with contract's specific nature. It is not advisable to renew a fixed term employment contract more than twice as a third extension of this type of contract, once signed or executed, is considered an indefinite duration employment contract.

The employee can also be employed under a part-time agreement, but the employer should grant the part-time employee the same benefits as a full-time employee in proportion to the effective working hours.



## Secrecy/Confidentiality

There are no specific rules in the OLL or its regulations relating to secrecy and confidentiality. However, under sub clause h), Section 79 OLLMWW, revealing manufacturing or corporate procedures constitutes just cause for dismissal.

Therefore, the inclusion of a Secrecy/Confidentiality clause is advisable in written contracts because the breach of such clause may be enforceable in claims of civil nature and covered by compensation for any property damage caused.

## Ownership of Inventions/Other Intellectual Property (IP) Rights

The OLLMWW has statutory provisions regarding the ownership of inventions and improvements performed by employees, categorized as "services", "corporate" and "free or occasional" inventions or improvements. Ownership will depend on the category, since the employer owns the services and corporate inventions or improvements as a result of the employment relationship itself or investment in resources.

In those cases, the employee is to be granted a right to participate in the results obtained from the invention if the compensation itself is proportionally inferior to such results. If the invention or improvement was a direct result of the intellectual activity of an employee not hired for such matters, it is considered a "free or occasional" invention and belongs to the employee, but if the invention is related to the activities of the company, the employer has a preferential right to buy it.

## Hiring Non-Nationals

Employers are obligated to ensure that all non-national employees have a working visa in accordance with immigration statutory laws.

Though employment rights are applicable for both national and non-national employees, statutory law provides that employers having 10 or more employees may hire up to a maximum of 10% non-national employees. In special circumstances, and with a previous authorization of governmental authorities, that percentage could be increased.

Employers will guarantee non-national employees repatriation expenses, including household transportation if necessary.

## Hiring Specified Categories Of Individuals

There are restrictions on the activities which can be performed by children authorized to work, as well as by pregnant women, who are prohibited from performing certain kinds of work and from working long hours which may endanger their life and health.

In addition, there is the obligation to engage persons with disabilities in a number equivalent to not less than 5% of the aggregate workers. Employers are also required to employ apprentices under the national apprenticeship scheme. Apprentices should account for a minimum of 3% and a maximum of 5% of the number of workers, provided that the company has more than 15 workers.

On the other hand, children and adolescent apprentices, professional sportsmen and women, rural workers, land, sea and air transportation workers, motorcycle messengers, actors, musicians, folk performers and other intellectual and cultural workers, depart from the general legal framework for labour relations.

### Outsourcing And/Or Sub-Contracting

As a general rule, outsourcing is prohibited by the OLLMWW. Within the prohibited forms of outsourcing are those involving the engagement of a company to perform processes, services, works or activities of a permanent nature which are directly linked to the production process of the contracting company. Neither is outsourcing allowed when seeking to evade labour legislation or when using typical contractual forms of civil or commercial law.

Despite the legal prohibition on the use of outsourcing, the OLLMWW allows the figure of the contractor, understood as the natural or legal person who by contract is responsible for performing works or services with his own elements, tools and workers under his dependency.

If the activity performed by the contractor is considered to be inherent or related to the line of business of the contracting party or such activity is executed in such volumes that it constitutes the contractor's main source of profit, there is joint liability. In mining and hydrocarbon activities there is a presumption of joint liability.

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## 03. Maintaining The Employment Relationship

### Changes To The Contract

The employer is entitled to perform any changes in the contract, in accordance with the "ius variandis" principle. Changes can only be made to the employee's occupation, timing and place of work and the position of the employee without creating a less favourable status than the previous one.

### Change In Ownership Of The Business

Such change in ownership of a business must be notified in writing to all employees and Unions. This notice should summarize the identification of the new owner, the exact date on which the change will be effective and the reason for the change.

The employees remain on the same terms of employment prior following the change and it does not affect rights consolidated in individual or collective bargaining agreements. If the employee does not agree with the change, he/she can end the employment relationship within 30 days following the date on which the change becomes effective.



### Social Security Contributions

The employer and the employee must make social security contributions. Such contributions register the employee with the VISS. Also, it is mandatory for employers to contribute to governmental social systems, such as Housing and Training of Apprentices among others.

### Accidents At Work

Employers have statutory obligations to implement a Safety and Health Program in accordance with the Organic Law on Prevention, Work Conditions and Work Environment (OLPWCWE) and its regulations. It is mandatory to guarantee the health and safety of the employees in the workplace. Employers are responsible under the OLPWCWE for accidents caused by the acts of their employees where the employees were acting in the course of their employment. Also if the accident occurs in itinere (in their way to work or back home) it is possible to consider the employer liable.

Prevention of occupational diseases caused or made worse by exposure to agents arising from work activities is also mandatory or liability may arise.

In addition to the OLPWCWE and its regulations, there is a Technical Normative issued by the National Institute for Occupational Prevention, Safety and Health (INPSASEL, by its Spanish acronym) containing a number of additional obligations imposed on employers. If the employer breaches any of its statutory duties this may give rise to labour, criminal and civil liabilities jointly in the same labour claim.

