

EUROPEAN Employment Law Handbook

2021

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EUROPEAN EMPLOYMENT LAW HANDBOOK

INTRODUCTION

Welcome to the Ogletree Deakins European Employment Law Handbook—a handy guide to the employment laws of 17 European countries—now updated in our 2021 version 2.

Employment laws vary considerably throughout Europe, even among the member nations of the European Union (EU), which can each have quite different versions of EU directives. The implementation of these laws also can be very different, with the collective negotiation environment of works councils and unions being widespread in some countries and almost nonexistent in others.

We recognize that it can be time-consuming and confusing to manage employees across different European countries, so we hope this handbook is a helpful starting point for your employment law queries. Our attorney-authors have extensive experience dealing with human resources issues throughout Europe. Our team is supplemented by close relationships with handpicked local counsel from highly rated law firms. We appreciate their help in creating this handbook.

Please note that the information contained in this handbook is current as of November 1, 2020. The laws referred to herein are subject to change, and the information is not legal advice.

If you have any questions, or would like to know how the Ogletree Cross-Border Practice Group can help with your employment law issues in Europe, please contact us. We look forward to speaking to you.

Diana J. Nehro, Chair,
Cross-Border Practice Group



diana.nehro@ogletree.com
599 Lexington Avenue
Suite 1700
New York, NY 10022
646-283-2037

Roger James, Partner,
European Contact,
Cross-Border Practice Group



roger.james@ogletree.com
St Pauls House
8-12 Warwick Lane
London EC4M 7BP
+44 (0)20 7822 7627

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BELGIUM



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in Belgium and does not need to set up a local subsidiary. Whether or not there is a local subsidiary, payroll registration is required, and employers are required to withhold income taxes and social security taxes from payments to employees—in contrast to independent contractors, who are paid gross and are responsible for their own taxes.

EMPLOYMENT STATUS AND HIRING OPTIONS

The two main methods of engagement are as an employee or a self-employed independent contractor (sometimes also called a consultant). While an employee works under the authority of his or her employer, a self-employed worker has freedom and autonomy in organizing his or her work.

Whether a person is working as an employee or on a self-employed basis depends on the facts rather than the type of contract used. Key factors to determine this are (a) the will of the parties, (b) the freedom to organize one's work and working time, and (c) the possibility of (hierarchical) control.

Employees are protected by Belgian employment law and adhere to the social security scheme for employees. A self-employed individual does not benefit from employment law protection. However, there are tax advantages to being self-employed.

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EMPLOYMENT STATUS AND HIRING OPTIONS

Different types of employment rights can apply to blue- and white-collar workers, students, sales representatives, remote workers, and agency workers.

Probationary Periods

Probationary periods are not allowed, except for student employment agreements and temporary agency work agreements, which are limited to the first three working days.

RECRUITMENT

The following steps are required on recruitment of an employee:

- Register with the National Office for Social Security (RSZ - ONSS) and the office for direct taxes (known as a Dimona declaration).
- Subscribe to industrial accidents insurance with a recognized insurance company. This covers medical costs and an employee's income if he or she becomes unfit for work as a result of an industrial accident.
- Set up an internal health and safety service. An employer must appoint a minimum of one health and safety advisor (for companies with fewer than 20 employees, this can be the employer) and sign up to a recognized external health and safety service for medical health checks and other advise on health and safety in case the employer does not have the requisite knowledge.
- Appoint an authorized agent to keep the compulsory employment documents and act as a post box to which all official correspondence is sent by the RSZ - ONSS.
- Where applicable, notify posted (seconded) workers and self-employed persons temporarily or partially employed or established in Belgium from another country (known as a LIMOSA notification).

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

Written employment contracts are not mandatory but are frequently used. However, certain contracts (fixed-term employment, part-time employment, remote working arrangements, student work) and clauses (noncompete) must be in writing.

Legally Required Policies

1. Work regulations: All employers must draw up work regulations that contain all the salary and work conditions applicable within the company.
2. Human resources data protection notice

Common Additional Policies

1. Car policy
2. Use and monitoring of electronic devices
3. Communications policy
4. CCTV policy
5. Reimbursement of cost policy
6. Remote work policy

Language Requirements for Documents

There are strict laws requiring all documents that contain terms of employment or other key information (including bonus plans) to be in the local language. The language in question depends on the location in Belgium:

- Brussels region: French for French-speaking members of staff and Dutch for Dutch-speaking members of staff
- Flemish region: Dutch
- Walloon region: French
- German-language region: German

Other Sources of Terms of Employment

Collective bargaining agreements (CBAs) are widespread and provide employees with certain rights. There are national, industry-level, and company-level CBAs.

1. National-level agreements concluded in the National Labour Council, which apply to all employers in the private sector, cover general employment rules (e.g., CBA 5 on trade union delegation, CBA 109 on unfair dismissal).
2. Industry-level agreements concluded in a Joint Labour Committee (JLC), which apply to all employers in a particular industry (e.g., health care, construction, retail, insurance, banking), cover minimum salaries, job descriptions, working time arrangements, and training requirements. A company belongs in principle to just one JLC, and this is determined by the company's main activity.
3. Company-level agreements concluded between a particular employer and trade unions: cover specific employment and salary conditions for that company only.

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HOLIDAY ENTITLEMENT

Employees are entitled to 20 working days' annual holidays when working a 5-day week. Those working shorter weeks have a proportionate entitlement. CBAs at industry level or company level can grant additional holidays.

Employees are entitled to 10 public holidays on top of their annual holidays:

- New Year's Day – January 1
- Easter Monday
- Labour Day – May 1

- Ascension Day
- Whit Monday
- Independence Day – July 21
- Assumption Day – August 15
- All Saints' Day – November 1
- Armistice Day – November 11
- Christmas Day – December 25

If an employee is required to work a public holiday, he or she is entitled to a day off in lieu.

WORKING TIME LAWS

Employees are not allowed to work more than 38 hours per week on an average basis and 9 hours per day (see below for circumstances in which overtime is allowed). Sunday work, night work, or work on public holidays is not allowed for most employees (although there are exceptions). Working time rules do not apply for sales representatives and employees with a leading function or in a trust position.

Opt-outs from the working time limits are not generally allowed.

The Working Time Act provides for several flexible working arrangements and several exceptions to the prohibition on working Sundays, public holidays, or at night. These exceptions are mainly for jobs requiring rotating shift work or a continuous service.

Overtime

Overtime is work beyond the limits of 9 hours per day and 38/40 hours (depending on the industry) per week. Overtime is allowed only under particular circumstances (including shift work, work with perishable and unstable materials, and dealing with an exceptional increase in workload).

All overtime must be paid at 150 percent of normal salary for work on a working day and 200 percent of normal salary for work on Sundays or public holidays. Additionally, compensatory rest is required.

Employees can work up to 120 overtime hours per year and must sign an agreement authorizing overtime hours.

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Gliding Work Hours

Some employers have so-called “gliding working hours.” This arrangement allows employees to work longer than the normal working hours in a given day or week, without the obligation for the employer to pay overtime compensation, as long as the average weekly working time has been respected during a certain reference period.

ILLNESS

Employees who are unable to work because of sickness or injury are required to inform their employers of their absence and must issue a medical certificate if this is stated in the employment contract, work regulations, or a CBA.

The position on payment differs for white- and blue-collar employees. Both will receive sick pay for 30 days, but for white-collar workers, it is all paid by the employer. By contrast, payment to blue-collar workers is from the employer for the first 14 days, and the rest is divided between social security and the employer.

After 30 days, further payments are paid entirely by social security, up to a percentage of normal income (55 to 60 percent). However, many employees benefit from a contractual enhancement (e.g., through individual or group medical insurance) from their employment contract or applicable CBA.

After 12 months' absence, employees are entitled to receive invalidity pay from social security. This is typically less than sick pay paid to that point.

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STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

A pregnant employee is protected from dismissal from the time an employer is informed that she is pregnant until one month after the end of her maternity leave. If an employer terminates a pregnant employee's contract without proving that the termination is due to reasons other than the pregnancy, it will be liable for compensation to the employee of a sum equal to six months of salary.

Mothers are entitled to 15 weeks of maternity leave (starting between 1 and 6 weeks before the expected birth date and ending no earlier than 9 weeks after the birth).

Employees receive a maternity allowance, paid by the health insurance fund, equal to 82 percent of salary during the first 30 days of leave and 75 percent of salary from the 31st day to the end of maternity leave.

Paternity Leave and Pay

Fathers or co-parents are entitled to 10 working days of paternity leave, to be taken within 4 months of the birth. They receive normal salary paid by the employer during the first 3 days and an allowance equal to 82 percent of salary for the remaining 7 days, paid by the health insurance fund.

Parental Leave

Either parent may also take a further 4 months of leave anytime up to the child's 12th birthday (21st birthday in cases of disability).

This is financed through the social security system. Employers may delay this leave by up to six months with good reason.

Adoption Leave

The leave period for the adoption of a child is 6 weeks per parent (anytime up to the child's 18th birthday) or for a couple (if both adoptive parents are employees) 13 weeks. The number of weeks of leave will gradually increase up to 17 weeks for a couple in 2027.

Employees receive normal salary from the employers for the first 3 days and then an allowance equal to 82 percent of salary for the remainder of the adoption leave, paid by the health insurance fund.

Other Family Leave

Leave is also available for palliative care, educational leave, care leave, and leave on the occasion of certain family events or for the fulfillment of civil obligations.

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FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

In general, part-time workers have the same rights as full-time workers, but in proportion to the duration of their work. Fixed-term employees are also generally entitled to the same benefits as permanent colleagues.

Temporary workers (including agency workers) are generally entitled to the same salary as applicable to regular employees where they work.

DISCRIMINATION AND HARASSMENT

The characteristics protected by law are gender, age, race, religion or belief, disability, sexual orientation, marital status, birth, wealth, political opinion, trade union belief, language, current or future state of health, physical or genetic characteristics, social origin, nationality, skin color, background, and national or ethnic origin.

Employers of disabled employees are also required to consider—and make—“reasonable adjustments” to remove a disabled person’s disadvantage in the workplace.

An employee who is a victim of a discriminatory act can file a complaint against or claim compensation (capped at six months’ salary) from the employer. An employer that breaches the anti-discrimination requirements also risks additional criminal penalties. There are also anti-retaliation (victimization) provisions, and if an employee is dismissed or detrimentally treated for a reason linked to raising a discrimination complaint, compensation of six months’ salary may be due if the employee has not been reintegrated into the company.

An employee who is a victim of harassment can follow an internal procedure, claim compensation directly before the employment court, or file a criminal complaint.

No qualifying period of employment is required to bring a discrimination claim, which may also be brought by unsuccessful job applicants.

TERMINATION OF EMPLOYMENT

There was a change to Belgian law on December 31, 2013, and notice periods depend on whether employment contracts were entered into before or after that date.

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Below are the notice periods for employment contracts entered into after December 31, 2013:

LENGTH OF SERVICE (SENIORITY)	NOTICE PERIOD FOR DISMISSAL BY EMPLOYER	NOTICE PERIOD FOR RESIGNATION BY EMPLOYEE	NOTICE PERIOD FOR COUNTER-DISSMISSAL
FROM 0 TO LESS THAN 3 MONTHS	1 WEEK	1 WEEK	1 WEEK
FROM 3 TO LESS THAN 4 MONTHS	3 WEEKS	2 WEEKS	2 WEEKS
FROM 4 TO LESS THAN 5 MONTHS	4 WEEKS	2 WEEKS	2 WEEKS
FROM 5 TO LESS THAN 6 MONTHS	5 WEEKS	2 WEEKS	2 WEEKS
FROM 6 TO LESS THAN 9 MONTHS	6 WEEKS	3 WEEKS	3 WEEKS
FROM 9 TO LESS THAN 12 MONTHS	7 WEEKS	3 WEEKS	3 WEEKS
FROM 12 TO LESS THAN 15 MONTHS	8 WEEKS	4 WEEKS	4 WEEKS
FROM 15 TO LESS THAN 18 MONTHS	9 WEEKS	4 WEEKS	4 WEEKS
FROM 18 TO LESS THAN 21 MONTHS	10 WEEKS	5 WEEKS	4 WEEKS
FROM 21 TO LESS THAN 24 MONTHS	11 WEEKS	5 WEEKS	4 WEEKS
FROM 2 YEARS TO LESS THAN 3 YEARS	12 WEEKS	6 WEEKS	4 WEEKS
FROM 3 YEARS TO LESS THAN 4 YEARS	13 WEEKS	6 WEEKS	4 WEEKS
FROM 4 YEARS TO LESS THAN 5 YEARS	15 WEEKS	7 WEEKS	4 WEEKS
FROM 5 YEARS TO LESS THAN 6 YEARS	18 WEEKS	9 WEEKS	4 WEEKS
FROM 6 YEARS TO LESS THAN 7 YEARS	21 WEEKS	10 WEEKS	4 WEEKS
FROM 7 YEARS TO LESS THAN 8 YEARS	24 WEEKS	12 WEEKS	4 WEEKS
FROM 8 YEARS TO LESS THAN 9 YEARS	27 WEEKS	13 WEEKS	4 WEEKS
FROM 9 YEARS TO LESS THAN 10 YEARS	30 WEEKS	13 WEEKS	4 WEEKS
FROM 10 YEARS TO LESS THAN 11 YEARS	33 WEEKS	13 WEEKS	4 WEEKS
FROM 11 YEARS TO LESS THAN 12 YEARS	36 WEEKS	13 WEEKS	4 WEEKS
FROM 12 YEARS TO LESS THAN 13 YEARS	39 WEEKS	13 WEEKS	4 WEEKS
FROM 13 YEARS TO LESS THAN 14 YEARS	42 WEEKS	13 WEEKS	4 WEEKS
FROM 14 YEARS TO LESS THAN 15 YEARS	45 WEEKS	13 WEEKS	4 WEEKS
FROM 15 YEARS TO LESS THAN 16 YEARS	48 WEEKS	13 WEEKS	4 WEEKS
FROM 16 YEARS TO LESS THAN 17 YEARS	51 WEEKS	13 WEEKS	4 WEEKS
FROM 17 YEARS TO LESS THAN 18 YEARS	54 WEEKS	13 WEEKS	4 WEEKS
FROM 18 YEARS TO LESS THAN 19 YEARS	57 WEEKS	13 WEEKS	4 WEEKS
FROM 19 YEARS TO LESS THAN 20 YEARS	60 WEEKS	13 WEEKS	4 WEEKS
FROM 20 YEARS TO LESS THAN 21 YEARS	62 WEEKS	13 WEEKS	4 WEEKS
FROM 21 YEARS TO LESS THAN 22 YEARS	63 WEEKS	13 WEEKS	4 WEEKS
FROM 22 YEARS TO LESS THAN 23 YEARS	64 WEEKS	13 WEEKS	4 WEEKS
FROM 23 YEARS TO LESS THAN 24 YEARS	65 WEEKS	13 WEEKS	4 WEEKS
FROM 24 YEARS TO LESS THAN 25 YEARS	66 WEEKS	13 WEEKS	4 WEEKS
25 YEARS AND BEYOND	ADD 1 WEEK FOR EVERY ADDITIONAL YEAR (E.G., 30 YEARS => 72 WEEKS)	13 WEEKS	4 WEEKS

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TERMINATION OF EMPLOYMENT

The notice period for employment contracts entered into force before December 31, 2013, is the sum of:

- the notice entitlement for the period from the start of the employment contract until December 31, 2013, calculated in accordance with the old dismissal rules; and
- the notice entitlement for the period from January 1, 2014, calculated in accordance with the table above, but just counting the period of employment after January 1, 2014.

Dismissal for a Serious Reason (*dringende reden/faute grave*)

Either party may terminate the employment contract without notice or compensation when it has a “serious reason” to do so. In this context, “serious reason” is a serious shortcoming that makes any professional cooperation between the employer and the employee immediately and definitively impossible (e.g., theft, insubordination, violence, repeated unjustified absences, fraud).

Unfair Dismissal

The law on this arises from National CBA 109. Employees who succeed with claims are entitled to compensation of between 3 and 17 weeks’ salary (the specific amount will be decided by the employment court). To succeed, an employee must show that a dismissal was manifestly unreasonable. This is a dismissal based on reasons not related to the suitability or the conduct of the worker, or not based on the necessities relating to the functioning of the company, and where the decision would never have been made by an ordinary and reasonable employer.

The employment court will also consider whether the employer followed any specific procedural requirements set out in the applicable industry-level CBA (e.g., in cases of poor performance).

To bring an unfair dismissal claim, an employee must have a minimum of six months’ service (seniority).

Collective Redundancies

Collective dismissal is a mass layoff on technical and economic grounds over a period of 60 days that affects at least:

- 10 employees for companies that employ more than 20 but fewer than 100 employees (average during the calendar year preceding the year in which the layoff takes place);
- 10 percent of the workforce for companies with at least 100 but fewer than 300 employees; or
- 30 employees for companies with at least 300 employees.

A strict information and consultation procedure must be followed with employment representative bodies (first phase). During a second phase, after the decision to implement the collective dismissal has been announced, it is temporarily forbidden to dismiss employees (for 30 to 60 days), and parties usually negotiate a social plan. The employer will also be required to create an employment unit to provide outplacement for dismissed employees in a structural way.

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TERMINATION OF EMPLOYMENT

Notification of Authorities

Employers are required to notify the authorities with collective redundancies and dismissal of a protected employee.

Protected Employees

Enhanced protection against dismissal exists for employees who are pregnant, employees who filed a complaint for harassment, employees on maternity leave or career break, company doctors, health and safety advisors, and trade union representatives.

Employee representatives of and candidates to the works council and the health and safety committee are the most protected employees. Dismissal is possible only for (a) serious cause, with approval of the employment court (required before dismissal); or (b) economic or technical reasons approved by the joint labor committee of the industry (required before dismissal). Very high compensation can be awarded for breach of these requirements (up to eight years of salary).

Severance Pay

If a permanent employee is dismissed without being allowed to work during his or her notice period, notice pay (payment in lieu) will be due. This must include end-of-year premiums, holiday pay, bonuses, company car, insurances, and other contractual benefits.

Employees are also entitled to (a) departure holiday allowance upon termination of employment; (b) 13th-month remuneration (end-of-year bonus) pro rata, if provided for in a CBA at industry level; and (c) salary for bank holidays that fall within 30 days after the last working day.

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EMPLOYMENT REPRESENTATION

There is a very strong employment representation and social dialogue culture in Belgium. Employees can be represented in three different bodies at company level, the members of which are elected or designated by the representative trade unions:

1. Works council

- a. Compulsory in a company with 100 or more employees
- b. Mainly advisory role (except it must consent to changes of work rules)

2. Health and safety committee

- a. Compulsory in a company with 50 or more employees
- b. Mainly advisory role on issues of well-being and health and security (except that it must approve any nomination of health and safety advisor)

BUSINESS TRANSFERS

A business transfer leads to the automatic transfer of employment contracts and continuation of individual and collective employment conditions (CBA 32bis). Both the transferor and transferee employers are jointly liable (in solidum) for debts already existing and arising from the employment contracts on the date of the transfer.