### Discipline And Grievance

The OLLMWW establishes justified causes for dismissal and resignation. However, an administrative proceeding must be pursued in the case of those employees, who, even though falling within such causes for dismissal, have at least one month in the service of the employer. If the prescribed procedure is not pursued the dismissal shall be automatically unjustified and any unpaid salaries and labour benefits must be paid to the employee.

Both dismissal and withdrawal take effect when the affected party receives the appropriate notice, as the case may be, and shall be invoked before the expiration of 30 business days. Dismissal shall be notified to the worker in writing stating the grounds for the dismissal.

### Harassment/Discrimination/Equal pay

Any discrimination on the basis of age, sex, race, marital status, religion, nationality, political affiliation or social status is prohibited. Sexual harassment shall be considered an expression of sex discrimination. The victim of discrimination may either terminate his or her employment invoking a justified cause for resignation or file an action seeking protection of his or her constitutional rights and the worker has the burden of proof.

Although all cases of discrimination have been specified in the ROLL since 2006, claims based on such grounds have not been frequent and, therefore, there have been no Court decisions demonstrating the scope of these principles in practice, except in gender violence and some mobbing cases.

### Compulsory Training Obligations

The employer must take such action as may be necessary to guarantee that before beginning their work, workers shall receive appropriate information and training in connection with any unsafe work conditions to which they may be exposed as well as any measures to prevent the same.

In addition, pursuant to the OLPWCWE and its regulations, the employer must develop training programs for employees covering the areas of health and safety, ergonomics, unsafe conditions as well as programs of recreation, use of leisure time and rest periods. This training must also cover the prevention of occupational accidents and illnesses and the use of personal safety and protection devices.

### Offsetting Earnings

The employer may offset employee's debts subject to certain legal restrictions. For instance, the minimum salary and the seniority benefit are protected, but any debts contracted by the employees with the employer, during employment, shall only be amortizable weekly or monthly, in amounts which may not exceed one-third of the amount equivalent to one week or one month salary, as the case may be.

If any debts of the employee should be pending upon termination of employment, the employer may offset the balance against any credit in favour of the employee on any account deriving from the services performed, up to fifty percent (50%).

### Payments For Maternity And Disability Leave

During maternity leave (pre and post natal) the employment relationship shall be suspended, but the employer shall be obligated to pay the employee her salary. If an employee receives a severance pay on termination which is calculated with reference to months worked; the months an employee was on maternity leave should be counted (See Severance Pay and also Parental Rights).

In the event of partial/temporary disability due to an occupational disease, the employee shall be entitled to payment of his salary for the days of his disability (See above Illness/Disability). Where the employer is negligent, the employee may be entitled to a compensation equal to double the salaries corresponding to the days of leave

### Compulsory Insurance

All employers have the obligation to pay to the VISS their quota and that of their employees on account of contributions. Companies failing to comply with this requirement must pay default interest. However, there is no other provision on compulsory insurance to be complied with by the employer.

### Absence For Military Or Public Service Duties

Compulsory military service is among the causes for suspension of the employment relationship. During the same, the employee is not obligated to perform the service nor the employer to pay the salary.



### Works Councils or Trade Unions

For the legalization of a trade union a procedure must be followed before the Ministry of Labour and Social Security (MLSS). Once legalized the employer may not deny its existence.

Those employees promoting the legalization of a trade union and the members of a union board of directors benefit from union privileges. According to these "privileges" they may not be dismissed, transferred nor their working conditions diminished without a just cause previously qualified by the MLSS. All workers participating in a collective bargaining negotiation also benefit by extension from union privileges.

In collective bargaining agreements the union may set forth provisions to guarantee their members the right to be preferred in the contracting of personnel of the company with respect to workers who are not members of the association. The employer has the obligation to deduct from the salary of workers who are members of a union the ordinary and extraordinary dues fixed by the union according to its by laws.

The extinction of the union may depend on the direct will of its members or of a body other than the union.

### Employees' Right To Strike

The employee's right to strike is contemplated under the Constitution and the law. A strike is defined as the collective suspension of the work by workers interested in a labour conflict and includes the duty to abandon the workplace. Although a specified duration is not stipulated, the suspension must be temporary.

A strike constitutes a suspension of the employment contract; therefore, neither the worker is obligated to perform the service (provided it is not an essential service) nor is the employer obligated to pay the salary. The workers' protection benefit from dismissal during the conflict and the period of duration of the strike must be taken into consideration when calculating severance.

### Employees On Strike

Before employees strike, it is required that the demand made to the employer be justified, that the union represent the majority of the workers and that all conciliatory procedures provided under the law have been exhausted.

A strike begins with the issue of a list of demands by the union stating the petitions addressed to the employer. The MLSS shall notify the employer and a Conciliation Board shall be constituted to give a recommendation, which may be a settlement or the remission of the dispute to arbitration. In cases where arbitration is recommended, an Arbitration Board shall be appointed and the arbitration award shall be issued within 30 days following the appointment of the Arbitration Board, which term may be extended.

### Employers' Responsibility For Actions Of Their Employees

The employers answer for any damages caused by their employees if the damage is a direct consequence of performing the services.

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# 04. Firing The Employee

### Procedures For Terminating The Agreement

The termination of an employment contract must comply with statutory law provisions, starting with a notice of dismissal in writing stating the reason for the dismissal. However, in those cases where the employee has at least one month in the service of the employer, dismissal should be authorized by MLSS in the course of an administrative proceeding to avoid the termination amounting to an unfair dismissal. The employer must be able to demonstrate the reason for dismissal as stated in the OLLMWW. Failure to comply with the statutory procedures will automatically result in an unfair dismissal.

When an employer dismisses an employee for just cause, he must notify the Labour Court of the dismissal. The notice does not mean the dismissal is subject to approval of Labour judge.

### Instant Dismissal

Instant Dismissal is only permitted when there is a just cause, in accordance with the OLLMWW. Such causes are: (a) dishonest or immoral behaviour at work; (b) physical violence, except if in legitimate defence; (c) insult or serious lack of respect and consideration due to employer, to his representatives or members of employer's family living under his roof; (d) intentional acts or gross negligence which may affect safety or hygiene at work; (e) omissions or recklessness which may seriously affect safety or hygiene at work; (f) unjustified absence from work for at least 3 business days in the period of 1 month; (g) material damage caused intentionally or as a result of gross negligence to machinery, working tools and implements, company's furniture; raw materials or finished products or work in process, plantations and other property; (h) the disclosure of manufacturing, fabrication or processing secrets; (i) abandonment of work; (j) mobbing and sexual harassment and (k) any other serious breach of the obligations imposed by employment contract.



### Termination on Notice

The parties may terminate the employment contract by giving prior notice to the other. Only in cases of management or trusted employees (see Directors/Senior Officers) is the employer entitled to terminate the employment relationship by giving the employee prior notice depending on his seniority or by making a payment in lieu of notice.

The employee may resign without just cause by giving prior notice to the employer according to the above, but if he fails to comply with this requirement the salaries equivalent to the prior notice term shall be deducted.

During the notice period all obligations arising from the employment contract shall remain unaltered.

### Termination By Reason Of The Employee's Age

Age does not constitute a just cause for termination of employment. It is optional for the worker to apply for his old age +pension before the VISS upon meeting the requirements of age and number of prior contributions. But this does not disable him per se to continue being employed.

### Automatic Termination In Cases Of Force Majeure

Force majeure constitutes, together with national government acts, a cause for termination of the employment relationship, according to sections 76 of the OLLMWW and 39 of the ROLL. The force majeure notion must be interpreted according to the provisions of the Civil Code as the same is not defined in the OLLMWW. In that case, only the compensation in lieu of prior notice is paid according to the time of service.

### Termination By Parties' Agreement

The parties may terminate the employment relationship by mutual agreement. In such cases it is advisable to enter into a written agreement breaking down the items paid on the occasion of the validity and termination of the employment relationship and sign it before the MLSS in order to obtain its approval with effect of res judicata.

### Directors Or Other Senior Officers

With respect to dismissal, only management employees may be fired without just cause, provided that the employer pays them the compensation in lieu of prior notice according to the seniority of the employee.

### Special Rules For Categories Of Employee

In Venezuela it is necessary to obtain the MLSS's authorization to dismiss, even with just cause, the following workers: those workers protected by union privileges, a pregnant employee during pregnancy and for two years from the date of childbirth, the father during two years following the birth of the child and any worker in case of strikes and collective conflicts.

Also, the OLPCWE allows an employee to be given the position of prevention delegate to guarantee the health and safety rights of workers. This delegate is elected by the workers and may not be fired without just cause and without the authorization of the MLSS from the time of his election until 3 months after the expiration of the term for which he was elected.

Also, the Presidency of the Republic has established the obligation for the employer to request the authorization of the MLSS to fire with just cause those workers who have at least one month in the service of the employer.

In all of these cases, the workers may not be fired without just cause and when there is a just cause and the authorization to fire is not requested, the dismissal shall be deemed unfair and will give rise to the reinstatement of the worker to his position and payment of accrued wages from the date of dismissal.

### Specific Rules For Companies in Financial Difficulties

There are specific rules for dismissals due to financial difficulties. The employer must follow a specific procedure established by the MLSS for "mass dismissal". This procedure must be followed in the following circumstances: when the measure affects 10% or more of employees working for a company with more than a 100 employees; when the measure affects 20% of employees at a company with more than 50 workers; and when the measures affects 10 employees of a company with less than 50 employees during a period of 3 months, or even longer if the circumstances should be of a critical nature.

### Restricting Future Activities

There are no legal restrictions with respect to the future activities of the employee. It is advisable to include in the contract a confidentiality clause or clause prohibiting disclosure of industrial or commercial secrets, should such provision had not been set forth at the time of the hiring (See above, Secrecy/Confidentiality).

### Severance Payments

After three months of continuous employment, employees are entitled to a severance pay of up to 15 days salary per quarter plus 2 additional days for every complete year after two continuous years of service, up to a maximum cumulative total of 30 days. Those amounts should be credited quarterly but the accumulated amount is only delivered to the employee upon termination of the employment relationship, although the law provides for the possibility of obtaining advances during the employment relationship of up to a 75% in certain specified cases.