A business transfer is not a reason to end an employment contract, except for serious cause or where there is an economic, technical, or organizational reason involving a change of employment. Employees dismissed due to a business transfer can therefore claim notice pay and compensation for unfair dismissal.

Information and consultation of employee representation prior to transfer is also required.

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NONCOMPETES AND RESTRICTIVE COVENANTS

Noncompete clauses are valid only if an employee's gross salary exceeds EUR 71.523 (2020), and they must meet a number of requirements, including that the clause is in writing and is reasonable, taking account of the activities performed, geographical scope, and duration of the restriction. In addition, an employer must make payment as a lump sum of at least half of the gross remuneration applicable to the duration of the clause. If an employer waives a noncompete clause within 15 days of the termination, no compensation is due.

A noncompete clause is not enforceable when the employment contract is terminated either during the first six months or afterwards by the employer without serious cause, or by the employee for serious cause.

A post-termination covenant not to solicit is, in principle, valid, insofar as it does not entirely exclude the ex-employee's freedom to provide services. There is no need for the employer to pay lump-sum compensation for a nonsolicitation clause.

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*Alexander Vandenberg and Isabel Plets of Lydian, Brussels
Roger James of Ogletree Deakins International LLP*

CZECH REPUBLIC



CORPORATE REGISTRATION REQUIREMENTS

A corporate registration is required if a foreign legal entity intends to conduct business in the Czech Republic. The corporate presence may take the form of a business corporation incorporated under Czech law (usually a limited liability company) or a local branch office of a foreign legal entity.

Even though a foreign legal entity engaging employees in the Czech Republic without conducting any business activity is not required to have a corporate presence, registering with the Czech Social Security Administration and a health insurance company is necessary.

EMPLOYMENT STATUS AND HIRING OPTIONS

Workers may be engaged as employees or independent contractors. In general, independent contractors do not enjoy the protection provided to employees under Czech labor law.

However, independent contractors may not be hired for the performance of “dependent work” that may only be carried out in an employment relationship. Key factors used in misclassification cases to support that work is dependent include, among others, the following:

1. Control: A contractor is following instructions of the principal while performing work, as opposed to making his or her own decisions.
2. Defined working hours: A contractor is performing work during shifts determined by the principal.
3. Materials and place of work: A contractor is using materials provided by the principal and performing work in the premises of the principal.
4. Pay: A contractor is paid for time spent working, not for completion of a task.
5. Personal service: A contractor is obliged to perform work in person and may not be substituted.
6. One principal: A contractor is performing work only for one principal.

CZECH REPUBLIC



EMPLOYMENT STATUS AND HIRING OPTIONS

Depending on particular circumstances, conducting work under some or all of the above conditions outside an employment relationship might be considered as illegal work (a so-called “hidden employment”). Illegal work is subject to fines that may be imposed by the State Labour Inspection Office on the principal as well as the contractor. It may also expose a principal to liabilities for tax and employment rights.

Probationary periods are common in employment agreements. The probationary period cannot exceed three months (six months for management employees) and may not exceed half of the agreed period of employment. The probationary period must be concluded on the first day of employment at the latest and may not be subsequently extended. During the probationary period, the employment can be terminated immediately by either party for any reason (except a discriminatory one) or without stating a reason.

RECRUITMENT

The employer is obliged to notify the Czech Social Security Administration, the employee’s health insurance company, and the tax authority within eight days following the date on which the employment starts.

CZECH REPUBLIC



REGULATION OF THE EMPLOYMENT RELATIONSHIP

The minimum legally required content for the employment agreement is the following:

1. Type of work that the employee will perform for the employer
2. Place or places of work
3. Date employment started

In addition, all employees are entitled to a written confirmation of their key terms of employment. These terms are typically also included in the employment agreement. If this is not the case, the employer must confirm to the employee, at the latest within one month from the date on which the employment started, the following:

1. Name of the employee
2. Name and registered seat of the employer (or employer's full name and address if he or she is an individual)
3. Salary (including payday and method of payment)
4. Hours of work and the individual's schedule
5. Holiday entitlement
6. Type of work
7. Place of work
8. Termination notice periods
9. Any applicable collective agreements and their parties

Language Requirements for Documents

There are no statutory language requirements for employment-related documents. However, an employee must be able to fully understand the content of the documents.

Other Sources of Terms of Employment

Collective bargaining agreements (CBAs) may set out additional rights for employees who are represented by a trade union that is a party to a CBA. CBAs may not impose obligations on employees or limit their rights prescribed by the Labour Code. CBAs may be concluded at any employer where a trade union is active. In practice, CBAs are more commonly used in large enterprises that employ manual employees (e.g., automotive, agricultural, and retail).

In addition to enterprise-level CBAs, Czech law recognizes a category of higher-level CBAs. The higher-level CBAs are concluded between an organization of multiple employers and a trade union, and cover all employees who work for one of the participating employers.

The scope of the higher-level CBAs may be extended by an announcement of the Ministry of Labour and Social Affairs to cover all employers in the relevant industry sector, whether or not those employers participated in the CBA negotiations. Such agreements currently apply, for example, to the agricultural and construction sectors. A list of such CBAs can be found on the website of the Ministry of Labour and Social Affairs.

Terms of employment may be also set out by working rules and other internal regulations in force at the employer. The internal regulations may only build upon the existing contractual or statutory obligation of the employee and cannot create new duties for the employee.

The employer may use a salary allotment to determine the employee's salary unilaterally (as opposed to an agreed-upon salary in the employment agreement).

CZECH REPUBLIC



HOLIDAY ENTITLEMENT

In general, all employees in the private sector are entitled to a minimum of four weeks of paid holiday per year. The employer and the employee may agree on additional holiday above the statutory minimum, or the employer may provide an extended holiday as a benefit. CBAs may also include an extended holiday entitlement (see above).

There are several statutory public holidays in the Czech Republic. However, if they fall on a weekend, they are not replaced, so the number of public holidays varies each year. Public holidays are not counted toward the statutory holiday entitlement.

The following public holidays are recognized in the Czech Republic:

- Restoration Day of the Independent Czech State; New Year's Day – January 1
- Good Friday
- Easter Monday
- Labour Day – May 1
- Liberation Day – May 8
- Saints Cyril and Methodius Day – July 5
- Jan Hus Day – July 6
- St. Wenceslas Day (Czech Statehood Day) – September 28
- Foundation of the independent Czechoslovak State – October 28
- Struggle for Freedom and Democracy Day – November 17
- Christmas Eve – December 24
- Christmas Day – December 25
- St. Stephen's Day – December 26

WORKING TIME LAWS

Generally, subject to limited overtime provisions referred to below, working hours must not exceed 40 hours per week. Furthermore, working hours of employees in a three-shift and nonstop working regime must not exceed 37.5 hours per week. Working hours of employees in a two-shift working regime cannot exceed 38.75 hours per week. Special regulation of working hours applies to those 18 years old and younger.

These periods do not include breaks for lunch and rest. Lunch and rest breaks must last at least 30 minutes and have to be provided after every 6 hours of continuous work at the latest. The employer is obliged to schedule hours of work so that adult employees have an uninterrupted period of daily rest of at least 11 consecutive hours between the end of one shift and the beginning of the following shift within a 24-hour period. The rest period for those under 18 years of age must be at least 12 hours under the same conditions.

CZECH REPUBLIC



WORKING TIME LAWS

Overtime work is any work performed by an employee at the employer's instruction or with his or her consent over the 40-hour weekly limit and outside the employer's shift schedule. Generally, overtime work ordered by the employer must not exceed an average of 8 hours per week and a maximum of 150 hours per calendar year.

Employees are entitled to a premium of at least 25 percent of their average earnings for overtime work unless they agree to time off in lieu with the employer.

ILLNESS

Employees who are unable to work because of sickness or injury are required to inform the employer without undue delay.

Employees who are absent from work due to a sickness or injury have a right to receive statutory sick pay from the fourth day of sickness or injury up to the 14th day of sickness or injury. This statutory sick pay is paid by the employer and amounts to 60 percent of average earnings. Starting on the 15th day of sickness, statutory sick pay is paid by the Czech Social Security Administration.

CZECH REPUBLIC



STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave

The Labour Code stipulates that a female employee is entitled to 28 weeks of maternity leave and 37 weeks if the mother gives birth to more than 1 child. The employer is obliged to retain the identical position (at the same workplace) that has been agreed upon in the employment agreement for the employee.

Parental Leave

If a father or mother so requests, the employer is obliged to grant him or her parental leave until the child reaches the age of three years.

After parental leave, the employer must employ the employee in his or her original job or a position that otherwise matches the position in his or her employment agreement.

Adoption Leave

A female employee is entitled to 22 weeks of adoption leave (31 weeks if the mother adopted 2 or more children),

but she must take it before the child's first birthday. Both parents are entitled to parental leave until the child reaches the age of three years (see above).

Pay During Maternity, Parental, and Adoption Leave

During maternity, parental, and adoption leave, the employee is not entitled to his or her salary but instead receives a statutory maternity pay or parental allowance, respectively, from the Czech Social Security Administration.

Other Leave

Employees are entitled to statutory leave due to important personal reasons, such as a medical examination, wedding, and death of certain family members.

In such cases, the employee is entitled to additional time off and, in certain situations, to salary compensation. Similar rules apply for time off for the purposes of performance of public office, civic duty, or other activity in the public interest.

CZECH REPUBLIC



FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Czech law recognizes fixed-term as well as part-time employment agreements. Part-time employees and employees with fixed-term agreements have the same rights and obligations as regular full-time employees with contracts for an indefinite period.

Apart from a traditional employment agreement, employers and employees may enter into two other types of agreements relating to work: (i) an agreement on work performance (*dohoda o provedení práce*), and (ii) an agreement on working activity (*dohoda o pracovní činnosti*).

The agreement on work performance may be concluded for a maximum of 300 hours per calendar year. The average scope of work under the agreement on working activity cannot exceed one-half of ordinary weekly working hours; i.e., on average, 20 working hours per week.

Employees engaged on the basis of the agreement on work performance or agreement on working activity are not protected to the same extent as employees engaged on the basis of a regular employment agreement. Mainly, the provisions on limitations regarding termination of employment, severance payments, holiday entitlements, etc., do not apply with respect to agreement on work performance or agreement on working activity.

Engaging employees via a licensed work agency is a common practice in the Czech Republic. Agency employees are in an employment relationship with the agency and temporarily assigned for the performance of work to the employer.

CZECH REPUBLIC



DISCRIMINATION AND HARASSMENT

The characteristics protected by law are gender; sexual orientation; race or ethnic origin; nationality; citizenship; social class origin; language; state of health; age; religion or belief; property; marital or family status; relationship within the family or obligations toward the family; political or other opinions; and membership and activity in political parties or political movements, trade unions, or employers' organizations. Discrimination based on pregnancy, maternity, paternity, or sexual identification is considered to be discrimination based on sex. Any detrimental action because of one of these characteristics is unlawful.

In addition, if an employer has a practice or procedure that subjects people who share one of these characteristics to a disadvantage, such as requiring job applicants to be six feet tall, which disadvantages women, then that is unlawful indirect discrimination unless it can be justified.

Harassment is a form of discrimination and arises when there is unwanted conduct related to a person's protected characteristic (e.g., sex or race) that violates his or her dignity or otherwise creates a hostile, humiliating, degrading, intimidating, or offensive environment.

Claims for discrimination can be brought by any employee regardless of length of service, as well as from potential recruits and ex-employees. Compensation awards are uncapped.

CZECH REPUBLIC



TERMINATION OF EMPLOYMENT

Statutory Notice

The minimum statutory notice period is two months. The employer and the employee may agree on a longer notice period, which has to be the same for both parties. The notice period begins on the first day of the month following the month in which the notice was given. The employment relationship ends with the expiration of the notice period.

The employer and the employee may unilaterally terminate the employment relationship with immediate effect due to specific serious grounds prescribed by the Labour Code. Employment may also be terminated with immediate effect during the probationary period. Moreover, the statutory notice period does not apply when terminating the employment on the basis of a termination agreement.

Severance Payments

In general, statutory severance payments must be paid if a reason for termination is closure or relocation of the employer or the employee's redundancy. Severance payments range from one to three months of the employee's average monthly earnings, depending on length of service:

DURATION OF EMPLOYMENT	MULTIPLE OF AVERAGE MONTHLY EARNINGS (INCLUDING BONUSES)
LESS THAN ONE YEAR	ONE
AT LEAST ONE BUT LESS THAN TWO YEARS	TWO
AT LEAST TWO YEARS	THREE

Special rules and higher severance payments apply to the termination of employment due to a work-related injury or illness.

The amount of severance payment may be stipulated more generously in the employment agreement or agreement on the termination of employment.

The employer also has to pay the severance payment if the employer and the employee concluded an agreement on termination of employment if it was based on one of the above-mentioned grounds.

CZECH REPUBLIC



TERMINATION OF EMPLOYMENT

Unfair Dismissal

Employees are protected against being unfairly dismissed regardless of their period of service. The employee may be dismissed only by notice based on the grounds below:

1. Closure or relocation of the employer or its part
2. Redundancy: The employer's need for the employee's work has ceased or diminished (see below for details).
3. Injury or illness: The employee cannot perform the current work due to a work-related injury or illness.
4. Health capability: The employee has lost, on a long-term basis, the ability to continue to perform his or her current work because of a health condition.
5. Lack of prerequisites for agreed work: The employee fails to fulfill the prerequisites stipulated by the legal regulations for carrying out the agreed work or fails to fulfill the requirements for proper performance of this work through no fault of the employer.
6. Unsatisfactory work results: The employee must have been notified in writing about the unsatisfactory work results within the previous 12 months and given the opportunity to remedy the insufficiencies within a reasonable period of time, which he or she failed to do.
7. Misconduct: The employee (i) committed a serious breach of his or her obligations arising from legal rules related to the employee's work, or (ii) committed a number of continuous less serious breaches of such obligations and was notified in writing about the possibility of dismissal in relation to such breaches within the previous six months.
8. Statutory sick leave: The employee breaches statutory sick leave conditions in a particularly gross manner.

During the probationary period, the employer or the employee may terminate the employment relationship in writing for any reason or without stating any reason.

In case the employer terminates the employment relationship contrary to the above (e.g., without a statutory reason or for a statutory reason that has not been fulfilled), the termination notice is invalid. Consequently, the employee may claim unfair dismissal in court and demand the following:

1. Salary compensation for the period in which he or she could not work (Should this period exceed six months, the court may decrease the amount of compensation to reflect a view that the employee should have found another job by then.)
2. Reinstatement
3. Damages for any other financial losses such as benefits

The employee's claim is subject to prompt written notification to the employer indicating that he or she insists on further employment based on invalidity of the notice.

CZECH REPUBLIC



TERMINATION OF EMPLOYMENT

Redundancy

An employer does not need to show economic hardship but does have to show the redundancy was because of a decision to change tasks or technical equipment, or a reduction of personnel was required for the purpose of increasing effectiveness or other acceptable organizational change. For example, an employer may decide to close a certain department or cancel a certain work position due to change in its scope of business. If the organizational change affects more employees, the selection of particular employees that are redundant is at the employer's discretion. However, the employer must refrain from any discrimination when choosing the specific employees as redundant.

Mass Layoffs

Additional rules apply when there are large-scale terminations due to closure, relocation, or other redundancy. These mass layoff rules apply when there are the following numbers of terminations within a period of 30 calendar days:

1. 10 or more employees in the case of an employer having 20 to 100 employees
2. 10 percent of employees in the case of an employer having 101 to 300 employees
3. 30 or more employees in the case of an employer having more than 300 employees

When these rules apply, the employer is obliged to inform any trade union and/or work council, or, if there are none recognized, all affected employees individually, about its intentions. This must be done in writing at least 30 days prior to delivering the termination notices. The information must include, among other things, the reasons for the

layoffs, numbers and professions of affected employees, and the selection criteria. The employer is also obliged to inform the appropriate regional labour office.

After providing this information to the union or employee representatives (or employees directly where appropriate), the employer must consult with them with a view to whether it is possible to limit the number of layoffs or their detrimental impact. This is a process of consultation, meaning the employees' views must be heard and considered, but the employees and any reps do not have veto power over the decision to conduct layoffs.

After consultation has ended, the employer must deliver to the regional labour office a final written report confirming its decision. The employment relationships of employees who were served the termination notices in the process may not end sooner than 30 days after the delivery of this report to the regional labour office.

Notification to Authorities

There is no need to inform the authorities about terminations of employment, with the exception of mass layoffs (see above).

Protected Employees

Special rules apply to termination connected with, inter alia, pregnancy or maternity/parental leave, trade union membership, transfers of undertakings, and public interest activities. The Czech Labour Code sets out situations in which the employer is not allowed to terminate the employment relationship (e.g., pregnancy, maternity leave, and sick leave). It also contains a number of complex exceptions under which these restrictions do not apply.

CZECH REPUBLIC



EMPLOYMENT REPRESENTATION

An employer has several information and/or consultation obligations toward any trade unions or work councils, or, in their absence, individual employees. These include consulting on the following:

1. Mass layoffs
2. Business transfers
3. Likely economical development at the employer
4. Contemplated structural changes, rationalization, or organizational measures
5. Health and safety issues
6. Status and structure of employees
7. Working conditions matters

Trade unions have enhanced information and consultation rights and, in addition to the above, must be consulted or informed about, among other issues, any measures that affect a significant number of employees and employee terminations.

Employee representatives rarely have the power to prevent a proposed action, but examples where they do include the contemplated dismissal of a trade union representative and the issuance of new working rules.

There is also legislation that requires employers to set up employees' councils when requested to do so by one-third of the workforce.

BUSINESS TRANSFERS

The Czech Labour Code provides employees with protection when there is a transfer of the employer's "tasks or activities," or any part thereof, to another employer. In such a situation, the employees transfer from the transferor employer to the transferee employer. Broadly speaking, the Labour Code requires employers to consult with employee representatives (or employees themselves if there are no employee representatives) 30 days prior to the transfer. The Labour Code also protects employees against substantial deterioration of work conditions and prevents the employer from making dismissals (subject to some limited exceptions).

CZECH REPUBLIC



NONCOMPETES AND RESTRICTIVE COVENANTS

An employment agreement may contain a noncompete clause subject to the following conditions:

1. Time limitation: The maximum period of a noncompete clause is 12 months after termination of employment.
2. Compensation: An employee must receive a compensation at a minimum of one-half of his or her average monthly earnings for each month of complying with the noncompete obligation.
3. Fairness requirement: The noncompete clause must be fair and reflect the knowledge of work and technological procedures that the employee obtained during employment. It must be of a nature where its usage in a competitive business could substantially hinder the employer's activity.

Noncompete clauses must be stipulated in writing and may include a contractual penalty for a breach of the employee's duties.

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***Sabina Krajickova and Katerina Kulhankova of Wolf Theiss, Prague
Roger James of Ogletree Deakins International LLP***

DENMARK



CORPORATE REGISTRATION REQUIREMENTS

In Denmark, it is not necessary to set up a subsidiary to engage people. A foreign company may instead either establish a branch or employ directly from overseas and pay salary through a payroll provider. However, it is highly advisable to seek legal advice before deciding whether to set up a local subsidiary, especially in relation to the substantial tax consequences of the different paths.