In addition to the quarterly credit to which the preceding paragraph refers, upon termination of the employment relationship, the employer shall multiply a month's salary by each complete year of service or fraction exceeding six (6) months, taking the last salary as basis. The resulting amount shall be compared with the amount of money accumulated on account of severance pay and the higher of the two amounts shall be the amount to be finally paid by the employer.

If the employment relationship is terminated for a cause not imputable to the worker, the employer shall pay to the worker a compensation equivalent to the Severance Pay.

### Special Tax Provisions And Severance Payments

Severance pay is not subject to income tax.

### Allowances Payable To Employees After Termination

There are no allowances payable to employees after termination of employment.

### Time Limits For Claims Following Termination

The statute of limitations for labour actions runs out after ten years. In cases of unfair dismissal, the worker must file the action with the MLSS within 30 days following dismissal. In any other case, the worker may request reinstatement before the Labour Courts within 10 working days following unfair dismissal. If the worker fails to do so, he shall forfeit his right to reinstatement, but will not lose other rights to which he is entitled to as a worker.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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# Vietnam

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## 01. General Principles

**Forums For Adjudicating Employment Disputes**

Depending on its nature, a labour dispute in Vietnam may be settled by a labour conciliator, the chairman of the district people's committee, arbitration, and/or the court.

In particular, for individual labour disputes (i.e., disputes between an individual employee and his/her employer), the competent authorities for dispute settlement include labour conciliators and the court. Except for cases involving dismissal or unilateral termination, individual labour disputes must be first settled by a labour conciliator appointed by the local labour authority. If either of the parties does not agree to the solution proposed by the conciliator, then it may submit the dispute to the court.

For collective labour disputes (i.e., disputes between the employees as a group and the employer), if a dispute is considered to be regarding existing rights (i.e., a dispute as to the performance of rights and obligations of the parties under the collective labour agreement or labour laws), then the competent authorities for dispute settlement include labour conciliators, the chairman of the district people's committee, and the court. The dispute must be first settled by a labour conciliator. If a mutual agreement as suggested by the conciliator cannot be achieved, then either party may submit the dispute to the chairman of the district people's committee for settlement. If either of the parties cannot agree to the settlement rendered by the chairman, then the dispute may be submitted to the court.

If a collective labour dispute involves new benefits (i.e., a dispute arising from a new demand of either of the parties that is not yet stipulated under the labour laws or the collective labour agreement, such as a dispute as to the demand of the employees for a salary raise or reduction of working hours, etc.) the competent authorities for dispute settlement include labour conciliators and labour arbitration councils. The dispute shall initially be settled by way of conciliation through a labour conciliator. If conciliation fails, then a party may submit the dispute to the arbitration council for settlement. The arbitration council acts similarly to a conciliator. In fact, it does not render any award. Rather, it tries to convince the parties to come to a mutual agreement. If a party (usually the employees) does not agree to the settlement proposed by the arbitration council then it may go on strike.

### The Main Sources Of Employment Law

The main sources of employment law in Vietnam are the Labour Code (initially introduced in 1994 and amended several times before being entirely replaced by the new Labour Code, adopted by the National Assembly of Vietnam on 18 June 2012, and in force since 1 May 2013), the Law on Vietnamese Labourers Working Overseas Under Contract (adopted by the National Assembly of Vietnam on 29 November 2006), government decrees, ministerial circulars and decisions, provincial decisions and guidelines, collective labour agreements, company rules, individual contracts, and the Supreme Court's annual judgment practice summaries and guidelines.

### National Law And Employees Working For Foreign Companies

Except for those foreign individuals working in Vietnam under an intra-company transfer regime (i.e., a foreign parent company assigns its employee to work at its Vietnam-based subsidiary), Vietnamese labour laws apply to all individuals physically present in Vietnam working for Vietnam-based organizations (including foreign-invested enterprises).

### National Law And Employees Of National Companies Working In Another Jurisdiction

Normally, Vietnamese labour law is applied when Vietnamese companies send their employees to work overseas. Technically, the employment contract does not need to specifically address this issue.

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# 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

A labour contract must be in writing and executed before the employee starts to work. Contracts for temporary jobs which last for a term of less than three months do not need to be in writing and can be oral. There are statutory requirements as to the form and the essential terms of a labour contract. A labour contract must be written in Vietnamese or in both Vietnamese and another foreign language which is applicable to the employee and employer.



### Mandatory Requirements

#### Trial Period

There is no compulsory obligation to provide trial periods, otherwise known as 'probationary periods', when engaging new employees, but it is common in practice to do so. A probationary period must not exceed sixty (60) calendar days for jobs requiring a college degree or more; thirty (30) calendar days for jobs requiring vocational qualifications or technical workers and professional staff; and six (6) business days for other types of work. Employees must be paid at least 85% of their normal salary during the trial period.

#### Hours of Work

The maximum working hours is eight (8) hours per day and forty-eight (48) hours per week for normal working conditions. Working hours may be on an hourly, daily or weekly basis, depending on the employer's needs. If on a weekly basis, the regular working hours must not exceed ten (10) hours a day and forty eight (48) hours a week. For jobs on the list of extremely heavy, toxic or dangerous working conditions as specified by the competent authorities, the regular working hours shall not exceed six (6) hours a day. Night-shift work hours are from 10:00 p.m. to 6:00 a.m. of the subsequent day.

#### Earnings

Vietnamese labour laws require that the salary payable to the employees must at least be equal to the minimum salary declared by the Government from time to time. The current minimum salary applicable to non-State-owned enterprises ranges from VND 1,900,000 to VND 2,700,000 (approximately USD 90 to USD 128), depending on the geographical area.

#### Holidays/Rest Periods

There is a requirement that employees must take a rest period of a minimum of twenty four (24) consecutive hours per week. There are also various compulsory daily and weekly rest periods and/or breaks which have to be observed. For instance, an employee who works for eight (8) hours (or six (6) hours for extremely heavy, toxic or dangerous work) consecutively shall be entitled to a break of at least thirty (30) minutes which shall be included in a set number of working hours. If the employee works at night, the minimum time of break increases to forty-five (45) minutes, Employees working on shifts are entitled to a break of at least twelve (12) hours before moving to another shift.

Employees are entitled to 12 to 16 annual leave days with pay, depending on the type of work in which they are engaged. In addition, there are 10 public holidays per annum in Vietnam.

#### Minimum/Maximum Age

The normal age for lawful employment is eighteen (18). In special cases, employers may employ employees who are below this age, subject to the satisfaction of certain conditions such as the nature of work and the prior acceptance of the guardian of the employee.

There is no mandatory retirement age. However, senior workers (over sixty (60) for men or over fifty-five (55) for women) are entitled to reduced daily working hours.

#### Illness/Disability

Employees who suffer from illness and/or disability and take leave in accordance with doctor's orders shall receive a monthly allowance paid by the social insurance fund of Vietnam which ranges from 45% to 100% of the premium payable to the social insurance fund for the month immediately before the month of leave. Depending on the type of work and nature of the illness or disability, the length of time for the allowance varies.

#### Location of Work/Mobility

An employee's place of work must be set out in the labour contract in order to comply with statutory requirements. Mobility clauses can be included in the employee's labour contract, if necessary. Where a job requires travel to another temporary location, it is customary for the employer to reimburse all reasonable travel expenses.

#### Pension Plans

Both employers and employees are required to contribute to the compulsory social insurance fund that shall pay a pension to employees when they retire.

#### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Employers must allow pregnant employees to have their health checked regularly. Female employees are entitled to take six (6) months of maternity leave.

Compulsory Terms

The Labour Code requires a labour contract to include the following material provisions: (i) Name and address of the employer or the employer's legal representative; (ii) full name, date of birth, gender, residential address, number of ID Card or other legal document of the employee; (iii) work to be performed and work location; (iv) term of the labour contract; (v) salary/wage rate, method and time of salary payment, allowance and other additional payment; (vi) regime for salary increase; (vii) working hours and rest hours; (viii) personal protective equipment for the employee; (ix) social insurance and medical insurance; and (x) training.

Non-Compulsory Terms

Employers and employees are free to agree any other terms in addition to the compulsory provisions, provided that these additional provisions are no less favourable than what is statutorily required and must not be contrary to the law or social morals.

### Types Of Agreement

Under Vietnamese labour laws there are three types of labour contracts: (i) An indefinite-term labour contract; (ii) a fixed-term labour contract with duration of twelve (12) to thirty-six (36) months; and (iii) a labour contract for a specific or seasonal job of less than twelve (12) months.

### Secrecy/Confidentiality

The Labour Code allows for covenants on confidentiality of business and technology secrets via provisions in the labour contract or a separate agreement. Such covenants may include payment of compensation if the employee breaches the confidentiality agreement.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

The ownership of inventions and other IP rights shall belong to the employer except if there is an agreement which states otherwise between the employee and the employer.

### Hiring Non-Nationals

All foreign nationals working in Vietnam must have a work permit, regardless of the length of time they intend to work in Vietnam, unless exempted. Vietnamese employers are required to provide support and submit application documents for the work permit. Foreign workers exempted from the work permit requirement include, among others, capital-contributing members or owners of limited liability companies, members of the board of management of shareholding companies, and Heads of Representative Offices of non-governmental organizations.

### Hiring Specified Categories Of Individuals

Employers are prohibited from employing female employees, pregnant employees, child employees, disabled workers, and senior employees for hazardous and hard work that may cause health problems.



### Outsourcing And/Or Sub-Contracting

Labour outsourcing is considered a conditional business in Vietnam. As such, labour outsourcing is permitted only for certain types of work and the labour lessor must be licensed to conduct labour outsourcing. In addition, a deposit is required for carrying out the business. The Labour Code provides general principles for this service. For example, the labour lessor is required to pay salary to a contractor at least equal to the salary the lessee would pay for its own employee who has the same level and same job, and the maximum term for outsourcing is twelve (12) months.

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# 03. Maintaining The Employment Relationship

### Changes To The Contract

In general, a labour contract must be made in writing and signed by both the employee and employer prior to the employee's start of work. Therefore, any change to the content of a labour contract must be also made in writing and signed by both parties (except for cases where the change brings more benefits to the employee such as salary increase, etc.). The change can be in the form of an addendum appended to the original labour contract and will form an integral part of the labour contract.