Furthermore, non-Danish employers must register with the Register of Foreign Service Providers (RUT).

EMPLOYMENT STATUS AND HIRING OPTIONS

In Denmark, employees can usually be placed in one of the following main categories: chief executives of the company, salaried employees, or blue-collar workers (typically paid hourly).

In addition, employees may be employed under collective bargaining agreements (CBAs), which can apply to both salaried employees and blue-collar workers.

It is also possible to engage someone as an independent consultant (from time to time referred to as a contractor). As with other countries, this status does not qualify as “employment” but carries the risk of a “misclassification”

finding if in reality the individual’s engagement has factors suggesting employment.

Chief Executives: The chief executive officer of the company (CEO) is not covered by the main parts of Danish mandatory employment legislation, including the Salaried Employees Act and the Holiday Act. Nor is the chief executive officer covered by collective agreements. The rights and obligations of the chief executive officer and the company are therefore exhaustively described in a service agreement.

Salaried Employees: The majority of employees in Denmark are salaried employees and are governed by the main

DENMARK



EMPLOYMENT STATUS AND HIRING OPTIONS

Danish employment legislation, the Salaried Employees Act. The main subgroups of salaried employees are:

- Shop assistants and office workers employed in buying and selling activities, in office work, or equivalent warehouse operations
- Persons whose work takes the form of technical or clinical services (except handicraft work or factory work); e.g., laboratory assistants, nurses, engineers, and architects
- Persons whose work is wholly or mainly to manage or supervise the work of others on behalf of the employer

The Salaried Employees Act regulates, among other things, notice periods, the entitlement to pay during sickness and maternity leave, noncompetition and nonsolicitation clauses concluded before 1 January 2016, severance pay, and compensation for unfair dismissal.

Salaried employees may also be covered by collective agreements regulating matters such as overtime pay, additional rights to pay during maternity leave than prescribed by the Salaried Employees Act, payment of pension contributions, and the rules regulating election of shop stewards.

Blue-Collar Workers: This term refers to employees who are not salaried employees, typically those engaged in craftsmanship, manual labour and/or production.

Consultant: Due to the employment protection laid down in the Salaried Employees Act, it is important to

establish whether an “independent” consultant is to be considered a de facto employee or not. The factors taken into consideration when determining the status of the relationship are similar to those in most other countries (in no particular order):

- Is the income subject to taxation at source? An employer is obliged to withhold tax, social security, etc., for employees, whereas an independent consultant must take care of this him- or herself.
- Is he or she value-added tax (VAT) registered? Generally, an independent consultant will be VAT registered.
- Where is the service carried out? An employee will usually perform his or her duties at the employer’s premises and in the name of the employer. An independent consultant will normally perform the duties at his or her own premises and in his or her own name.
- Duty to work? The independent consultant will have a duty to ensure performance of the services contracted, but not necessarily a duty to work at any particular times.
- Other factors are i) planning of work, ii) variable working time and/or payment on completion of a specific task, and iii) multiple employers. An independent consultant can often plan his or her work on his or her own account and will usually be paid on completion of the task, rather than by the time spent working on the project. Further, it is common that the independent consultant has multiple employers.

RECRUITMENT FILINGS

No filings are necessary unless the employee must be registered with the RUT (see section 1).

DENMARK



RECRUITMENT FILINGS

No filings are necessary unless the employee must be registered with the RUT (see section 1).

REGULATION OF THE EMPLOYMENT RELATIONSHIP

The key statutory protections are set out below. Note that there is no mandatory minimum wage and no mandatory pension. Most terms and conditions of employment are either agreed in individual agreements or laid down in CBAs.

Information Obligations

An employer must inform its employees in writing of all essential conditions applicable to the employment relationship. The information must be provided no later than one month after the commencement of the employment relationship and must cover:

1. The name and address of the employer and the employee
2. The place of work
3. A description of the work or an indication of the employee's title and grade
4. The nature or category of work for which the employee is employed
5. The date of commencement of the employment relationship
6. The expected duration if it is not permanent employment
7. The employee's right to holiday and holiday pay
8. The notice required by the employee and the employer to terminate employment
9. Pay, allowances, and other pay elements, such as pension contributions and any board and lodging, together with information on dates of payment
10. The length of the normal working day or week
11. Whether any collective agreements apply and the names of the parties to the agreement

This information may be included in the following documents:

- A written declaration of the essential employment conditions
- A letter of engagement
- A written contract of employment, which is the most common form

Any change in the information referred to above must be confirmed in writing at the earliest opportunity and not later than one month after the change in question, unless the change is because of legislative changes or changes to collective agreements.

Policies

Except for smoking policies, there are no policies that are required by law (other than obligations under the General Data Protection Regulation (GDPR) to communicate how data is used). However, most employers have detailed policies regulating the working environment. Some of the most common policies are those covering safety, alcohol, smoking, anti-harassment, sickness absence, email and/or Internet use, data protection, guidelines on performance assessment, internal insurance and/or pension plans, maternity leave and other types of paid leave, and other practical information about the company.

Language Requirements for Documents

There is no law requiring that information be given in Danish (except for the employer's statement according to the Stock Options Act), although it is the employer's responsibility to ensure that employees understand the terms of employment. It is advisable to give information in English when employees are foreign and may not speak good Danish.

DENMARK



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Other Sources of Terms of Employment

Denmark does not have common collective bargaining agreements (CBAs) that cover all employers in a sector. Instead, CBAs exist on a company-by-company basis or where applied because the employer is a member of an employer's organization that is subject to a CBA. However, a significant proportion of Danish employees are covered by CBAs, including 100 percent of the public

sector and more than 50 percent of the private sector. For these employees, most rules regarding their terms of employment are regulated in the CBA.

Consequently, a vast number of CBAs exist, covering many kinds of work. Usually, the employer's membership of an employer's organization results in one or more CBAs applying, although membership of an employer's organization does not necessarily entail CBAs.

HOLIDAY ENTITLEMENT

The Holiday Act

The statutory rules on an employee's right to holiday are set forth in the Danish Holiday Act. An employee is entitled to 25 days of holiday each year (adjusted accordingly for those who work fewer than five days per week). The Holiday Act has recently been revised to introduce the principle of concurrent holiday—paid holiday can be taken from the start of employment rather than a year in arrears—and the change entered into full force as of September 2020.

The holiday year runs from 1 September to 31 August. An employee earns 2.08 paid holidays per month to be taken in the same holiday year or no later than 30 December in the following year.

Employees typically take 15 days of holiday between 1 May and 30 September of each year; this is known as the employee's main holiday. Holiday pay is based on normal remuneration as if the employee were working and therefore includes variable pay calculated at an average rate. Salaried employees must also receive an annual holiday supplement of 1 percent of annual salary payable no later than when the corresponding holiday begins.

For employees who are typically employed on an hourly

basis, and who are for instance not entitled to salary during holiday, the company must instead make quarterly payments of 12.5 percent of salary to the Danish Public Holiday Pay Fund ("Feriekonto") according to fixed principles of calculation.

Public Holidays

Denmark recognizes the following days as public holidays: New Year's Day, Maundy Thursday, Good Friday, Easter Monday, Common Prayer Day, Ascension Day, Whit Monday, Christmas Day, and Boxing Day. The Holiday Act does not regulate whether public holidays must be provided as holidays, nor whether an employee is entitled to enhanced pay if required to work. However, most employers provide paid leave on public holidays in addition to the regular 25 days' entitlement.

Special Days Through CBAs

CBAs often recognize certain days as public holidays, entitling covered employees to paid leave. For instance, it is common that 1 May (Labour Day), 5 June (Constitutional Day), 24 December (Christmas Eve), and 31 December (New Year's Eve) are recognized as "public" holidays in CBAs. CBAs will often also provide entitlement to so-called "special holidays," which are additional days based on length of service.

DENMARK



WORKING TIME LAWS

Working time is regulated by the Working Environment Act, the Law on Working Hours, and, most significantly, by CBAs.

Working time must be organized in a way that ensures that every employee obtains:

1. A minimum rest period of 11 consecutive hours within every 24-hour period
2. A break every 6 hours (the law does not specify the duration of the break, but CBAs typically require a minimum of 10 minutes)
3. 24 hours of uninterrupted rest each 7-day period (the 24-hour rest period shall, as far as possible, fall on Sundays and, if possible, on the same day for every employee in the company)

In addition, the average working week, including overtime, must not exceed 48 hours, using a 4-month reference period. Paid vacation and periods of sick leave are not included in the calculation of the four-month average.

The rules on daily rest and weekly rest may be derogated from if necessary due to natural disasters, accidents, machinery breakdown, and/or similar events that interrupt the regular operation of the company.

Similarly, there are special derogation exceptions for certain types of businesses.

No statutory rule on overtime payment exists. Normally, it will be regulated by a CBA and/or in the individual employment contract.

ILLNESS

Employees covered by the Salaried Employees Act are entitled to full remuneration during illness for an indefinite period. Other employees are often covered by an entitlement to at least some sick pay through a CBA.

Employers are entitled to some limited reimbursement of sick pay from the State.

DENMARK



MATERNITY, PARENTAL, AND PATERNITY LEAVE

Leave and Payment Is Not the Same

The right to absence and the right to pay during pregnancy, maternity, parental, and paternity leave do not necessarily go hand in hand; these subjects are therefore described separately below.

The Right to Pregnancy, Maternity, Parental, and Paternity Leave

A mother is entitled to commence pregnancy leave four weeks before the expected childbirth. Some collective agreements extend this to eight weeks before expected childbirth.

A mother is entitled to maternity leave lasting for 14 weeks after the birth (for a total of 18 weeks when added to the pregnancy leave taken before the birth) and can follow that with up to 46 weeks of parental leave.

The father is entitled to 2 weeks' paternity leave in connection with the childbirth (to be taken within 14 weeks of the birth) and beyond that up to 46 weeks further leave as parental leave. Parental leave for each parent is a separate right, and both parents can take the full 46 weeks.

One of the parents is also entitled to postpone up to 13 weeks of his or her parental leave to be taken at a later time (although it must be taken before the child reaches the age of 9 years old).

The Right to Pay During Pregnancy, Maternity, Parental, and Paternity Leave

Parents can receive a total of 52 weeks of paid leave per child from the state, distributed the following way:

Fathers are entitled to municipality benefits (paid by the state) during the two weeks of paternity leave. However, many collective agreements and company policies/individual contracts of employment entitle the father to full salary as well. If the employer pays full salary, the employer is entitled to reimbursement equivalent to the municipality benefits received by the father.

If the mother is covered by the Salaried Employees Act, she is entitled to 50 percent of her salary for the duration of her pregnancy and maternity leave. However, all collective agreements and many company policies/individual contracts of employment entitle the mother to full salary during these periods.

If the mother is not covered by the Salaried Employees Act, a collective agreement, or an individual contract of employment entitling her to salary during leave, she is entitled to pregnancy/maternity benefits from the municipality (paid by the state). If the employer pays full or partial salary in the period, the employer is entitled to reimbursement from the municipality equivalent to the mother's pregnancy/maternity benefits.

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MATERNITY, PARENTAL, AND PATERNITY LEAVE

Consequently, the mother and the father are in total entitled to municipality benefits for the remaining 32 weeks, which includes any parental leave taken after pregnancy/maternity/paternal leave. The 32 weeks can be shared between the mother and father. Thus, the municipality benefits cannot exceed an aggregate of 32 weeks. If parental leave is extended to 46 weeks, the amount paid each week will be reduced. Some collective agreements and company policies entitle the mother to more generous entitlements.

Municipality benefits from the state during pregnancy, maternity, paternity, and parental leave are capped at a maximum of DKK 4,405 per week and DKK 119,05 per hour

(2020 levels) on the basis of 32 weeks (lower if someone takes the extended 46-week period).

Adoption

Adoptive parents have broadly the same rights as biological parents.

Other Family Leave

There are statutory entitlements to leave if a child or a close family member gets severely ill and/or is dying. Additional family-related leave will often be granted under a CBA.

FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

People employed part time, on a fixed-term, or as agency workers may not be discriminated against. Special legislation applies to each category of employment.

Generally, the nondiscrimination principle entails that the conditions of employment for a part-time, fixed-term, or agency worker may not be less favorable than those of a comparable permanent, full-time employee.

DENMARK



DISCRIMINATION AND HARASSMENT

Mandatory Legislation

The characteristics protected by anti-discrimination legislation (sorted by legislation):

The Danish Discrimination Act:

- Sex or race
- Ethnicity, politics, or religion
- Sexual orientation
- Age or handicap
- National, social, or ethnical origin

The Equal Treatment Act:

- Pregnancy or any motive related to maternity
- Taking, or seeking to take, parental leave

The acts protect against both direct and indirect discrimination.

Direct discrimination occurs where a person is treated less favorably than someone else in a comparable situation because of one of the protected characteristics.

Indirect discrimination occurs where a “provision, criteria or practice” puts bearers of one or more of the characteristics in a less favorable position than others and there is no legitimate purpose, and the means to fulfill the purpose are appropriate and necessary. An example would be a requirement for applicants to be six feet tall, which would be unlawful discrimination against women if it could not be justified as necessary.

Claims for discrimination can be brought before the courts regardless of seniority, as well as by potential candidates and former employees.

Compensation

Compensation awards will be determined based on the facts of the case, but normally, the compensation is set between 9 and 12 months’ remuneration.

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TERMINATION OF EMPLOYMENT

Statutory Notice

For employees covered by the Salaried Employees Act, the employer is entitled to terminate the employment subject to the following minimum notice periods:

- One month's notice, to expire on the last day of a month if given in time to end employment during the first six months of employment
- Three months' notice, to expire at the last day of a month thereafter
- The notice periods increase by one month for every three years of employment, subject to a maximum of six months' notice:

LENGTH OF SERVICE AT TIME NOTICE EXPIRES	NOTICE
LESS THAN 6 MONTHS	1 MONTH
LESS THAN 3 YEARS	3 MONTHS
LESS THAN 6 YEARS	4 MONTHS
LESS THAN 9 YEARS	5 MONTHS
OVER 9 YEARS	6 MONTHS

Probation periods can be agreed for up to three months, during which a salaried employee is entitled to at least two weeks' notice of termination.

Employees may always terminate the employment by giving one month's notice.

For employees not covered by the Salaried Employees Act, the notice period is normally regulated in a CBA or in the individual employment contract.

The Salaried Employees Act and most CBAs also provide that a shorter notice period of one month (regardless of length of service) can be agreed in the employment contract if termination follows the salaried employee having received pay during sickness for a total of 120 days during a period of 12 consecutive months.

Payments in lieu of notice are not common in Denmark and should only be carried out according to agreement with the employee at the time of termination.

DENMARK



TERMINATION OF EMPLOYMENT

Unfair Dismissal

Under the Salaried Employees Act, a termination must be reasonably justified by the conduct of the employee or the circumstances of the company if the employee has been employed with the employer for a continuous period of more than 12 months (may be 9 months if the employee is covered by a CBA).

If the employer wants to dismiss an employee due to the circumstances of the employee (e.g., unsatisfactory performance or cooperative problems), the employee is generally entitled to a prior warning before being dismissed. For purposes of proof, such warning should be in writing and clearly state that if the employee does not improve the reprimanded matters, he or she will be dismissed.

Redundancies in connection with downsizing or restructuring of a business are usually considered a just cause for dismissal.

Compensation

The sanction for unfair dismissal is limited to relatively modest compensation—typically one to three months' salary, which may be increased to six months' salary in special situations. However, collective agreements normally provide an opportunity to grant substantially higher compensation of up to 52 weeks' salary.

Protected employees are entitled to higher compensation of up to 12 months' salary. These cases arise when the dismissal is tainted by reasons related to maternity,

disability, or age, or where the employee was a shop or safety representative.

The rules of the Salaried Employees Act on unfair dismissal do not provide courts with the power to reinstate an unfairly dismissed employee unless this is specified as a remedy in an applicable collective agreement.

Normally, there is no formal termination procedure if only a few employees are to be dismissed. However, an employer must negotiate with applicable unions if a shop steward or a safety representative is to be dismissed.

Redundancy Procedures

The Act on Collective Dismissals sets out more detailed procedures for mass redundancies and applies in the following situations:

- At least 10 employees are dismissed in a company normally employing more than 20 but fewer than 100 employees
- At least 10 percent of the employees are dismissed in a company usually employing at least 100 and fewer than 300 employees
- At least 30 employees are dismissed in a company usually employing at least 300 employees

The act requires an employer making dismissals above these levels to initiate collective consultation with the workforce. This consultation must take place with either

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TERMINATION OF EMPLOYMENT

recognized trade union representatives, elected employee representatives, or the individual employees themselves if no representatives are elected. Consultation must begin at the earliest possible stage and before any proposed dismissals actually take place. The employer must disclose all relevant information concerning the proposed dismissals to the employees/their representatives.

The Act on Collective Dismissals does not prescribe a minimum period for consultation, but the consultation must be meaningful. The act prescribes consultation only, and the parties are not forced to reach an agreement regarding the dismissals. The company may therefore unilaterally make the decision to make reductions in staff after consulting the employees.

Noncompliance with the provisions laid down in the Act on Collective Dismissals may give rise to compensation of up to 30 days' salary to each of the dismissed employees as well as fines, although fines are rarely imposed.

A collective agreement may also contain additional rules on consultation, noncompliance with which is considered a violation of the collective agreement, and the union with whom the agreement has been entered into may claim significant compensation depending on the circumstances.

Mandatory Severance Payments

Generally, employees made redundant are entitled only to notice, not severance pay. However, employees covered by the Salaried Employees Act who have been

continuously employed for over 12 or 17 years are entitled to severance pay equal to 1 or 3 months' remuneration, respectively.

CBA's may also set out additional severance pay requirements.

Notification of Authorities

The employer does not have to inform the authorities of any dismissals.

DENMARK



EMPLOYMENT REPRESENTATION

Representation at Company Level

In limited liability companies that have employed an average of at least 35 employees in the preceding 3 years, the employees are entitled to elect a number of representatives to the company's supreme management body.

The employees' representatives have the same rights and duties as any other members of the company's supreme management body and are thus able to have an impact on decisions made by this body.

Information and Consultation Committee

According to the Act on Information and Consultation, companies with more than 35 employees must establish a procedure for informing and consulting employees on matters of significant importance for their employment.

The Act on Information and Consultation is often implemented in a CBA and involves the creation of an information and consultation committee. Members of that committee have protection against dismissal.

RESTRICTIVE COVENANTS

All employees are covered by the Act on Restrictive Employment Clauses. The Act applies to restrictive covenants concluded 1 January 2016 or later.

Noncompetition Clauses

A noncompetition clause is valid if the following requirements are fulfilled:

- 1) the employee holds a *special position of trust*;
- 2) the employee receives the justification for entering into a noncompetition clause in writing;

- 3) the employee has been employed with the company for at least six months;
- 4) the employee receives compensation in accordance with the Act;
- 5) the employee is not bound by the clause for more than 12 months after the effective date of termination; and
- 6) the employee receives information on the above in writing.