Nevertheless, the law also allows the employer to temporarily change the terms and conditions of a labour contract for a limited period of time under certain circumstances. In particular, in cases of force majeure or due to the employer's business demand, the employer may temporarily assign an employee to do work other than that specified in the labour contract, subject to the satisfaction of the requirements as to the time of the assignment not exceeding sixty (60) calendar days in one year and the new salary being at least 85% of the current salary.

### Change In Ownership Of The Business

Where there is a merger, consolidation, division, separation, or transfer of ownership, or change in the right to manage, or change in the right to use assets, succeeding employers shall be responsible for the continuous performance of all employees' labour contracts.

If all available employees are unable to be employed, there must be a plan for labour usage. This plan must be communicated with the Trade Union organization, if any, who will provide input where necessary. If a labour contract is terminated under these circumstances, an employee who is let go, but who has worked for the former employer for twelve (12) months or longer, shall be entitled to receive a job-loss allowance equalling one (1) month salary for each working year (for which the employee has not already received unemployment benefits in accordance with the Law on Social Insurance) but no less than two (2) months' salary.

### Social Security Contributions

Employers and employees are required to make social insurance, medical and unemployment contributions to the social insurance fund. The social insurance fund shall pay allowances for severance or job loss (from 2009), sick leave, maternity leave, work-related accidents, occupational disease, and pensions to employees.

### Accidents At Work

The laws require employers to provide employees with sufficient protective equipment, to ensure occupational safety and hygiene and to improve working conditions in the workplace. Employees are also required to comply with occupational safety and hygiene regulations and internal labour rules of employers.

Work-related accidents are defined as accidents which injure any bodily parts or functions of an employee, or cause the employee's death during work, and closely relate to work performance or labour activity. An employee who is injured in a work-related accident must be immediately treated and be fully attended to. The employer must take full responsibility for the occurrence of the work-related accident in accordance with the provisions of the law.

During the period in which an employee is absent from work for medical treatment in respect of a work-related accident or occupational disease, the employer must pay the employee his/her full salary and expenses for the treatment (which are not covered by the medical insurance).

### Discipline And Grievance

Depending on the seriousness of the breach of labour rules committed by an employee, he/she may be subject to one of the three types of labour disciplinary measures which are (i) reprimand; (ii) extension of the period for wage increase by no more than six (6) months or demotion; or (iii) dismissal. The laws set out the procedures and statutory forms that are required for disciplining violating employees. An internal hearing must be organized and the employer is required to prove the employee's fault.

If an employee who is disciplined is dissatisfied with the disciplinary decision, he/she is entitled to complain to the employer and the local.

### Harassment/Discrimination/Equal pay

Vietnamese labour laws prohibit employers from any act of discrimination on the basis of the employee's gender, nationality, social class, beliefs or religion. Moreover, employers are strictly prohibited from conducting discriminatory behaviour towards female employees or conduct that degrades female employees' dignity and honour. Employers are required to implement the principle of gender equality in respect of recruitment, utilization, wage and wage increase.



### Compulsory Training Obligations

In general, there are no compulsory obligations regarding employees' training imposed on employers. However, in certain cases, such as reorganization and/or change of technology, employers are required to re-train employees.

### Offsetting Earnings

An employer may make a deduction from an employee's salary/wage as compensation for a loss incurred by the employer resulting from an act in which the employee was at fault. However, the employee must be notified of the reasons for the deduction before the deduction is made. The aggregate amount deducted must not exceed 30% of the employee's monthly salary/wage.

### Payments For Maternity And Disability Leave

A female employee when giving birth shall be entitled to take six (6) months maternity leave. Where an employee gives birth to more than one (1) child at one time, she shall be entitled to take an additional one month leave for every additional child calculated from the second child onwards.

The employee will receive maternity allowance which is paid by the social insurance fund during maternity leave.

With regard to sick leave, an employee will be entitled to receive sick leave allowance paid by the social insurance fund. The maximum entitlement is thirty (30) days per year (if the employee has contributed to the social insurance fund for less than fifteen (15) years) or forty (40) days per year (if the employee has contributed to the social insurance fund for between fifteen (15) and thirty (30) years) or sixty (60) days per year (if the employee has contributed to the social insurance fund for more than 30 years).

During the period in which an employee is absent from work for medical treatment in respect of a work-related accident or occupational disease, the employer must pay full salary and certain expenses for the treatment. After the treatment, the employee shall, depending on the reduction of his/her ability to work due to a work-related accident or disease, be examined and diagnosed in order to be entitled to a social insurance benefit paid as a lump sum or in monthly instalments by the social insurance fund.

The amount of allowances payable by the social insurance fund is determined based on the paid premium amount and the length of payment by the employee to the fund.

### Compulsory Insurance

Compulsory insurance shall apply to enterprises, entities and organizations which employ employees under indefinite term labour contracts or under term labour contracts with a duration of three months or more. Compulsory insurance includes social insurance, medical insurance and unemployment insurance. Both employees and employers are required to contribute to the social insurance fund at statutory rates which currently are 10.5% for employees and 22% for employers.

### Absence For Military Or Public Service Duties

Employees are entitled to suspend performing their duties under labour contracts if they are required to carry out military service or other public civic obligations. Employers are required to re-employ the employees at the end of the suspension period.

### Works Councils or Trade Unions

A trade union is defined under Vietnamese law as the body that represents and protects the employees. Generally, the trade union is delegated to participate in, negotiate, sign, and supervise the implementation of collective labour agreements, wage scales, payrolls, internal labour rules, etc.; to assist in resolution of labour disputes, and to discuss and cooperate with the employer to formulate a harmonious, stable and progressive labour relationship within enterprises.

The trade union system consists of the Vietnam General Confederation of Labour and the trade unions at the provincial, district and grassroots levels. Grassroots trade unions are formed upon request of the employees at enterprises with the assistance of, normally, the district-level trade union, provided that there are at least five employees registered as trade union members. A Vietnamese employee working in an enterprise has the right (but not obligation) to establish and join a grassroots trade union and to participate in its activities in accordance with the Law on Trade Unions and Vietnam's Trade Unions Charter.

Employers are required to facilitate and assist the establishment and operation of the grassroots trade union and, once the grassroots trade union is established, the employer must recognise it and create favourable conditions for its operation. In addition, employers are required to contribute 2% of the payroll amount used as the base salary for social insurance contribution purposes (not the actual payroll amount) in order to support trade union operations, while the amount contributed by the employee shall be 1% of his/her salary.

### Employees' Right To Strike

Employees may voluntarily go on strike. However, strikes must be organized and led by the executive committee of the company's trade union or the local trade union if there is no company trade union. Striking is allowed only in respect of a collective labour dispute regarding new benefits and after such dispute has been heard by a labour arbitration council (but in which the parties have disagreed with the proposed agreement by the arbitration council). Statutory procedures and steps for organization of strikes must be followed, such as obtaining opinions from the employees or the trade union, issuing a decision to strike, notifying the decision to strike to the employer and the labour authority, etc.

Strikes are prohibited at enterprises which supply certain types of products and services that are essential for the national economy for the reason that such strikes may cause threats to the national defence and security of Vietnam.



### Employees On Strike

Employers are not required to pay salary to employees who participate in a strike. However, employers are prohibited from terminating labour contracts or applying labour disciplinary penalties to employees or to organizers of strikes or transferring employees or strike organizers to do other jobs or to work at another location because of their participation in or preparation for a strike.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where employees act outside the scope of their employment.

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## 04. Firing The Employee

### Procedures For Terminating The Agreement

There must be proper legal grounds for an employer to terminate a labour contract with an employee, such as performance issues, prolonged illness, a force majeure event or winding up of the company. Employers are required to follow a number of statutory steps such as sending a warning letter to employees and/or sending advance written notice regarding the termination of employment to employees within a statutory time limit.

If an employer does not have legal grounds for the termination or fails to follow the proper statutory procedure, a termination may be declared wrongful and, if so, employers may be required to reinstate the employee, pay their salary for the period that they were not allowed to work, and pay two months or more of the employee's salary as a penalty for the wrongful termination.

### Instant Dismissal

Under Vietnamese Labour Law, dismissal is the severest labour disciplinary measure. Employees may be dismissed when they commit an act of gross misconduct such as theft, embezzlement, disclosure of business or technology secrets, or repeatedly commit acts in violation of the employers' work rules or policies. Generally, a disciplinary hearing meeting must be held and a number of statutory procedures must be followed.

### Termination on Notice

Termination by the employer on notice or at will is not allowable under Vietnamese law. As a result, if the parties agree that either party may terminate the labour contract by giving an advance notice to the other, such an agreement will be deemed unenforceable.

However, an employee who is under an indefinite-term labour contract may resign from his/her job without a specified reason. Before doing so, such an employee is required to give the employer an advance notice of at least forty five (45) working days. For an employee who is under a definite term labour contract, there must be statutorily recognized grounds for his/her resignation, such as the employee not being assigned the correct work or workplace as agreed in the labour contract, or the employee was mistreated, sexually harassed or subject to labour coercion, etc. In this case, an advance notice of at least thirty (30) working days must be given to the employer.

### Termination By Reason Of The Employee's Age

Unilateral termination by reason of the employee's age is not a legal ground under Vietnamese labour laws, unless the employee reaches legal retirement age. Legal retirement age is sixty (60) for men and fifty five (55) for women. A retired person will receive his/her pension from the social insurance fund. When an employee reaches legal retirement age, the employer is entitled to opt to terminate the labour contract with the employee or to extend the labour contract with such employee. If the labour contract is extended, the senior employee is entitled to reduced working hours in accordance with the provisions of law.

### Automatic Termination In Cases Of Force Majeure

Where, as a result of a natural disaster, fire or for any other cause of force majeure as prescribed by law, an employer, despite having taken all necessary measures to remedy the problem, still needs to downsize the business, the employer is entitled to early termination of labour contracts with employees. However, the employer is still required to send an advance notice to employees and follow the statutory procedures for termination. The employee shall be entitled to a severance allowance which is currently equivalent to half of the employee's salary for each year of employment for any period of employment through the end of 2008. Starting from 2009, the severance allowance shall be paid by the social insurance fund.

### Termination By Parties' Agreement

The parties are entirely free to agree to termination on any grounds they desire.