RESTRICTIVE COVENANTS

Nonsolicitation Clauses

A nonsolicitation clause is valid if the following requirements are fulfilled:

- 1) the clause concerns customers with whom the employee has been in commercial contact during the last 12 months prior to the effective date of termination;
- 2) the employee has been employed with the company for at least six months;
- 3) the employee receives compensation in accordance with the Act;
- 4) the employee is not bound by the clause for more than 12 months after resignation; and
- 5) the employee receives information on the above in writing.

In the event of termination, the employer must provide the employee with a list of the customers relevant for the nonsolicitation clause.

Compensation

An employee bound by a noncompetition/nonsolicitation clause must receive a monthly payment of 40 percent of the monthly salary applicable at the time of resignation if the clause applies for up to 6 months. If the clause applies between 6 and 12 months, compensation increases to 60 percent of the employee's monthly salary.

During the first two months, compensation is paid as a lump sum; afterwards, it is paid as monthly payments for the remainder of the period in which the clause is in force.

If the employee obtains other appropriate work, the company may set off other income against the compensation payable by the company.

COMPENSATION	DURATION	OTHER APPROPRIATE WORK
60 PERCENT	UP TO 12 MONTHS	NO
40 PERCENT	UP TO 6 MONTHS	NO
24 PERCENT	UP TO 12 MONTHS	YES
16 PERCENT	UP TO 6 MONTHS	YES

Combined Employment Clauses

An employee may be bound by a noncompetition clause and a nonsolicitation clause in the same period, i.e., *combined employment clauses*. Such combined clauses may be maintained only for a period of 6 months and the compensation amounts to 60 percent of the employee's monthly salary (24 percent, if other appropriate work).

Last updated July 2020.

**Jonas Enkegaard and Christian Vesterling of Horten, Copenhagen
Roger James of Ogletree Deakins International LLP**

FINLAND



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in Finland and does not necessarily need to set up a local subsidiary. However, in practice, it is advisable and common to establish a subsidiary or branch in Finland. Payroll registration is required, and employers are required to withhold income taxes and social security payments. In addition, employers are under an obligation to arrange occupational health care for their employees as well as to take out statutory accident insurance against work-related accidents.

EMPLOYMENT STATUS AND HIRING OPTIONS

The main method of engagement is employment, but independent contractors are used as well. Employment legislation, however, applies only to employees; independent contractors are treated as business partners and do not enjoy the same employee protections. Sometimes, the difference between these two forms of engagement is not clear, especially if the independent contractor operates as a private individual and not through a trade name or a corporation. Disputes can arise when a contractor claims employment rights (typically on termination), and the tax authorities can also instigate investigations. In any case, the main differentiator is that the employer has the right to direct and supervise the work of an employee, whereas an independent contractor works

independently and also takes care of his or her own insurances and other related obligations.

Finnish labor legislation is based on the principle of employee protection and includes mandatory provisions that cannot be deviated from to the disadvantage of employees, even by mutual agreement. The Employment Contracts Act (ECA) (55/2001, as amended) constitutes the main framework of Finnish labor law and sets out the general conditions regarding employment. The ECA applies to arrangements under which an employee undertakes to conduct work for an employer under the surveillance and guidance of the latter in return for remuneration and/or other compensation.

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EMPLOYMENT STATUS AND HIRING OPTIONS

Fixed-Term Employment

Fixed-term agreements normally require a justified reason. However, in some circumstances, employers may conclude fixed-term agreements for a maximum period of 1 year with employees who have been unemployed for at least 12 months without any justified reason.

Probationary Period

The parties may agree on a probationary period of up to six months. Please note, however, that some collective bargaining agreements (CBAs) (see section concerning the regulation of the employment relationship) may also include mandatory provisions concerning probationary periods.

Agency Workers

An employer's obligations with respect to hired employees (agency workers) are shared between hiring enterprise

(the employer supplying the agency workers) and the end user. The hiring enterprise remains the employer and is responsible for paying salary and arranging occupational healthcare, whereas the right to direct and supervise the work would transfer to the user enterprise. Moreover, the ECA contains provisions on the minimum terms of employment applicable to the employment relationship of a hired employee.

Other important acts applying to the employment relationship include the Working Hours Act (872/2019), the Annual Holidays Act (162/2005), and the Occupational Safety and Health Act (738/2002).

All the aforementioned acts are principally mandatory by nature. Additionally, CBAs may also set forth certain additional requirements.

RECRUITMENT

There are certain filings and insurance contributions required in relation to a new recruit:

- Registering for payroll taxes
- Occupational health care provision
- Employers' statutory social insurance contributions, which include earnings-related pension insurance, unemployment insurance, and accident insurance contributions and social security contributions

FINLAND



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Pursuant to the ECA, employment contracts may be written or oral, but all employees with a contract that lasts for longer than one month must be provided with the written confirmations of their key terms of employment. The information shall include at least the following:

1. Domicile or business location of the employer and the employee
2. Date of commencement of employment
3. Date or estimated date of termination of the fixed-term contract and the justification for such fixed-term contract
4. Any probationary period
5. Place of work
6. Employee's principal work duties
7. Applicable CBAs
8. Pay and other remuneration, as well as pay period
9. Working hours
10. Determination of annual holiday
11. Notice period or grounds for determining it
12. If work is performed abroad for a minimum period one month: duration of the work, currency of salary, remunerations and benefits, and the terms for the repatriation of the employee

Legally Required Policies

1. Equality plan (mandatory if the employer regularly employs at least 30 people)
2. Occupational safety and health policy

3. Occupational health care action plan
4. Anti-corruption and -bribery policy (mandatory in certain fields of business)
5. Notification on the processing of personal data (data protection in accordance with the General Data Protection Regulation (GDPR))

Common Additional Policies

1. IT and communications
2. Whistleblowing
3. Travel
4. Fringe benefits
5. Maternity and other paid leave
6. Action program on substance abuse prevention

Language Requirements for Documents

There are no language requirements for documents as long as the instructions and documents are given in such language that the employee understands.

Other Sources of Terms of Employment CBAs

Close cooperation between the Finnish government and labor unions (employer and employee organizations) is characteristic of the Finnish labor market system. In Finland, employer organizations and their employee

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

counterparts have traditionally entered into CBAs concerning certain terms and conditions of employment, usually more favorable for the employee than the statutory regulations. Generally, CBAs include provisions providing benefits to employees in excess of the ECA and other Finnish labor law provisions. The CBAs usually enhance statutory minimum standards on termination as well as rights to labor protection and industrial action.

A CBA may bind an employer either through membership of an employer organization (a normally binding CBA) or

through general applicability (a generally applicable CBA). Some collective agreements are generally applicable within a business sector, which means that they are binding for the employer irrespective of whether or not the employer is a member of an employer organization.

Most business sectors in Finland have a generally applicable CBA, meaning that all employers within such a business sector must adhere to the generally applicable CBA.

HOLIDAY ENTITLEMENT

In Finland, the Annual Holidays Act regulates holiday entitlement.

Holiday entitlement is calculated on a complex basis, which roughly equates to 2.5 days' entitlement for each calendar month an employee has worked at least 14 days or 35 hours (2.0 days during the first year of employment). The entitlement is adjusted on a pro rata basis for part-time employees.

This equates to 30 working days (12 months x 2.5 days), except for in the first year, when the entitlement is 24 working days (12 months x 2.0 days). Thirty working days equals five weeks, as Saturdays count as working days for the purpose of holiday entitlements.

Furthermore, there are 13 public holidays a year, as listed below, which most employees are entitled to on top of

their normal annual holiday entitlement, unless they have agreed to work those days:

- New Year's Day – January 1
- Epiphany – January 6
- Good Friday
- Easter Monday
- May Day – May 1
- Ascension Day – 40 days after Easter
- Midsummer Eve
- Midsummer Day – Saturday falling between June 20 and 26
- All Saints' Day – Saturday falling between October 31 and November 6
- Independence Day – December 6
- Christmas Eve – December 24
- Christmas Day – December 25
- Boxing Day – December 26

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HOLIDAY ENTITLEMENT

Workers in certain industries, such as hospitality and healthcare, do not have a right to leave on Sundays or public holidays, although they do normally have a right to enhanced pay for working those days.

The general rule is that the holiday season is the period between May 2 and September 30, during which the employer shall grant the employee's annual summer holiday. The portion of the holiday earned by an employee that exceeds 24 days shall, however, be granted as an annual winter holiday in the period between October 1 and April 30, unless the employee consents to other

arrangements. The employee shall always be given the opportunity to submit a request in advance as to when he or she wishes to have the annual holiday.

Furthermore, CBAs often specify more generous holiday benefits than the mandatory legislation, such as a holiday bonus, which normally amounts to 50 percent of the holiday salary.

Employers have a statutory obligation to keep sufficient records of the annual holiday accrual.

WORKING TIME LAWS

Working hours and overtime compensation are regulated by the Working Hours Act.

The Working Hours Act applies to the majority of employees. However, the scope of the Working Hours Act generally excludes a person who has a genuinely independent status and the right to decide on the organization of his or her work, is responsible for a certain functional entity of the company, has subordinates, and has genuine powers to make decisions in his or her area of liability.

The maximum regular working hours are 8 hours per day or 40 hours per week. In practice, CBAs often include more specific provisions concerning working time.

“Additional work” is work that is carried out on the employer's instruction outside the agreed contractual working hours but during regular working hours and still within the daily and weekly limits referred to above. There is no legal obligation to pay a higher hourly rate for additional work.

Overtime, on the other hand, always requires the employee's consent and is work that is carried out on the employer's initiative that exceeds the statutory daily or weekly maximums referred to above. Employees are entitled to a 50 percent overtime premium for the first 2 hours of daily overtime and 100 percent overtime premium for any overtime hours thereafter. Weekly overtime is remunerated by a 50 percent extra premium to the extent not already covered by daily overtime.

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WORKING TIME LAWS

The Working Hours Act no longer regulates the maximum amount of overtime. Instead, it contains provisions regarding the maximum number of an employee's total working hours. The working hours of an employee, including overtime, may not exceed an average of 48 hours per week over a period of 4 months. Arrangements may be made under a CBA to extend the calculation period to 12 months.

Employees can be required to work on Sundays when the work is by its nature regularly performed on Sundays, or when the employer and the employee agree on it. For any such Sunday work, employees are entitled to a 100 percent premium on their pay.

Employers have a statutory obligation to monitor and keep sufficient records of working hours and overtime accrual.

ILLNESS

Pursuant to the ECA, employees who are unable to work due to an illness or accident and have at least one month's service are entitled to their normal salary for up to nine days of absence, but only up to the point at which the employee's right to national sickness allowance under the Health Insurance Act (1224/2004) comes into effect. Employees who have worked for their employer for less than 1 month are entitled to 50 percent of their salary for this period.

CBAs commonly provide for considerably longer periods of paid sick leave. The period is usually staggered according to length of the employment relationship and usually ranges from four weeks to three months.

It is standard practice that a medical certificate is required after three days of absence.

Employees are not entitled to salary (from the employer) during illness or recovery if they have caused the illness willfully or by gross negligence.

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STATUTORY RIGHTS OF PARENTS AND CARERS

Pursuant to the ECA, employees are entitled to take leave from work during maternity, special maternity, paternity, and parental benefit periods specified by the Health Insurance Act. Furthermore, an employee returning to work from such leave has the right to return to his or her previous work. If this is not possible, the employer has to offer the employee equivalent work in accordance with the provisions of their respective employment contract.

Maternity Leave and Pay

Maternity leave is 105 working days, 30 to 50 days of which generally are to be used before giving birth and 55 to 75 days after birth. During this period, the employee is, with the employer's consent, entitled to perform work that does not pose a risk to her or to the unborn or newly born child. However, work is not permitted during the period from two weeks before the expected time of birth to two weeks after giving birth.

By law, employers are not obligated to pay wages during any of the types of family leave. Instead, employees receive an allowance granted by the National Social Insurance Institution of Finland. It is based on earnings using a sliding scale (ranging from 70 percent for the lowest incomes to 25 percent for the highest).

However, many CBAs contain binding provisions on employers to pay wages during maternity and paternity leave, usually depending on the length of the employment relationship. If an employer is obliged under such an agreement to pay salary during leave, the maternity allowance paid by the National Social Insurance Institution generally shall be paid to the employer instead.

Paternity Leave and Pay

Statutory paternity leave can last up to 54 working days, or about 9 weeks. However, only 18 days of that can consist of a period when both the father and the mother stay at home. Generally, as with maternity leave, pay during paternity leave is provided by the National Social Insurance Institution.

Shared Parental Leave

In addition to maternity and paternity leave, parents are entitled to up to 158 working days of parental leave, which is taken immediately after the end of maternity/paternity leave. Parents are free to agree between themselves how to split the parental leave entitlement. Pay over this period is continuing parental allowance calculated in the same way as the maternity and paternity allowance.

Adoption Leave

Generally, the same rights apply for parents adopting, with one parent taking leave equivalent to maternity leave and paid in the same way.

Other Family Leave

There are statutory entitlements to leave in cases of emergency involving a close family member. Employees are also entitled to a maximum of 4 days of temporary child care leave if their child under 10 years of age suddenly falls ill. Moreover, parents are entitled to child care leave up to when the child reaches the age of three years.

FINLAND



FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

In principle, fixed-term employees and part-time employees are, broadly speaking, entitled to the same pay and benefits as comparable permanent, full-time employees. Employers cannot discriminate based on an employee being fixed term or part time.

Fixed-term employment contracts always require justification under a specific legal ground, the absence of which renders the employment permanent.

Employers can use variable working hour contracts only where there is a legitimate need for flexibility based on demand for the employee's services. The working hours agreed must be in accordance with the actual need of labor. If a situation arises where the actual working hours over the past six months do not correspond with the contractual hours, the employer and employee should try to renegotiate the working hours. If they do not reach an agreement, the employer must provide the employee with a written explanation of its view and decision.

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DISCRIMINATION AND HARASSMENT

The characteristics protected by law are gender, age, ethnic origin, nationality, language, religion, opinion, political activity, trade union activity, family ties, health, disability, sexual orientation, and certain other appropriate person-related reasons. Any detrimental action, whether direct or indirect, because of one of these characteristics is unlawful.

Discrimination is prohibited irrespective of whether it is based on a fact or an assumption concerning the person him- or herself or another person. Discrimination includes the detrimental treatment of an employee compared to other employees under similar circumstances or where the effect of certain requirements, conditions, or practices imposed by an employer has a disproportionately adverse impact on an employee or a group of employees (so-called “indirect discrimination”).

In addition to direct and indirect discrimination, harassment, refusal to provide reasonable adjustments that would help disabled employees to manage in working life, and an instruction or an order to discriminate are also construed as discrimination.

Discrimination is prohibited in all aspects of employment, including the advertisement of vacancies, hiring, training and advancement, as well as termination. Moreover, employers are under a general obligation to treat employees equally, unless there is an acceptable cause for derogation deriving from the duties and position of the employees.

Claims of discrimination may be brought by any employee, as well as by potential recruits and ex-employees, regardless of length of service. Claims must be brought within two years of the alleged discriminatory act or within one year from the moment the discriminated job applicant received information about the recruitment decision. A person who has been discriminated against is entitled to compensation and damages. Furthermore, an employer may also be criminally liable and subject to a fine or a prison sentence.

FINLAND



TERMINATION OF EMPLOYMENT

Statutory Notice

The right to give notice mainly relates to employment contracts valid until further notice (permanent employment contracts). Fixed-term contracts may not be terminated upon notice unless it was specifically agreed that the parties would have that right.

Both the employee and the employer can give notice to terminate an employment contract, and the parties can agree on the notice period provided that it does not exceed six months. The employee's notice period may also not be longer than the employer's. In certain situations, shorter notice may be given (e.g., bankruptcy or death of the employer).

In the absence of any agreement on the matter, the notice periods will be in accordance with the ECA and range from 14 days to 6 months, depending on length of the employment relationship, as listed below.

As set forth in the ECA, the notice periods to be observed by the employer are the following if the employment relationship has continued uninterrupted:

- Fourteen days, if the employment relationship has continued for up to one year
- One month, if the employment relationship has continued for more than one year but no more than four years
- Two months, if the employment relationship has

continued for more than four years but no more than eight years

- Fourteen months, if the employment relationship has continued for more than 8 years but no more than 12 years
- Six months, if the employment relationship has continued for more than 12 years

The notice periods applicable to notice from the employee are the following:

- Fourteen days, if the employment relationship has continued for less than five years
- One month, if the employment relationship has continued for more than five years

It should be noted that some CBAs set forth mandatory notice periods, which usually are the same as the ones set forth in the ECA.

Severance Payments

There is no legal entitlement to severance pay. The parties may, however, agree on such severance pay; this is rather common in connection with mutual termination agreements.

Unfair Dismissal

According to the ECA, termination of an employment always requires a proper and weighty reason. As set

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TERMINATION OF EMPLOYMENT

forth in the ECA, an employment relationship may be terminated on grounds relating to the employee's person (individual grounds) or on financial and production-related grounds deriving from the employer (collective grounds/redundancy). In addition, an employment contract may also be cancelled without notice in case of very serious breaches or serious misconduct. Finally, an employer and an employee may mutually agree on termination.

Before terminating an employee on individual grounds, the employee shall be given a written warning and a reasonable period to correct his or her conduct. What is considered as a proper and weighty reason in a termination on individual grounds depends on the situation. However, the grounds must not relate to the following:

1. Illness, disability, or an accident that has not caused a substantial and permanent reduction of the employee's working capacity rendering it unreasonable to require the employer to continue the employment
2. Participation by the employee in a strike or other industrial action arranged by an employee organization
3. Political, religious, or other views of the employee, or his or her participation in public activities or in the activities of an association
4. Resorting by the employee to means of legal protection available to employees

Redundancy

An employer is entitled to terminate an employment contract on collective grounds under the following conditions:

1. The amount of work has decreased due to financial or production-related reasons or due to reorganization.
2. The decrease is substantial and permanent.
3. The employee cannot, with regard to his or her skills and capabilities, be reasonably reassigned or trained for other tasks.

Further, if the employer needs personnel for the same or similar work within 4 months (6 months if the employment relationship had lasted for over 12 years) of the termination date, such work shall first be offered to the terminated employee if he or she is still seeking work via the local employment agency and if his or her employment contract was terminated on collective grounds.

Employees may claim damages amounting to 3 to 24 months' salary for unlawful termination; i.e., termination without a legal ground. However, employees may not claim reinstatement on the basis of unlawful termination.

When determining the amount of compensation payable based on unlawful termination, a number of factors

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TERMINATION OF EMPLOYMENT

are taken into consideration, such as the duration of the employment relationship, the employee's age and possibilities for finding other employment, and the parties' actions in relation to the termination.

The court has wide powers of discretion. However, in practice, awards at the higher end of the compensation scale usually require exceptional circumstances and/or the termination of a very long employment relationship.

Collective Redundancy Rules

Employers with at least 20 employees (in total, not the proposed number of dismissals) must also adhere to the provisions of the Co-operation Act (334/2007, as amended). The act obligates the employer to initiate consultation and seek to negotiate for a certain minimum time with employees' representative(s) before making any final decisions on any measures that may lead to redundancies or material changes to the terms of employment.

Notification of Authorities

In cases of collective redundancies when the Co-operation Act is applicable, an employer must notify the local employment office of the negotiations before the commencement of the cooperation negotiations. In addition, according to the ECA, an employer must always immediately notify the local employment office of the dismissal of employees if there are at least 10 employees to be dismissed on collective grounds.

Protected Employees

There is enhanced protection against dismissal for employees who are pregnant, on maternity or paternity leave, or employee representatives.

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EMPLOYMENT REPRESENTATION

There are general obligations to consult with employee representatives on business decisions that may have an effect on employees. When the Co-operation Act is applicable, the employer must negotiate for a certain minimum time with employee representatives before executing any of the contemplated measures in accordance with the legislation.

BUSINESS TRANSFERS

Pursuant to the ECA, a transfer of a business refers to the transfer of an independent business or an operative part thereof to another party where the business remains the same or similar without interruption after the transfer. In a transfer of a business as set forth in the ECA, the employees will automatically transfer into the service of the new employer with the same employment terms and conditions they had before the transfer. The new employer cannot unilaterally amend the terms and conditions or give notice to an employee solely on the basis of the transfer.

A business transfer does not in itself trigger any consultation obligations, but the Co-operation Act requires that both the transferor company and the transferee company provide certain general information to the representatives of personnel groups.

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NONCOMPETES AND RESTRICTIVE COVENANTS

During employment, an employee is prohibited from engaging in any competing activities.

An agreement regarding post-employment noncompetition is valid, provided that a particularly weighty reason exists relating to the operations of the employer. Such a particularly weighty reason may exist, for example, for managerial employees, employees with critical roles in R&D, or those who are otherwise entrusted with significant business secrets or important know-how. The particularly weighty reason must exist both when the agreement is concluded and when the employer seeks enforcement.

The maximum term for a noncompetition agreement is six months from the end of the employment relationship, and for that period, no additional compensation is required (*although note that at the time of writing a change in the labor legislation is pending, according to which employers might have additional compensation obligations*). The term may, however, be extended to 12 months if the employee is paid a reasonable compensation for the restrictions imposed on him or her by the agreement.

A noncompetition agreement may include a provision on liquidated damages, which may not exceed the amount of pay received by the employee for the six months preceding the end of his or her employment relationship.

Notably, however, these restrictions regarding the duration of a noncompetition agreement and the maximum liquidated damages do not apply to managerial employees or employees who have equivalent status. In practice, such managerial employees are often bound by a noncompetition restriction of up to 12 months without additional compensation and have liquidated damages amounting to 12 months' salary.

In Finland, there are no laws or provisions for nonsolicitation of clients, but covenants not to solicit employees or customers after the termination of employment are generally acceptable.

Last updated July 2020.

***Tomi Kemppainen and Deniz Yildiz of Castrén & Snellman, Helsinki
Roger James of Ogletree Deakins International LLP***

FRANCE



CORPORATE REGISTRATION REQUIREMENTS

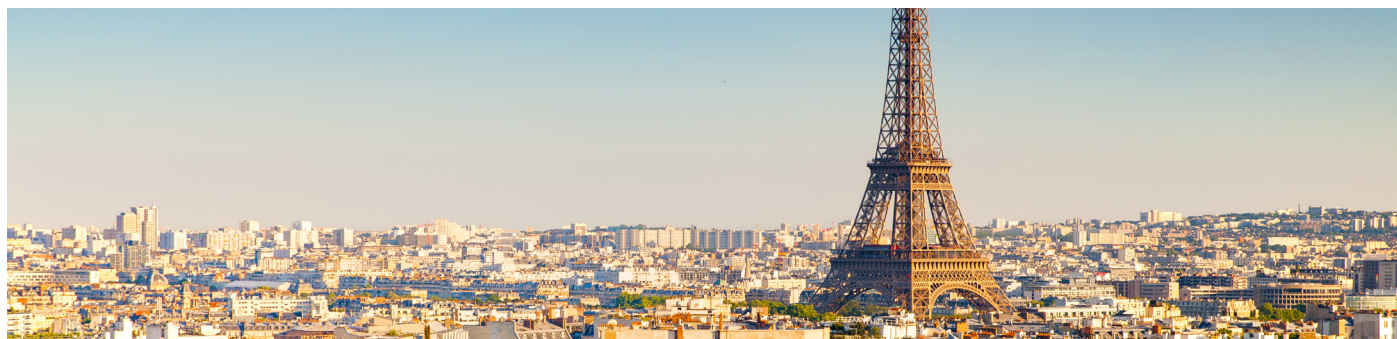
A foreign entity can engage people directly in France and does not need to set up a local subsidiary. Payroll registration is required, and employers are required to withhold social security taxes from payments to employees and, since January 1, 2019, personal income taxes as well. By contrast, independent contractors are paid gross and are responsible for their own taxes.

EMPLOYMENT STATUS AND HIRING OPTIONS

Individuals who provide their work services fall into the following main groups: employees, independent contractors (or consultants), and temporary agency workers:

- **Employees:** Most employment contracts in France are for an indefinite duration (*contrats à durée indéterminée*). Fixed-term contracts (*contrats à durée déterminée*) are strictly regulated, and their use should be limited to circumstances where there is a precise and temporary task. Fixed-term contracts should not be used to fill a position linked to the normal and permanent activity of the company.
- **Independent contractors:** Independent contractors (or consultants) are people who are in business on their own account and are responsible for making their own decisions as to how the job is performed. Disputes can arise when a contractor claims employment rights (typically on termination), and the tax authorities can also instigate investigations. Key factors used to determine these disputes are the following:
 1. **Control:** An employee is typically told not just what to do but also how to do it.
 2. **Integration:** A contractor would not normally have company business cards or a company email address.
 3. **Set hours of work:** A contractor is more likely to manage his or her own time.
 4. **Pay:** A contractor is often paid on completion of a specific project or tasks (often carried out using his or

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EMPLOYMENT STATUS AND HIRING OPTIONS

- her own equipment) rather than based on time spent.
5. Operating as a business: A contractor may have other clients, a business name, and a higher degree of financial risk than a salaried employee.
6. Personal service: A contractor is sometimes able to supply a substitute to perform services. This is never consistent with an employment relationship.
7. Temporary agency workers: The use of temporary agency workers is strictly regulated. Temporary work could be defined as a triangular relationship between a temporary worker, a temporary work agency (entreprise de travail temporaire), and a client company.

RECRUITMENT

Employers should ensure that there is no discrimination when hiring.

An employer should only seek information that is relevant and has a direct link to the position in question. Employers must also inform job applicants of the recruitment methods used. Pre-hire background checks are allowed as long as the information requested is directly related to the job and assists the employer to assess the applicant's ability to perform the duties.

A pre-hiring statement (déclaration préalable à l'embauche) must be sent to France's social security administration, or URSSAF (Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales), during the eight days leading up to the commencement of employment.

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

Permanent employment contracts can be written, verbal, or result from a mere exchange of correspondence. However, as a matter of practice, most employment contracts are indefinite and are written.

However, fixed-term contracts, part-time contracts, and temporary work contracts must always be in writing and must contain specific provisions in order to be valid; otherwise, these contracts would be deemed full time and/or for an indefinite period.

Legally Required Policies

Any employer that employs 50 employees or more on a regular basis must draft internal regulations (*règlement intérieur*) that set out general and permanent rules relating to the following:

1. Health and safety matters
2. Disciplinary provisions, including sanctions and measures to prevent sexual and moral harassment.

There are specific rules regarding the adoption and filing of these internal regulations. In particular, employee representatives must be consulted, and the Labour Inspector is entitled to review the document.

Common Additional Policies

Certain other policies and procedures are recommended, such as the following:

1. Equal opportunities

2. Anti-harassment and -bullying
3. Anti-corruption and -bribery
4. Whistleblowing
5. IT and communications
6. Health and safety policy
7. Data privacy policy

Companies that wish to implement any policies that contain rules normally contained in internal regulations should implement them as an appendix to the internal regulations to ensure that the policies are enforceable.

Language Requirements for Documents

Except in certain circumstances, all documents providing obligations binding on employees or containing information necessary for the performance of work (such as employment contracts, addenda to employment contracts, and variable remuneration schemes and policies) must be drafted in French (or dual language).

Other Sources of Terms of Employment

The main sources of law that govern employment relationships in France are the Labour Code (the statute containing employment legislation), collective bargaining agreements, and case law of the Court of Cassation (*Cour de Cassation*), the highest court in France.

Collective bargaining agreements (CBAs) are agreements with a trade union and are particularly important in France. These agreements may provide employees with enhanced

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

rights in areas such as notice entitlement, overtime pay, and leave entitlements. CBAs can take different forms, being either (i) agreed directly between a company and trade union delegates, employee representatives, or mandated employees (known as an “in-house collective agreement”), or (ii) agreed at an industry level (such as car manufacturing) and applicable to all employers in the industry, whether or not they have signed the agreement.

The internal regulations, customs, and practices that may be in effect within a company, as well as individual employment agreements, may also govern employment relationships.

HOLIDAY ENTITLEMENT

Employees who work a standard five-day week are entitled to at least two-and-a-half days of paid vacation for each month worked during the “reference year” (which runs from June 1 of the current year to May 31 of the next year, unless a CBA or an in-house collective agreement provides otherwise). If an employee works the full 12 months, the standard annual paid vacation is therefore 5 weeks (a week being 6 days for these purposes).

The applicable CBA may provide for a more generous entitlement, typically based on an employee’s seniority.

Most employees are also entitled to paid leave on the following public holidays:

- New Year’s Day – January 1
- Easter Monday
- Labour Day – May 1

- VE Day – May 8
- Pentecost Monday (day of national contribution for elderly persons)
- Bastille Day – July 14
- Assumption of the Blessed Virgin Mary – August 15
- All Saints’ Day – November 1
- Armistice Day – November 11
- Christmas Day – December 25

If someone has to work on one of these days (for example, a hotel or hospital worker), he or she will usually be provided with compensatory rest and/or additional financial compensation.

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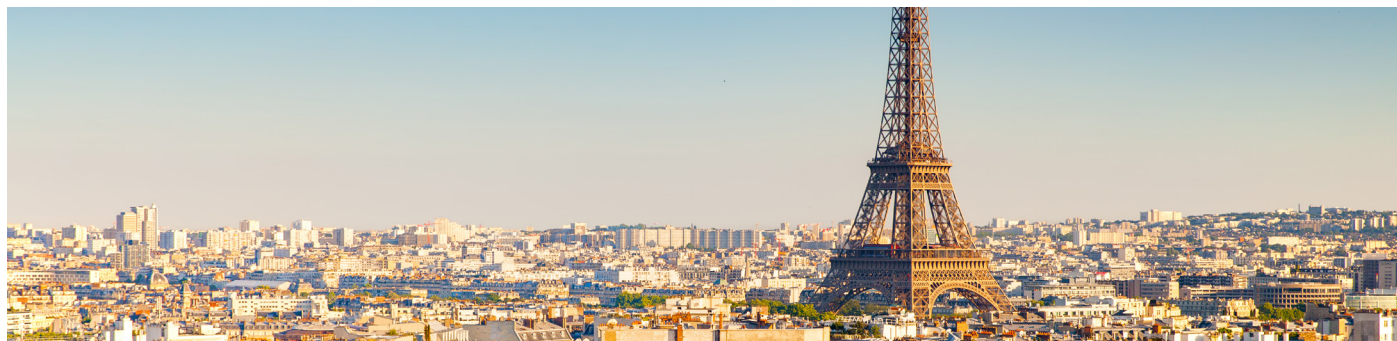
WORKING TIME LAWS

Standard working time in France is set at 35 hours per week (151.67 hours per month). However, an employee can exceed this by working overtime, and the maximum working week is then set at 44 hours per week (calculated as an average over 12 consecutive weeks), with an absolute maximum of 48 hours in any 1 week. In addition, the maximum number of hours that an employee may work in any 1 day is limited to 10 hours, rising to 13 hours when lunch and breaks are included.

Any work performed beyond 35 hours per week is considered overtime. Overtime hours are limited by the Labour Code to 220 hours per year and may also be restricted by the CBA applicable within the company. These hours must be compensated by a 25 percent enhancement to pay for each of the first 8 hours beyond 35 hours (i.e., from the 36th hour to the 43rd hour) and a 50 percent enhancement for the hours beyond that. They can also be compensated by an equivalent compensatory rest under specific conditions. The CBA applicable within the company may provide for different overtime pay rates.

A CBA or an in-house collective agreement may provide for more flexible working time arrangements. However, in all cases, employees must benefit from a minimum daily rest of 11 consecutive hours and a minimum weekly rest of 35 consecutive hours.

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ILLNESS

An employee who is unable to work because of sickness or injury is required to submit a medical certificate to his or her employer (generally within 48 hours of the absence).

During any period of sick leave, part of the employee's salary is paid by the health insurance authorities. The employer may be required to pay all or a portion of the remainder of the employee's salary for a certain period of time, depending on the terms of the CBA applicable within the company.

STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

A pregnant employee is entitled to a total of 16 weeks of maternity leave, generally beginning 6 weeks prior to the expected date of delivery and lasting until 10 weeks after the delivery. If delivery is earlier than expected, the post-delivery term is extended to meet the 16-week total. If the delivery is later than expected, the pre-delivery portion of the leave is extended until the date of delivery, while the post-delivery portion of the maternity leave remains unchanged.

Maternity leave is increased to 26 weeks (10 weeks before birth and 16 weeks afterwards) for a third or subsequent child. Further extensions are applicable to multiple births or medical complications.

During maternity leave, the Social Security Fund pays the maternity benefit directly to the employee, unless an applicable CBA provides that the employer maintains the employee's salary. The maternity benefits payable by the

Social Security Fund are calculated based on average salary for the previous three months, subject to the monthly social security limit (EUR 3,428 as of January 1, 2020). Most companies have supplementary health schemes that provide for additional compensation so that an employee does not incur any loss of remuneration because of her maternity leave.

Paternity Leave and Pay

Spouses and partners may take a maximum of 11 consecutive days (18 days for multiple births) "paternity and child-welcoming leave" within 4 months following the child's birth. Male employees are entitled to pay from the Social Security Fund for this leave as with maternity leave.

In addition, the employee may take three days of "birth leave" for each birth occurring at his or her home or for the arrival of a child placed for adoption.

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STATUTORY RIGHTS OF PARENTS AND CARERS

Parental Leave

There is an additional type of leave that can be taken by either parent, parental leave. This provides for up to a year's additional leave (on top of the entitlements referred to above). An employee can also request partial parental leave to reduce his or her working hours for the one-year period.

Parental leave is not paid by the company or the Social Security Fund.

Adoption Leave

An employee (male or female) adopting a child is entitled to 10 weeks' leave (or more if the adopted child is the third child in the household). The adoption leave starts when

the child arrives home or seven days before at the earliest. During adoption leave, one parent (male or female) is entitled to the same maternity benefits as a female employee on maternity leave.

Other Leave

There are numerous forms of leave. Most of these are unpaid, subject to the provisions of an applicable CBA. Below is a list of the most common:

- Leave for international adoption
- Family solidarity leave
- Leave to start a business
- International solidarity leave

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FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Special rules apply to temporary workers, fixed-term employees, and part-time workers, who are all, broadly speaking, entitled to the same treatment as comparable permanent, full-time employees.

DISCRIMINATION AND HARASSMENT

The characteristics protected by law are ethnic origin, sex, ethnic customs, sexual orientation or gender identity, age (unless the difference of treatment based on age can be justified by a legal purpose), marital status or pregnancy, genetic characteristics, particular vulnerability resulting from the person's economic situation, citizenship, race, political or religious beliefs, union involvement, external physical appearance, surname, place of residence, state of health, loss of independence or disability, or ability to express in a language other than French. Any detrimental action because of one of these characteristics is unlawful.

In addition, if an employer has a practice or procedure that subjects people who share one of these characteristics to a disadvantage, such as requiring job applicants to be six feet tall, which disadvantages women, then that is unlawful indirect discrimination unless the practice or procedure can be objectively justified.

French law allows employers to discriminate in favor of one sex where the needs of the job require the jobholder to be of that sex. Such positions are very limited; for example, actors (playing male or female roles) and models.

Claims for discrimination can be brought by any employee or worker regardless of length of service, as well as by potential recruits and ex-employees. Courts have the power to declare any discriminatory act void and also award a victim compensation, which is potentially unlimited depending on the severity and financial losses. For example, in the case of a discriminatory dismissal, the court can order both reinstatement and damages for loss of wages. In addition, unlike in many other countries, there can be criminal sanctions in addition to civil liability. Depending on the nature of the breach, discrimination may be sanctioned by a fine on the employer of up to EUR 225,000. The legal representative of the company can also personally be sanctioned by a fine of up to EUR 45,000 as well as three years of imprisonment. There are also retaliation (victimization) laws. A person who has alleged discrimination or harassment (or given evidence in support of another) shall not be sanctioned, dismissed, or subjected to discrimination.

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DISCRIMINATION AND HARASSMENT

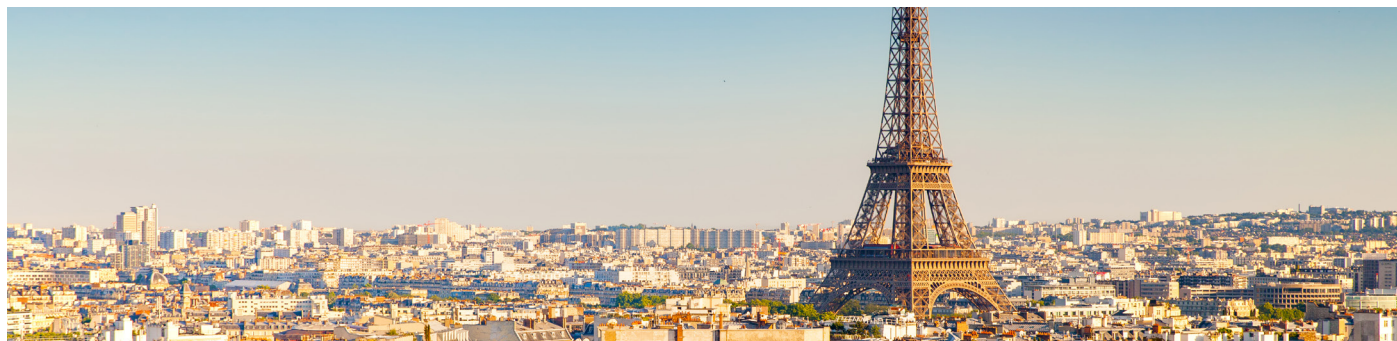
Harassment

Moral harassment arises when there is unwanted conduct related to a person's protected characteristic (e.g., sex or race) that violates his or her dignity or is otherwise hostile, humiliating, degrading, intimidating, or offensive. Harassment is a form of discrimination.

In cases of harassment, criminal sanctions may be imposed on the offender (maximum fine of EUR 30,000 and/or imprisonment for up to two years). This is increased to EUR 45,000 and/or three years imprisonment in cases with aggravating circumstances. The company employing an offender can also be liable for a fine of up to EUR 150,000.