Where both parties agree to terminate employment, they are not required to give advance notice. The parties may also waive any procedures. However, all the related issues such as employment termination, severance payments, personal income tax, social insurance, etc., should be finalized and addressed in a document, which should be signed by both parties.



### Directors Or Other Senior Officers

In addition to labour law, certain high-ranking employees, such as general directors and members of the board, are subject to Vietnam's Investment Law of 2005 and Enterprise Law of 2005, as well as the company's charter (i.e., Articles of Association). The term for the above positions shall not exceed five (5) years, but it is renewable.

A director or senior officer may have his/her job description set out in the labour contract. However, the functions, duties, obligations, rights, and authority of such employees may also be provided by the relevant law and the company's charter and/or decisions assigned by general shareholders' meetings, members' council, boards, etc.

### Special Rules For Categories Of Employee

The Vietnamese labour laws provide special rules for certain categories of employees, including underage, female, disabled and senior employees.

For example, for underage employees (i.e., employees under the age of 18), employers are prohibited from using them in extremely heavy, toxic or dangerous work or in jobs which adversely affect the personality and health of underage employees, such as in the production and business of alcohol, tobacco or other addictive substances; or in casinos, bars, dance halls, etc.

Senior employees include people who continue to work after having reached the retirement age. These employees are entitled to reduce the number of working hours in a day or work on a part-time regime. Employers are prohibited from assigning senior employees to heavy, toxic or dangerous work which might have adverse effects on their health.

Employers are required to ensure suitable working conditions, tools and equipment appropriate for disabled employees and must take regular care of their health. It is also prohibited to allow a disabled person whose ability to work has been reduced by 51% or more to work overtime or at night. Employers are prohibited from assigning disabled workers to heavy, toxic or dangerous work.

Female employees are entitled to the most protective rules. Among other rules, employers are required to ensure the implementation of gender equality during the employment relationship with female employees and ensure that female employees have adequate changing rooms, shower facilities and toilets in the workplace. An employer is not permitted to assign a pregnant female employee to do night work, overtime work or to go on a business trip to remote areas from the employee's 7th month of pregnancy or if the employee is nursing a child under one year old. During the pregnancy, nursing period or maternity leave, the female employee is not subject to labour discipline. After the maternity leave, the female employee is guaranteed her old job upon returning to work. The employer is also prohibited from assigning a female employee to work which has an adverse effect on her ability to bear and raise a child, work involving regular underwater immersion, or regular underground work (mining).

### Specific Rules For Companies in Financial Difficulties

There are special rules which apply if a company is in financial difficulty. If a company goes into liquidation then an employer has legal grounds to unilaterally terminate all employees' labour contracts. However, the employers are required to send an advance notice and pay severance allowance to employees, etc.

If the employer is in bankruptcy, the employees shall become unsecured creditors. However, the employees' interests (salary, allowance, insurance, and other contractual benefits) will be given priority over other unsecured creditors.

### Restricting Future Activities

Vietnamese labour laws set forth a basic principle under which employees have the right to work, to freely choose their type of work and only competent courts have the right to prohibit employees from doing certain jobs. Therefore, while there is no direct legal prohibition, clauses that attempt to restrict the future activities of an employee are likely unenforceable in Vietnam.

In practice, employers often include "unfair competition" or "non-compete" clauses in labour contracts to prevent their former employees from working for their competitors or directly competing with them for a certain period of time after termination. In reality, the enforceability of such agreements will most likely depend on the voluntary compliance of employees.

### Severance Pay

Vietnamese labour laws require employers or the social insurance fund to pay severance to employees who have been continually working for the employer for twelve (12) months or more. In particular, employers are required to pay severance allowance for the term of service until the end of 2008. From 2009, the social insurance fund will take over this duty. However, there are certain cases in which employees are not entitled to severance allowance such as in the case of dismissal.

### Special Tax Provisions And Severance Payments

In Vietnam, any income earned by an employee under the form of salary, wage, allowance, and bonus shall be subject to personal income tax ("PIT"). Employers, as income-paying organizations, are required to withhold and pay PIT to taxation authorities.

Generally speaking, statutorily allowed severance payment is not subject to PIT. However, any extra payments beyond that shall be subject to PIT.



### Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowance that is payable to employees after termination, unless otherwise agreed by the parties in the labour contract, provided that all required severance payments up to the date of termination (where applicable) were fully paid.

### Time Limits For Claims Following Termination

In terms of a claim arising from the disciplinary measures resulting in dismissal, or a dispute arising from a unilateral termination of the labour contract or disputes relating to payment of compensation for loss and damage or payment of allowances, the statute of limitation period for an individual labour dispute is one (1) year from the date of occurrence of conduct which any disputing party claims breached its rights or benefits.

## 05. General

### Specific Matters Which Are Important Or Unique To This Jurisdiction

Labour laws of Vietnam are heavily employee protective. Without carefully worded and registered internal labour rules, termination of an employment relationship with an employee in Vietnam is practically impossible. In addition, at-will termination is not allowed in Vietnam. An employer may only terminate a labour contract prior to its term under certain specific conditions as set out by the laws (and detailed in the internal labour rules). Depending on the grounds for termination, the conditions for severance or job-loss allowance, notice periods and procedures may vary.

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