Furthermore, the legal representative of a company that dismisses or discriminates against an employee who was subject to, or who refused, sexual harassment may be liable for a fine of up to EUR 45,000. A court can also order that a decision be published in newspapers. In this situation, the company may be liable for a maximum fine of EUR 225,000.

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TERMINATION OF EMPLOYMENT

Statutory Notice

Employment can normally be terminated only by notice, except in the case of gross or willful misconduct by the employee.

Minimum legal notice periods are complicated, as they may vary based on age and employee classification pursuant to an applicable CBA and customary practices. Minimum notice periods are the following:

- Less than six months' service: the notice period to be given by the employer is that applicable in the case of employee resignation
- Between six months' and two years' service: one month's notice
- Two years' or more service: two months' notice

However, these periods will apply only in the absence of a more favorable entitlement from a CBA, employment contract, or customary practice.

Payments in lieu of notice are permitted, but the employee must receive the full salary he or she would have received had he or she worked during the notice period (including variable remuneration, benefits in kinds, etc.).

The notion of "garden leave" does not exist under French law.

Severance Payments

Except in cases of gross or willful misconduct, employees are entitled to severance pay, which is referred to as a dismissal indemnity.

The legal minimum dismissal indemnity is based on the employee's seniority, as follows:

- One-quarter average monthly remuneration per full year of service for employees with more than 8 months of service and less than 10 years of service
- One-third average monthly remuneration per full year of service for employees with more than 10 years of service

The applicable CBA or the employment agreement may provide for a more favorable dismissal indemnity.

Employees are also entitled to payment of an indemnity for accrued but unused vacation entitlements at the end of the employment contract.

Unfair Dismissal

After any probationary period, an employer may terminate a permanent employee at any time. However, the employer must be able to show a "real and serious cause" (*cause réelle et sérieuse*) for the termination of the employment relationship and comply with the applicable mandatory dismissal procedure.

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TERMINATION OF EMPLOYMENT

The notion of a “real and serious cause” has been progressively defined by French case law. “Real” means that the cause must be exact, accurate, and objective, and “serious” means that it must be of a certain significance, making it impossible for the employer to continue the employment relationship.

Valid personal grounds for dismissal include poor work performance, lack of discipline, unjustified absences, etc.

Whether the employee will get a dismissal indemnity or notice depends on the seriousness of the employee’s conduct. No dismissal indemnity is payable in serious cases, such as those considered gross misconduct (*faute grave*) or willful misconduct (*faute lourde*). However, an employee dismissed for basic misconduct (*faute simple*) will get dismissal indemnity and notice.

In the event of a court claim for unfair dismissal, the amount of damages (over and above the statutory severance payments) to be paid to the employee is determined by the labor courts according to a new statutory scale in light of the employee’s years of service and the company’s workforce. This ranges from one month’s salary to 20 months’ salary. Further compensation may be available if an employee succeeds with other claims, such as those related to overtime, harassment, loss of chance, discrimination, bonus, commission, etc.

Redundancy

A redundancy dismissal is referred to as one based on economic grounds. In these cases, it is vital that the position of the employee dismissed is not replaced in France.

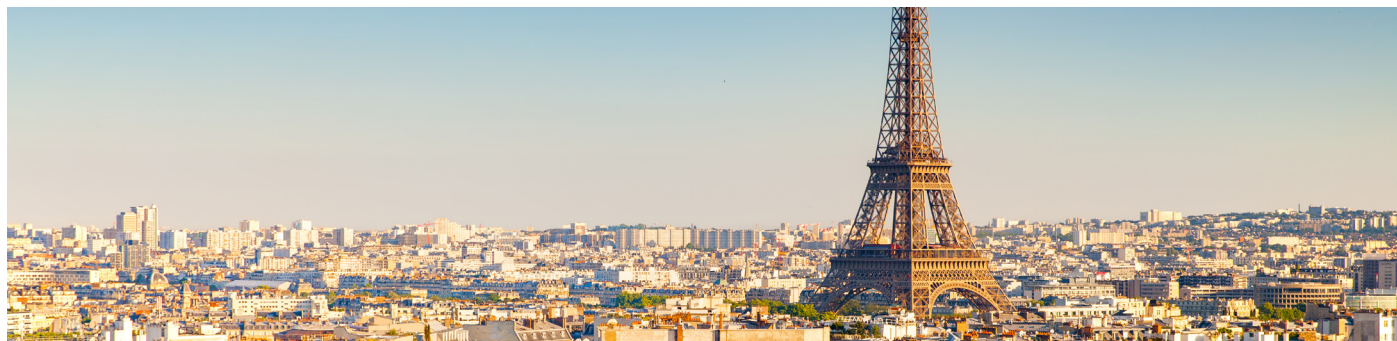
Moreover, for an economic dismissal to be valid, the company will need to evidence a “real and serious” justification, such as (i) economic difficulties, (ii) technological change, (iii) reorganization of the company necessary to safeguard its competitiveness, or (iv) closure of the company. For companies part of a group located in France and abroad, the economic difficulties to be taken into account are those of the French companies of the group within the same sector of activity.

In addition, an employer must make serious efforts to find an alternative position for the employee whose dismissal is contemplated, both within the company and within the group in France, even at a lower level and even if it entails a modification in the employee’s position and/or functions.

Collective Redundancy Rules

If more than 1 employee is terminated for economic reasons over a 30-day period, and the company has employee representatives, then those representatives must be informed and consulted about the proposed dismissal. When 10 or more dismissals for economic grounds are contemplated over a 30-day period in companies employing more than 50 employees, a social plan (*plan*

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TERMINATION OF EMPLOYMENT

de sauvegarde de l'emploi) must also be implemented. A social plan is a plan put together by the employer and employee representatives (or trade union delegates) under the control of the French labor authorities (DIRECCTE) to set out the steps that will be taken to mitigate the impact of the terminations, including in particular the method for making severance payments.

Notification of Authorities

The employer must inform the DIRECCTE in writing in the event of any economic dismissal, even if only one person. Where

there is a social plan, the DIRECCTE will have to approve the plan and thereafter be kept informed throughout the process.

Protected Employees

There is enhanced protection against dismissal for certain employees, including a requirement for authorization of their dismissal from the Labour Inspector. Protected employees are generally those who are employee representatives, trade union delegates, candidates to elections, pregnant, on maternity leave, and fathers who have recently had a child.

EMPLOYMENT REPRESENTATION

Since recent changes in legislation, the Social and Economic Committee (*Comité Social et Economique, or CSE*) is now mandatory and must replace, in all companies that have employed at least 11 employees during the last 12 consecutive months, the existing employee representative bodies (i.e., employee delegates, works council, and health and safety committee) by January 1, 2020.

The CSE's duties include presenting to the employer individual or collective employee claims; promoting health, safety, and working conditions in the company; and carrying out investigations of work accidents or occupational sickness. It also benefits from a right to alert (*droit d'alerte*) so that it is made aware of incidents that may infringe upon employees' rights, impact physical or mental health, impact individual liberties, or create serious and imminent danger or serious risk to public health or to the environment.

In companies with at least 50 employees, the CSE should also be periodically informed and consulted on the financial, industrial, and commercial situation of the company; on the company's strategic objectives; and on the company's social policy. It should also be informed and consulted on proposed redundancies, transfers of business, or changes to working conditions. A specific health, safety, and working conditions commission must be implemented within the CSE in companies with more than 300 employees.

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BUSINESS TRANSFERS

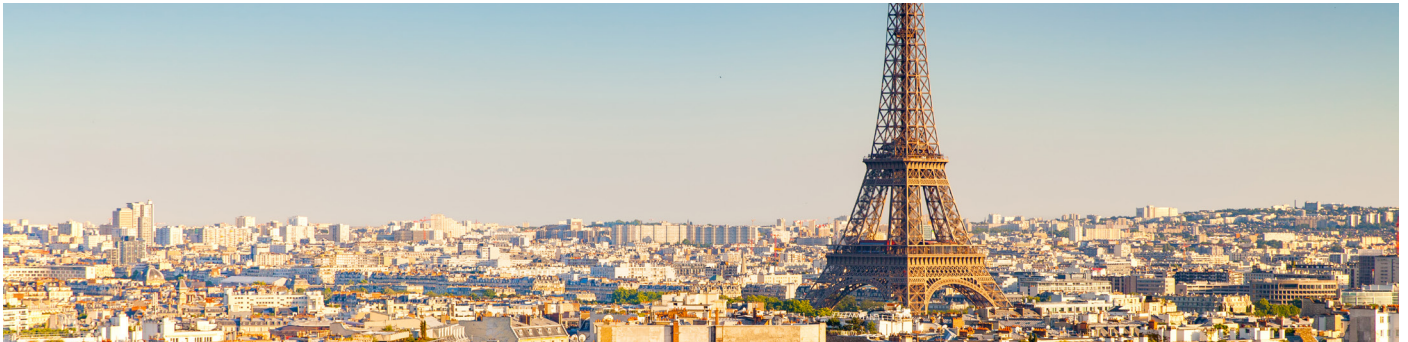
French law requires the automatic transfer of all employment contracts and benefits to the transferee in the event of a business transfer. As with other EU countries, this requires the following:

- The employees must be considered as part of an “autonomous economic entity,”; i.e., an organized group of individuals and tangible and/or intangible assets allowing an economic activity to be carried out having its own purpose. The sale of the assets of a business will normally meet this condition.
- The new employer must continue the business.
- The business must be transferred by means of a sale, merger, change of activity, incorporation, or sale of part of a business in particular.

In cases where an autonomous economic entity is not identified, there is no automatic transfer of employment contracts. In such cases, the company must obtain the written consent of the concerned employees before transferring them to a new employer—effectively a modification of their employment contracts.

In principle, the transfer of business is not in itself a valid reason for termination of employees. However, it is possible to terminate employment contracts prior to or after the transfer on separate personal or economic grounds. There is, however, an exception for companies with at least 50 employees whose transfer of an economic autonomous entity involves a site recovery; in such cases, it is possible, prior to the transfer, to terminate employees in the framework of a social plan.

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NONCOMPETES AND RESTRICTIVE COVENANTS

To prevent an employee from competing with his or her employer after the contract has been terminated, a noncompetition clause should be included in the employment contract.

In accordance with current French case law, a post-employment noncompete obligation must satisfy the following:

- Be limited to a specific period (generally no more than two years) and geographical area
- Provide for the payment of financial compensation on a monthly basis during the entire length of the noncompete covenant, the amount of which should be at least 33 percent of the employee's average previous salary (based on current case law); this amount may be increased by an applicable CBA
- Be proportionate to the employer's legitimate interests

A noncompete covenant would not be considered appropriate for an employee who does not have access to clients or confidential information. In addition, it must not prevent the employee from finding new employment. Courts tend to reduce the geographical scope of a covenant when necessary to allow the employee to find new employment.

If a noncompetition clause is valid, an employee who is in breach of the clause may be ordered to pay damages to his or her former employer and prevented from taking up employment with his or her new employer.

Last updated July 2020.

Lucille Gressier of Ogletree Deakins International LLP, Paris

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CORPORATE REGISTRATION REQUIREMENTS

A foreign entity does not need to set up a local subsidiary in Germany in order to engage people. However, payroll registration is required, and employers are in general required to withhold income taxes and social security taxes from payments to employees. For this purpose, a company registration number (*Betriebsnummer*) provided by the Federal Labor Agency is required. This can be applied for online and is in general provided within a couple of days. For independent contractors, no payroll registration is necessary, as they are paid gross and responsible for their own taxes.

EMPLOYMENT STATUS AND HIRING OPTIONS

Individuals can be hired as employees or independent contractors. Furthermore, it is possible to hire personnel temporarily as agency workers via a staffing agency.

In order to differentiate between employees and independent contractors, inter alia, the following criteria are relevant:

- Independent contractors are not bound to instructions as to working time, place of work, and methods of work.
- Independent contractors are not integrated in the company's business organization; they use their own organization (e.g., they don't have company business

cards or a company email address; they use their own work equipment).

- Contrary to employees, independent contractors are not obliged to provide their services personally, but they can in general use their own staff or subcontractors.
- Independent contractors can work for other clients and operate businesses.
- Remuneration of independent contractors is in general based on services provided or projects completed.

If the contractual arrangement deviates from the factual circumstances, the latter are decisive. Disputes can arise when a contractor claims employment status. Furthermore,

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EMPLOYMENT STATUS AND HIRING OPTIONS

tax and social security authorities can and often do investigate the status of independent contracts within the framework of their regular tax and social security audits.

In cases of misclassification of a contractor, statutory employment provisions (e.g., paid vacation, continued remuneration in case of sickness or termination protection) apply to the individual. Furthermore, the employer is liable

for the retroactive payment of social security contributions (employee's and employer's portion) plus default interest and is jointly liable with the individual for income tax payments. Furthermore, the violation of the obligation to pay social security contributions can result in a fine as a criminal offense.

RECRUITMENT

There are no filings to authorities required when employing someone, except for registering for payroll taxes.

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

Employees are entitled to written confirmation of their key terms of employment, to be provided within one month after the beginning of the employment. It is customary to enter into written employment contracts.

Employment contracts typically provide for the following:

- Starting date and term (limited or unlimited)
- Position or job title
- Place of work
- Probationary period (not mandatory, but customary) and notice period
- Remuneration
- Working hours
- Vacation entitlement

Legally Required Policies

There is no legal obligation to have specific policies. However, multinational companies in particular will usually have policies on matters such as IT, anti-harassment and -bullying, anti-corruption and -bribery, and whistleblowing. Depending on its content, a policy may require codetermination with any works council, which means the implementation and content have to be agreed with the works council.

Language Requirements for Documents

There is no language requirement under statutory law. However, if disputes arise, documents have to be provided to a labor court in German. It is advisable to provide either German or bilingual employment contracts.

Other Sources of Terms of Employment

Furthermore, entitlements can result from collective agreements such as works council agreements (if any works council exists) or collective bargaining agreements (CBAs). The latter only apply to an employment relationship if (i) both parties are bound to CBAs (i.e., the employee is a member of the respective union that entered into the CBA, and the employer either directly entered into the CBA or is a member of an employers' association that entered into the CBA), or (ii) the employment contract refers to a CBA or a CBA has been declared to be generally applicable by the Federal Ministry of Labour and Social Affairs (e.g., for certain regions, CBAs for the hotel and restaurant industries have been declared to be generally applicable).

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VACATION ENTITLEMENT AND PUBLIC HOLIDAYS

The statutory annual minimum vacation entitlement is 20 days based on a 5-day working week. CBAs often grant additional vacation days. In addition, in some industries, it is customary to grant additional vacation days depending on the size of a company and industry sector.

In addition to paid vacation, employees are entitled to continued remuneration on public holidays. Public holidays are defined by statutory law, and some of them are only regional.

The following nine public holidays apply across all German Federal States:

- New Year's Day – 1 January
- Good Friday
- Easter Monday
- Labour Day – May 1
- Ascension Day
- Whit Monday
- Anniversary of German Unification – October 3
- Christmas Day – December 25
- Boxing Day – December 26

Additional public holidays (e.g., Epiphany, Corpus Christi, Reformation Day, International Women's Day) apply in certain Federal States only.

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WORKING TIME LAWS

Under German law employees are allowed to work up to 8 hours per day (48 hours per week). Saturday is considered to be a normal working day unless otherwise agreed.

Work on Sundays and public holidays is in general forbidden. Exceptions apply in certain sectors (e.g., hospitality, media, transportation) under certain circumstances (specific emergencies) or if explicitly approved by the authorities.

An extension of the daily working time to a maximum of 10 hours is possible as long as the average working time per workday does not exceed 8 hours in a 6-month, or 24-week, period.

Overtime has to be paid only if agreed upon in the employment contract or in a collective agreement. It is possible to agree with an employee that a certain number of overtime hours (capped at 25 percent) is deemed to be compensated by the base salary.

When working between 6 and 9 working hours per day, employees have to take a break of at least 30 minutes. That increases to 45 minutes if more than 9 hours are worked. Breaks may be divided over the day, but they may not be shorter than 15 minutes.

A rest period of at least 11 hours is required between 2 working days.

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ILLNESS

Employees are obliged to inform their employers about any incapacity to work due to sickness, as well as its expected duration, as soon as possible.

Where the absence due to illness exceeds three days (or fewer, if requested by the employer), employees are obliged to provide a medical certificate certifying their illness and its anticipated duration.

Employees are generally entitled to continued remuneration during illness for up to six weeks. After that period, employees covered by statutory health insurance are entitled to an allowance paid by the statutory health insurance.

STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

A pregnant employee is entitled to 6 weeks' maternity leave prior to the expected delivery date and 8 weeks after delivery (12 weeks after delivery in cases of premature or multiple births). During maternity leave after delivery, employees are prohibited from working. Prior to delivery, they can work but are allowed to stop at any time without specific reason.

During maternity leave, employees are entitled to their average salary of the last 3 months (or 13 weeks) prior to the pregnancy. It is paid by the employer apart from a supplement, which is paid by the statutory health insurance or the State.

During pregnancy, maternity leave, and four months after delivery, any dismissal of the employee is prohibited unless explicitly approved by the authorities.

Parental Leave

Any employee (male or female) is entitled to parental leave for any child under the age of three living in his or her household. Parental leave is not contingent on any approval by the employer. The maximum period of parental leave is three years per child. Parental leave can be taken by mothers and fathers, consecutively or simultaneously.

During parental leave, employees are not paid by the employer but are entitled to a parental allowance (67 percent of most recent net salary, capped at EUR 1,800 per month) for up to 16 months.

During parental leave, employees cannot be dismissed without prior approval of the authorities. Furthermore, employees can apply to work part time during parental leave (a maximum of 30 hours per week). In companies with more than 15 employees, such a request can be rejected only for compelling business reasons.

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FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Fixed-Term Employment Contracts

Fixed-term contracts are limited to a maximum duration of two years, unless the employer has a legitimate reason to justify a longer period, such as to work on a construction project due to last four years.

It is crucial that the fixed term is agreed in writing prior to the beginning of the employment relationship. Otherwise, it is invalid, and the employee can claim the existence of an unlimited permanent employment relationship.

Part-Time Employment

Under German law, any employee with at least 6 months of service working in a business operation with more than 15 employees can request a permanent change to work part time. In business operations with more than 45 employees, employees may also request part-time hours to last for a limited period of between 1 and 5 years (as opposed to permanently). The employer can reject the part-time request for operational reasons. Slightly different rules apply during parental leave, when up to 30 hours work per week can be requested and a rejection by the employer is possible only for urgent operational reasons.

Agency Workers

Companies can hire agency workers. Agency workers remain employed and paid by the agency. The assignment of an agency worker to a company is in general restricted to a maximum period of 18 months. Furthermore, agency workers are entitled to the same pay and benefits as comparable employees at the company to which they are assigned.

DISCRIMINATION AND HARASSMENT

The characteristics protected by law are race, ethnic origin, gender, disability, religion, belief or philosophy of life, age, and sexual orientation. Any detrimental action because of one of these characteristics is unlawful. However, there might be objective reasons justifying treating employees differently (e.g., a job applicant may be refused, if he or she does not have a work permit or does not have language skills required for the specific job).

Any form of harassment at the workplace is also forbidden. Harassment is a form of discrimination and arises when there is unwanted conduct related to a person's protected characteristic (e.g., sex or race) that violates his or her dignity or is otherwise hostile, humiliating, degrading, intimidating, or offensive.

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DISCRIMINATION AND HARASSMENT

Any employer is obliged to take any measures to protect employees against discrimination and harassment, including preventive measures. In cases of discrimination or harassment, employers are held liable for the actions of their employees.

TERMINATION OF EMPLOYMENT

Statutory Notice

The notice either party must give to terminate the employment relationship is typically agreed in the employment contract. Any notice must not be shorter than the statutory minimum notice periods. During any probationary period, the statutory minimum notice period is two weeks. After that, it is four weeks, and it runs to the 15th or the end of a calendar month. For dismissals by the employer, extended statutory notice periods increase further depending on length of service as follows:

- One month to the end of a calendar month after two years of service
- Two months to the end of a calendar month after five years of service
- Three months to the end of a calendar month after eight years of service
- Four months to the end of a calendar month after 10 years of service
- Five months to the end of a calendar month after 12 years of service
- Six months to the end of a calendar month after 15 years of service
- Seven months to the end of a calendar month after 20 years of service

If there is a severe violation of the employment relationship, a summary dismissal for cause with immediate effect is possible. However, in such cases, notice of dismissal must be given within two weeks of gaining knowledge of the breach.

Special Termination Protection

Some groups of employees enjoy special termination protection and can be dismissed only if the competent authorities consent, even in situations of dismissals for cause with immediate effect. The protected categories include severely disabled employees, works council members, data privacy officers, and employees on maternity or parental leave.

Termination Protection Act

The German Termination Protection Act applies to any dismissal of an employee with more than 6 months' service who works in a business operation with more than 10 employees.

Under the German Termination Protection Act, any dismissal must be "socially justified," which means it must be based on the employee's conduct, the employee's abilities, or compelling business reasons.

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TERMINATION OF EMPLOYMENT

A dismissal based on the employee's conduct requires a violation of the duties resulting from the employment relationship entailing the impossibility of a continuation of the employment relationship from an objective point of view and taking into consideration both parties interests. In general, any dismissal based on conduct requires a prior warning in relation to a similar incident. Only in very severe cases (e.g., fraud) can a dismissal without prior warning be justified.

A dismissal based on an employee's abilities requires the employee's inability to fulfill the obligations under the employment contract and that a continuation cannot be reasonably expected by the employer. Typical cases can be frequent short-term or long-term absences due to sickness.

A dismissal based on compelling business requirements is justified, if:

- the employee's position is redundant;
- there are no vacant positions in the respective company for which the employee is qualified; and
- a proper social selection has been made.

A social selection means that the employer has to select for redundancy out of a group of comparable employees in the same business operation the employee(s) who would be the least affected by the dismissal based on age, length of service, maintenance obligations (dependent children and family), and disability.

In court cases, the employer has the burden of proving

justification for the dismissal. If the court considers the dismissal to be justified, the employment ends as of the expiry of the notice period without any additional severance payment. However, if the dismissal is considered invalid, the employee is reinstated.

Under German law, there is generally no entitlement to severance payment under statutory law. However, in practice, severance payments are regularly agreed in separation or settlement agreements in order to avoid or settle termination lawsuits. The amount of the severance payment is subject to negotiation and depends on various factors, particularly the strength of any potential lawsuit. The calculation of a severance payment is typically based on the employee's remuneration and years of service; severance payments normally range between 0.5 and 1.2 months' gross salary per year of service.

Notification of Authorities

With the exception of mass dismissals under the Termination Protection Act or dismissals of employees with special termination protection (e.g., disabled employees), there is no need to inform the authorities of terminations. In cases of mass dismissal, the Federal Labor Agency has to be notified in writing prior to the dismissals; otherwise, the dismissals are null and void. Mass dismissals exist, if:

- more than 5 employees are to be dismissed in business operations with more than 20 but fewer than 60 employees;

GERMANY



TERMINATION OF EMPLOYMENT

- at least 10 percent or more than 25 employees are to be dismissed in business operations with at least 60 but fewer than 500 employees; or
- at least 30 employees are to be dismissed in business operations with at least 500 employees.

The number of dismissals is counted over any 30-day period. Any terminations through the signing of mutual separation agreements are counted in these numbers.

EMPLOYMENT REPRESENTATION

Employee representation may happen at either the union or works council level. Unions represent employees across a specific industry sector, potentially covering many different employers. By contrast, works councils represent employees in a specific business operation (local works council). In addition, there can be company works councils (if several local works councils exist in the same legal entity) and group works councils (if several company works councils exist within the same group). Unlike unions, works councils are not able to call for strikes and have no codetermination rights with regard to work conditions that arise from CBAs.

Establishment of Works Councils, Costs, and Status of Works Council Members

There is no statutory obligation to establish a works council. One can, however, be established in any business operation with five or more employees when requested by the workforce. The employer must refrain from any action that could impede or interfere with the establishment of a

works council. Otherwise, the employer can be subject to imprisonment of up to one year or a fine.

Works councils are elected directly by the workforce for four-year terms.

The number of members of the works council depends on the total number of employees entitled to vote in the respective business operation.

Members of the works council do not receive additional compensation for fulfilment of their duties. However, they are entitled to paid time off to perform their functions. In business units with more than 200 regular employees, 1 or more members of the works council must be completely relieved from all work duties while being paid their normal remuneration.

Works council members and substitute members enjoy special protection against dismissal and can generally be terminated for cause only and with the works council's

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EMPLOYMENT REPRESENTATION

prior consent. If consent is refused, the employer must get permission from the labor court to overrule the lack of consent.

All necessary and reasonable costs incurred by the works council in the exercise of its functions, including election costs, are to be borne by the employer. This includes expenses for traveling and accommodation, and often fees for legal advice. Further, the employer is obliged to provide the works council with office equipment, materials, facilities, and even personnel, as reasonably required by the works council, to conduct its day-to-day business.

Rights and Duties of Works Councils

Statutory law grants the works council a variety of specific participation rights, which may vary depending on the issue in question:

- Information rights
- Rights to consultation and cooperation
- Veto rights and rights of consent (i.e., the works council has the right to block
 - management's decisions until an agreement is reached or a decision by the labor court is taken overruling the veto)
- Codetermination rights (i.e., the employer cannot make or enforce any decision in related matters without the works council's consent or a decision of the conciliation board (Einigungsstelle))

The rights of participation can be further divided into four categories:

Social Matters

Works councils enjoy codetermination rights (i.e., the consent of the works council is generally required) with regard to the following social matters:

- Distribution of working hours, breaks, overtime work, variable work hours, shift work, and short-time work
- Implementation and use of technical devices designed to monitor or control the conduct or performance of employees (e.g., productivity-measuring devices, automatic storage of phone connections, computer-assisted personnel information systems)
- Questions related to remuneration arrangements, in particular principles of remuneration and the introduction and application of new remuneration methods or the modification of existing methods (e.g., bonus schemes)
- Matters relating to the rules/policies of the business operation and the conduct of employees (e.g., access control, time recording system); vacation; health and safety; and social facilities (e.g., cafeterias, pension funds)

GERMANY



EMPLOYMENT REPRESENTATION

Operational Matters

The employer must inform and consult with the works council on (but the works council cannot veto) issues regarding the planning of certain operational matters and their impact on the business and on the workforce (e.g., planning of new buildings, new methods of manufacturing, changes to administration, other plant facilities, new technical installations, work processes and methods).

Personnel Matters

The following general personnel matters trigger participation rights:

- General personnel planning (e.g., planning of personnel structure, recruiting, development, costs)
- Internal job postings
- Content and use of questionnaires and appraisals
- Policies regarding selection of employees to be hired, transferred, reclassified in job grades, or dismissed require prior consent of the works council
- In business units with more than 20 employees, the employer must inform the works council and seek its consent before hiring, grouping, regrouping, or transferring an employee
- Consultation in case of any individual dismissal (no consent required)

Economic and Financial Matters

In businesses with more than 20 employees, the works council has to be involved in the planning process of operational measures (e.g., site closures, carve-outs, relocations of sites, significant organizational changes, mass dismissals).

As a first step, an employer must inform the works council about the reasons for the proposed measures, the time schedule for implementation, any applicable alternative measures, and the justification.

The works council must thereafter be involved in planning before management makes a final decision on whether to proceed or how the change will be implemented.

The employer must also negotiate with the works council a so-called “balance-of-interest agreement” (*Interessenausgleich*) describing the operational change, its timing and implementation. If an agreement cannot be reached, the employer has to apply to the labor court for the establishment of a conciliation board. Any such conciliation board consists of a chairman as mediator (often a judge) and representatives of the works council and the employer. The goal of the conciliation board is to reach an agreement on a balance-of-interest agreement. However, it has no power to force an agreement upon the employer. This means that ultimately, although a works council can delay the implementation of proposed mass terminations, it cannot prevent them.

GERMANY



EMPLOYMENT REPRESENTATION

In addition to a balance-of-interest agreement, the employer has to negotiate a social plan with the works council, providing for social benefits or payments to alleviate hardship for employees. This may include commuting allowances, reimbursement of relocation benefits, training payments, outplacement assistance, and, most important, severance payments. Unlike the balance-of-interest

agreement, the works council can insist on a decision by the conciliation board about the content of a social plan and the benefits to be provided to the workforce.

In practice, negotiations on the content of a social plan take the majority of the time spent on consultation and can quite often last for several months.

BUSINESS TRANSFERS

In cases of a transfer of all or part of a business, the employment relationships with employees attributed to that (part of the) business automatically transfer to the acquirer by operation of law. Liabilities vis-à-vis employees whose employment ended prior to the transfer (e.g., pension liabilities) do not transfer to the acquirer. The terms of employment agreed upon in the employment contracts remain the same and are not affected by the transfer.

Employees have to be notified in detail about the transfer, in particular about the time of the transfer; the identity of the acquirer; the legal basis for the transfer; the so-called “legal, economic and social consequences”; any intended changes that will impact employees to be made by the acquirer (so-called “measures”); and their right to object to the transfer. Employees have the right to object to the transfer within one month after proper notification. In cases

of objection, the employees remain employed by the seller. Dismissals based on the transfer are invalid. However, dismissals based on other grounds remain possible.

CBA's will continue to apply only if the acquirer is a member of the applicable employers' association. Otherwise, provisions of CBA's transform to an individual level; i.e., they remain applicable on an individual contractual basis.

Works agreements remain applicable on a collective basis after the transfer if the operational structure does not change; otherwise, they also transform to the individual level. Works agreements of the seller are replaced by works agreements of the acquirer if the transferred operation is integrated into an operation of the acquirer and the acquirer has works agreements on the same subject matter.

GERMANY



NONCOMPETES AND RESTRICTIVE COVENANTS

While any competing activity is strictly forbidden during the term of the employment relationship, post-contractual noncompete covenants are rather restricted under German law and expensive. As with other countries, any post-contractual noncompete covenant must be justified by legitimate business interest, should normally be restricted by territory, and must not unreasonably impact on the employee's professional freedom. In Germany, this means that any post-contractual noncompete covenant must not last longer than two years. Furthermore, a post-contractual noncompete covenant is valid and enforceable only if the employer commits itself to pay for the term of the covenant compensation amounting to at least 50 percent of the employee's last overall remuneration (i.e., base salary plus variable salary and any other benefits).

An employer may waive a post-contractual noncompete covenant to avoid or limit this financial obligation but will only be released from the obligation to pay the compensation if the termination is more than 12 months after declaration of the waiver.

Last updated July 2020.

Dr. Ulrike Conradi of Ogletree Deakins International LLP, Berlin

HUNGARY



CORPORATE REGISTRATION REQUIREMENTS

People in Hungary can be directly employed by a foreign entity, without the obligation of creating a local subsidiary for this purpose.

EMPLOYMENT STATUS AND HIRING OPTIONS

There are two main types of legal relationship for the purpose of performance of work: (i) employment relationship and (ii) independent contractor/consultant status. In the latter relationship, statutory employment rights and the implied obligation of loyalty on an employee's part do not apply. However, misclassification claims can arise and result in a finding that a contractor is in fact an employee. Those claims can be instigated by the contractor or the National Tax and Customs Administration.

Misclassification claims are assessed on the basis of the so-called "primary and secondary qualifying factors."

The primary qualifying factors that suggest an employment relationship are the following:

- Obligation to perform work personally
- Employer's obligation to provide work and employee's obligation to be available
- Subordinate relationship

Courts make decisions based on the reality of the working relationship rather than the content of the written contract. The secondary qualifying factors are, among others, the following:

HUNGARY



EMPLOYMENT STATUS AND HIRING OPTIONS

1. High level of instructions and control
2. Set working time
3. Whether work is done in the employer's workplace
4. Payment through payroll
5. Use of employer's equipment

Employers are required to withhold income tax and other deductions (such as social security contributions) from payments to employees. On the other hand, independent contractors are responsible for the payment of their own taxes.

RECRUITMENT

Employees have to be registered with the National Tax and Customs Administration.

PROBATIONARY PERIOD

The maximum limit of a probation period is three months. However, a collective bargaining agreement (CBA) may extend this to six months. Any probationary period must be referred to in the employment contract. If the parties stipulate a shorter probationary period than three months, it can be extended by consent up to a period of three months in total.

HUNGARY



REGULATION OF THE EMPLOYMENT RELATIONSHIP

In Hungary, in order to establish an employment relationship, the parties need to enter into a written employment contract. The contract must set out the following:

1. The name of the contracting parties
2. The employee's base salary
3. The job position

Other aspects of the relationship, such as the notice period, are then governed by law. However, employers often include other provisions in the contract, such as noncompetition, longer notice period (than statutory notice), enhanced severance payment entitlement, and other diverging conditions, typically in favor of the employee.

There is additional information that employers must set out in writing within 15 days of the commencement of employment. This is usually achieved by including it in the employment contract. That information is the following:

1. The daily working time
2. Any other elements of pay and other benefits
3. The frequency of payment of salary and the day of payment
4. The tasks applicable to the job position
5. The number of days of leave and the procedures for allocating and determining such leave
6. The rules governing the notice periods to be observed by the employer and the employee
7. Whether a collective agreement applies to the employer
8. The person exercising employer's rights

Key Policies

1. Work safety policy (mandatory)
2. Fire protection policy (mandatory)
3. Policy on fitness-to-work examinations (mandatory)
4. General HR policy, including the rules of proper behavior in work
5. IT and communications, rules of monitoring the employees
6. Data processing policy

Language Requirements for Documents

There is no language requirement, but it is always advisable to use bilingual documents (with Hungarian as the governing language if there is a discrepancy) to be sure the content is understood by the employee. If there is litigation, a court will want to see an official translation into Hungarian of any document written in another language.

Other Sources of Terms of Employment

In CBAs, the contracting parties can deviate from statutory regulations, within limits, even if to the detriment of employees. Company-level CBAs are rare in Hungary and tend to apply only in larger private-sector industries. However, there are currently three sectoral CBAs that apply to all workplaces; they cover the tourism and catering industries, building industry, and electricity industry.

As an alternative to the CBAs, works council agreements can be concluded, provided that (i) a works council operates, (ii) there is no CBA in force, and (iii) there is no trade union at the employer. A works council agreement's scope is identical to a CBA's, with the exception that such an agreement cannot refer to remuneration-related matters (e.g., base wage, wage supplements, etc.).

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HOLIDAY ENTITLEMENT

Besides statutory (or base) holiday entitlement of 20 working days per calendar year, there are also additional age-related holidays.

Public holidays in Hungary are set out below. These are usually provided as paid leave in addition to the statutory entitlement, but that varies based on the type of employment and work pattern.

- New Year's Day – January 1
- Memorial Day of the 1848 Revolution – March 15
- Good Friday
- Easter Monday
- Labour Day – May 1
- Whit Monday
- State Foundation Day – August 20
- Memorial Day of the 1956 Revolution – October 23
- All Saints' Day – November 1
- Christmas Day – December 25 to 26

WORKING TIME LAWS

The maximum daily working hours is limited to 12 hours, which includes extraordinary work as well. The working week is limited to 48 working hours, including any extraordinary hours. Where employees work irregular hours, compliance with weekly working time requirements is assessed on an average basis. Employers must keep working time records to show compliance with legal requirements. Extraordinary work is also capped at 250 hours per year (reduced proportionately for part-time workers) but can be increased to 300 hours per year via a CBA. In addition to that employers and employees may agree on voluntary overtime on a yearly basis, even where there is a CBA, although overtime cannot exceed 400 hours.

The Labour Code specifies a daily rest period of 11 hours (which can be reduced in some cases to 8 hours) and in addition 2 rest days in a given week. In certain cases, instead of weekly rest days, 48 hours of uninterrupted weekly rest period may be provided.

HUNGARY



ILLNESS

An employee who is unable to work because of sickness or injury should notify his or her employer of the reason of absence as soon as practicable. On return to work, the employee must present the related medical certificate to the employer. Every absence connected to illness has to be certified.

There is no time limit for sickness leave. Employees may take as long as is necessary to recover, but it is not all necessarily paid. Employees are entitled to sick pay at 70 percent of absentee pay for the first 15 days of sickness and, after that, to sick allowance at 60 percent of absentee pay. Sick pay is paid exclusively by the employer. By contrast, sick allowance is paid one-third by the employer and the remaining two-thirds is paid by the government. Sick allowance lasts up to one year and is calculated in accordance with the relevant law. An employer that wishes to pay more than the minimum entitlements may of course do so.

STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

A pregnant employee is entitled to maternity leave of 24 weeks, which, in the absence of an agreement to the contrary, shall be allocated so that not more than 4 weeks fall before the expected date of birth. If the woman wants to, she may return to work earlier, but not for the two weeks immediately following the birth.

An employee on maternity leave is entitled to an infant care allowance for up to 24 weeks, which equals 70 percent of her salary. Employers can claim a proportion of this benefit back from the government. Naturally, employers can provide more generous maternity pay.

Paternity Leave and Pay

A father is entitled to five working days' leave upon a

child's birth as extra vacation time, or seven working days' leave in the case of twins. It must be taken before the end of the second month after the date of birth and be allocated on the days requested by the father. This leave is also available if the child is stillborn or dies.

Shared Parental Leave

In addition to maternity and paternity leave, both parents are entitled to unpaid leave for taking care of their child (or children) at any time up to the child's third birthday (or tenth birthday in cases where the child is disabled or sick).

Adoption Leave

Maternity leave, paternity leave, and shared parental leave as referred to above are also provided to employees who have adopted a child.

HUNGARY



FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

As a general rule, part-time workers, agency workers, and fixed-term employees are entitled to the same (where applicable, proportionate) payments and benefits as comparable permanent, full-time employees. However, special rules apply to them in other aspects.

DISCRIMINATION AND HARASSMENT

The characteristics protected by law are as follows: gender, ethnic origin, race, skin color, age, mother tongue, disability, state of health, motherhood (pregnancy) or fatherhood, family status, sexual orientation, gender identity, social origin, financial status, religious or ideological conviction, political or other opinion, part-time or fixed-term status, and membership in a representation organization. Any detrimental action because of one or more of these characteristics is unlawful.

In addition, if an employer has a practice or procedure that subjects people who share one of these characteristics to disadvantage—such as a requirement for recruits to be six feet tall, which disadvantages women—then that is unlawful indirect discrimination unless it can be justified.

Employees may bring claims regardless of length of service, as may potential and former employees. An employee who believes he or she has been treated less favorably on the ground of any protected characteristic can contact the Equal Treatment Authority, which initiates procedure.

Other forms of discrimination that are covered by legislation are the following:

- Harassment arises when there is unwanted conduct related to a person's protected characteristic (e.g., sex or race) that violates his or her dignity or is otherwise hostile, humiliating, degrading, intimidating, or offensive.
- Segregation arises when a person is separated from other people or groups of people who are in the same or comparable situation, because of that person's protected characteristic.
- Retaliation is unlawful conduct or the threat thereof against someone who has complained about discrimination or cooperated in relation to another person's claim.

HUNGARY



TERMINATION OF EMPLOYMENT

Protected Employees

Termination cannot be communicated to any employee who is pregnant, on maternity leave, on unpaid parental leave, or on voluntary reserve military service, or a woman receiving fertility treatment.

In sickness cases, termination can be communicated, but the notice period does not run for the time the employee remains off work sick.

Other employees with an enhanced level of protection are those receiving rehabilitation treatment or rehabilitation benefits, those within five years of retirement, and mothers/single fathers with a child under three years of age.

Statutory Notice

The statutory notice period is 30 days in cases of termination by either the employee or the employer, with notice starting the day following the communication of the notice. However, the notice period to be given by the employer is extended, up to 90 days, based on the employee's length of service. The parties may agree to longer periods, but with a maximum cap of six months.

Employment contracts often provide more generous entitlements and also often allow "garden leave" (which means that the notice period runs, and employment continues, but the employee is relieved from work duty and can stay away from the workplace).

Severance Payments

Employees are entitled to severance pay in any of the following situations:

- The employment relationship is terminated by the employer
- The dissolution of the employer without succession
- A transfer of undertaking if the new employer is not covered by the Labour Code (rare, but this applies to some public-sector positions)

Severance pay is payable only if the employment relationship has lasted for at least three years at the time of termination/dissolution. It is calculated based on what is known in Hungary as "absentee pay." This is basic pay plus some other elements, such as performance pay.

The amounts payable are the following:

- one month's absentee pay for employees with three years' service
- two months' absentee pay for employees with five years' service
- three months' absentee pay for employees with 10 years' service
- four months' absentee pay for employees with 15 years' service
- five months' absentee pay for employees with 20 years' service

HUNGARY



TERMINATION OF EMPLOYMENT

- six months' absentee pay for employees with 25 years' service

Enhanced payments are due for those employees within five years of retirement, as set out in the Labour Code.

Severance pay is not due where termination is because of (i) retirement (meaning the employee is recognized as a pensioner in the Labour Code) or (ii) reasons connected with behavior or ability on grounds other than health reasons.

Unfair Dismissal

Employees are protected from the first day of employment against being unlawfully dismissed. An employer has an obligation to justify a dismissal, either because of the employee's behavior or ability, or due to reasons unrelated to the employee but related to restructuring the employer's operations.

The most common reason for unfair dismissal (sometimes also called "unlawful termination") is inadequate justification. Compensation is based on lost salary and any other damages resulting from the unlawful termination. Lost income is limited to 12 months' absentee pay. As compensation, no taxes or social security contributions are deducted.

In certain limited cases, a court may order reinstatement; for example, when termination was in violation of the principle of equal treatment.

Collective Redundancy Rules

Collective dismissal rules apply if an employer intends to terminate (i) more than 10 workers when more than 20 but fewer than 100 workers are employed, (ii) at least 10 percent of employees when more than 100 but fewer than 300 workers are employed, or (iii) more than 30 workers when more than 300 workers are employed.

When the rules apply, an employer must provide certain information in writing to the works council, which must be given seven days to process the information. A consultation period then takes place between the employer and the works council for a minimum period of 15 days. This means consultation rights should be commenced at least 22 days before making a firm decision on the redundancies. The written notification must include the following:

- The reason for the planned workforce reduction
- The number of the impacted employees, divided in job groups
- The average number of employees in the groups impacted (calculated over the previous six months)
- The planned time scale and viewpoints of reduction
- The payments and allowances proposed and any other applicable conditions (beyond those defined in the employment contracts)

This notification must be sent to the works council and the local labor authority at least 30 days before serving any termination notices to the employees.

HUNGARY



TERMINATION OF EMPLOYMENT

Notification of Authorities

There is no need to inform the authorities of terminations, except in cases of mass redundancies. However, employers must deregister all terminated employees from the National Tax and Customs Administration electronically, on a special template form.

EMPLOYMENT REPRESENTATION

Under the Hungarian Labour Code, employees may elect a shop steward or works council where the average number of employees exceeds 15 or 50, respectively. Employees are not obliged to do so, but if they do, the employer must support and finance the election and the operation of the works council.

When a works council is in place, an employer must consult it at least 15 days before passing decisions about actions or regulations that affect a large number of employees (meaning at least 20 percent of the employees).

An employer must also consult with any works council on collective redundancies.

This can include changes to use of personal data of employees, new surveillance, training and education, and working arrangements. However, this does not mean that the works council has a co-decision on these matters. It has a right to be consulted.

HUNGARY



BUSINESS TRANSFERS

In cases of business transfers, the transferring and receiving employers shall, at least 15 days before the effective date of transfer, inform the works council of (i) the proposed date of transfer; (ii) the reason for the transfer; and (iii) the legal, economic, and social consequences for the employees. If no works council or shop steward has been elected, this information should be given to the employees directly.

After the transfer, the receiving employer shall inform the affected employees in writing about the change of identity of the employer and any change to working conditions.

The transferring employer is required to inform the receiving employer about applicable terms of employment prior to the transfer so the receiving employer can plan.

NONCOMPETES AND RESTRICTIVE COVENANTS

Noncompetition restrictions are allowed as long as the employer pays adequate compensation to the employee. The aim of the noncompetition agreement is to avoid any conduct that can jeopardize or infringe upon the economic interests of the employer. Noncompetition agreements must be in writing and can last for a maximum period of two years following the termination of employment.

Compensation is paid at a minimum of one-third of basic salary for the period of restriction, and often more. In setting the amount of compensation, the degree of impediment on the employee's ability to find employment elsewhere is taken into consideration.

Employees have the right to rescind a noncompetition agreement in rare cases where the employer has itself breached the employment contract. Employers that do not wish to enforce a covenant on termination (so as to avoid making the compensation payment) can withdraw the noncompetition restriction on termination, but only if they have reserved the right to do this in the employment contract.

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*Barnabás Buzási and Nora Bogdany of Wolf Theiss, Budapest
Roger James of Ogletree Deakins International LLP*

IRELAND



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in Ireland and does not need to set up a local subsidiary. Payroll registration is required, and employers are required to withhold income taxes, social insurance, and a social levy from payments to employees—in contrast to independent contractors, who are paid gross and responsible for their own taxes.

EMPLOYMENT STATUS AND HIRING OPTIONS

The two main methods of engagement are as an employee or independent contractor (sometimes also called a consultant). Statutory rights and the implied obligation of loyalty do not apply to independent contractors. Disputes can arise when a contractor claims employment rights (typically on termination), and the Irish tax authorities can also instigate investigations and ultimately deem an employment relationship to exist. Key factors used to determine these disputes are the following:

1. Control: An employee is typically told not just what to do, but also how to do it.
2. Integration: A contractor would not normally have company business cards or a company email address.
3. Set hours of work: A contractor is more likely to manage his or her own time.
4. Pay: A contractor is often paid on completion of a project or tasks, rather than based on time spent.
5. Operating as a business: A contractor may have other clients, a business name, and a higher degree of financial risk than a salaried employee.
6. Personal service: A contractor is sometimes able to supply a substitute to perform services. This is never consistent with an employment relationship.

Typically, not all factors align on one side, and the decision-maker will look at the overall situation. The label put on the arrangement contractually is not decisive.

IRELAND



EMPLOYMENT STATUS AND HIRING OPTIONS

Customarily, employers impose a period of contractual probation during which an employee's suitability for longer-term employment is assessed (typically six months). A careful approach to probation substantially reduces the risk associated with a dismissal implemented during or at the end of that period.

With or without provision for probation, an employee is not generally protected under statutory dismissal law for the first 12 months of employment. There are exceptions to this

rule, including that 12 months' service is not required to challenge dismissal for trade union membership or activity, pregnancy, taking family leave, exercising rights under minimum wage legislation, discriminatory dismissal, or being retaliated against for making a protected disclosure.

Employers must still have regard for fair procedures in order for the termination of employment during the probationary period to be deemed fair.

RECRUITMENT

There are no filings required when employing someone. A company must be registered with the tax authority for payroll taxes.

IRELAND



REGULATION OF THE EMPLOYMENT RELATIONSHIP

An employer is required to provide the following core terms to an employee in a written statement within five days from his or her start date:

1. the full names of the employer and employee;
2. the address of the employer;
3. where the contract is temporary, the duration of the contract, or, if it is for a fixed term, the date on which the contract expires;
4. the rate or method of calculation of the employee's remuneration and pay reference period; and
5. the number of hours per day and per week that the employer reasonably expects the employee to work.
6. If a temporary or a fixed-term contract, the date of expiry of the contract
7. Pay (and intervals of payment)
8. Hours of work
9. Holiday entitlement
10. Sick pay entitlement (if any)
11. Pension arrangement
12. Notice required to be given by each party to bring employment to an end
13. Any applicable collective agreements

This requirement is in addition to the obligation to provide an employee with a written statement of terms of employment within two months of his or her start date, as set out below.

All employees are entitled to written confirmation of their key terms of employment no later than two months after the commencement of employment. Typically, this is done by way of an employment contract. This is the main document governing the working relationship, and any offer letter used at the recruitment or offer stage is typically replaced by the contract. The minimum legally required content for the employment contract is the following:

1. Name of employer and employee
2. The address of the employer in Ireland, or the address of its registered office
3. The place of work
4. Job title or nature of the work
5. Date employment started (if past service with a previous employer is to be recognized, the date such earlier employment commenced)

Common Policies (Not Legally Required)

1. Disciplinary policy
2. Grievance policy
3. Fair processing notice (data protection)
4. Anti-harassment and antibullying policy
5. Whistleblowing
6. Sickness absence
7. Health and Safety
8. Equal opportunities
9. Anti-corruption and -bribery
10. Poor performance
11. Maternity and other paid leave
12. IT and communications, use of social media

Language Requirements for Documents

There is no statutory requirement for contracts or policies to be translated for non-English-speaking employees. Case law in Ireland does however suggest that there should be procedures in place to ensure that non-English-speaking nationals are able to understand their employment documentation.

IRELAND



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Other Sources of Terms of Employment

The Constitution of Ireland gives the right to citizens to form associations and trade unions. However, it does not impose a corresponding obligation on employers to recognize or bargain with trade unions for the purposes of negotiating pay and conditions of employment, irrespective of the level of trade union membership in the company concerned. Employers may want to establish and engage with an “employee consultative forum” in order to protect against union claims.

For employees working in certain sectors (e.g., cleaning and construction) where wages tend to be lower, Sectoral Employment Orders (SEOs) allow for minimum pay and working conditions to apply. The future of SEOs, however, is in doubt following recent decisions of the Irish High Court.

HOLIDAY ENTITLEMENT

An employee in Ireland is entitled to a minimum of four working weeks of paid annual leave. More generous arrangements are common in some sectors. Senior executives would generally expect to receive 25 days of paid annual leave.

In addition, there are nine annual public holidays in Ireland for which employees are entitled to be compensated:

- New Year’s Day – January 1
- St. Patrick’s Day – March 17
- Easter Monday
- May bank holiday – first Monday in May
- June bank holiday – first Monday in June
- August bank holiday – first Monday in August
- October bank holiday – last Monday in October
- Christmas Day – December 25
- St. Stephen’s Day – December 26

Employees can be required to work on public holidays. In this event, they are entitled to one of the following, at the employer’s discretion:

- A paid day off within a month of that day
- An additional day of annual leave
- An additional day’s pay

IRELAND



WORKING TIME LAWS

The average weekly working time limit is generally 48 hours over a reference period of 4 months for most employees. It is not possible for employees to opt out of this limit, except where it can be shown that the employee concerned is in a position to dictate his or her own working time.

As well as prescribed rest breaks during the working day, minimum daily (11 consecutive hours) and weekly (24 consecutive hours) rest breaks are prescribed under legislation.

An employee required to work on Sundays is entitled to a premium unless his or her employer has set his or her pay at a rate that takes Sunday work into account.

There is no obligation to pay an overtime premium for working outside of contractual hours. Payment of an overtime premium would however be common in certain sectors for employees who are paid hourly.

ILLNESS

An employer is not obliged to pay an employee who is absent because of illness. However, many companies do have a paid sick leave scheme (sometimes subject to a qualifying service period) whereby an employee can continue to be paid by the employer for a limited number of sick days.

Statutory illness benefit (which is earnings-linked up to a limit in the region of €200 per week) is generally payable to qualifying employees directly by the state after a waiting period (currently six days).

Employees are generally required under the contract of employment to submit medical certification to cover absences exceeding three working days.

IRELAND



STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

An expectant employee is entitled to 26 weeks of “basic” maternity leave, to commence no later than 2 weeks prior to the medically certified due date. A woman cannot return to work during the first four weeks following the birth. Subject to the requisite social insurance contributions having been made by the employee, statutory maternity benefit (up to approximately €245 per week) is payable by the Department of Employment Affairs and Social Protection for the period of “basic” maternity leave.

In the absence of a contractual commitment, an employer is not obliged to top up this statutory payment. However, many employers do so for the period of basic leave or a proportion of it.

Employees are entitled to take up to 16 weeks of “additional” maternity leave, to commence immediately following the “basic” maternity leave. Statutory maternity benefit is not payable during the period of additional maternity leave.

Employment is protected during maternity leave (i.e., the employee is entitled to return to the same role as was held prior to going on leave or, if that is not reasonably practicable, a suitable alternative).

Paternity Leave and Pay

Legislation provides for 2 weeks of paternity leave to be taken any time within the 26 weeks following the birth

(or, in the context of adoption, placement) of the child. Paternity leave can be taken by the spouse, cohabitant, or civil partner of the mother, regardless of gender. The two weeks of paternity leave must be taken at one time.

Subject to the requisite social insurance contributions having been made by the employee, paternity benefit (up to approximately €245 weekly) is payable by the Department of Employment Affairs and Social Protection. An employer is not obliged to top up this statutory payment. However, many employers do so.

Parental Leave

Up to 26 weeks of unpaid leave from work for each parent, per child is available in addition to the above entitlements. The leave can be taken in a continuous 26-week period, in 2 separate periods of not less than 6 weeks each, or by some other arrangement agreed upon with the employer. The leave must be taken before the child reaches 12 years of age or, if the child is disabled, 16 years of age.

To be entitled to take parental leave, the employee must generally have at least one year’s continuous service with the employer. The employer may decide to postpone the parental leave for up to six months.

Employment is protected during absence on parental leave (i.e., the employee is entitled to return to the same role as was held prior to going on leave or, if that is not reasonably practicable, a suitable alternative).

IRELAND



STATUTORY RIGHTS OF PARENTS AND CARERS

Parent's Leave

Each parent is entitled to two weeks' leave during the first year of a child's life, or, in the case of adoption, within one year of the child's placement with the family.

There may be changes made in Budget 2021 to increase parent's leave to five weeks for each parent, with parents allowed to take leave in the first two years of a child's life.

Adoption Leave

An adopting mother or a sole adopting father is entitled to 24 consecutive weeks of "basic" adoptive leave from the date of adoption placement, during which statutory benefit is payable by the State. An employer is not obliged to top up the benefit paid by the Department of Employment

Affairs and Social Protection. However, many employers do so for the period of basic leave or a proportion thereof. A period of 16 weeks of "additional" adoptive leave, commencing from the end of the basic leave period, is also available.

Employment is protected during absence on adoption leave (i.e., the employee is entitled to return to the same role as was held prior to going on leave or, if that is not reasonably practicable, a suitable alternative).

Other Leave

Legislation also provides for force majeure leave (in cases of emergency involving a close family member) and carer's leave (time off to care for someone medically certified as needing full-time care and attention).

IRELAND



FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Special rules apply to agency workers, fixed-term employees, and part-time workers, who are, broadly speaking, entitled to no less favorable treatment than comparable directly employed, permanent, and full-time employees, respectively.

DISCRIMINATION AND HARASSMENT

The characteristics protected by law are gender, civil status, family status, sexual orientation, religion, age, disability, race, and membership of the Traveller community. Any detrimental or disadvantageous treatment because of one of these characteristics is unlawful.

In addition, if an employer has a practice or procedure that subjects people having one of these characteristics to a disadvantage (such as requiring job applicants to be six feet tall, which disadvantages women), then that is unlawful indirect discrimination unless it can be justified by a business case if it is proportionate.

Harassment is a form of discrimination and arises when there is unwanted conduct related to any of the discriminatory grounds (e.g., sex, race, etc.) that violates an employee's dignity or is otherwise hostile, humiliating, degrading, intimidating, or offensive.

Claims for discrimination can be brought by any employee, regardless of length of service, as well as by unsuccessful

candidates and ex-employees. A person who has alleged discrimination (or given evidence in support of another person who has alleged discrimination) is protected from retaliation or detriment (known as "victimisation"). If an employee establishes that he or she has been discriminated against or "victimised," up to two years' remuneration may be awarded.

Employers are vicariously liable for discriminatory acts of employees, whether such acts are committed with or without the employer's knowledge or consent. Employers can avoid or mitigate such liability where they can prove that they took reasonable steps to prevent the discriminatory behavior.

Employers of disabled employees are required to consider—and make—"reasonable adjustments" to neutralize or minimize a disabled person's disadvantage in the workplace.

IRELAND



TERMINATION OF EMPLOYMENT

Statutory Notice

The notice each party must give to terminate employment is required to be specified in the contract, and it must not be less than “statutory notice,” which is one of the following:

- One week’s notice (by the employee)
- Between 1 and 8 weeks’ notice (by the employer), depending on the length of service of the employee, up to a limit of 8 weeks for employees having over 15 years’ service.

Employment contracts will often provide for a reciprocal period of notice exceeding statutory notice and commonly also allow for payment in lieu of notice (allowing instant termination in return for a lump-sum payment of notice pay) or “garden leave” (which means notice runs and employment continues for that period, but the employee is required to stay away from the place of employment and the company’s customers).

Severance Payments

If the reason for termination is redundancy (removal or restructuring of the role), the employee will qualify for a statutory redundancy payment if he or she has at least two years’ continuous service. Statutory redundancy is equal to two weeks’ pay per year of service, plus one additional week’s pay. Weekly earnings over €600 are disregarded for the purpose of this calculation.

In the absence of a contractual commitment, or a sufficiently established customary practice in the particular workplace, there is no legal entitlement to severance pay or enhanced (top-up) redundancy pay.

Unfair Dismissal

Employees having at least 12 months’ service can challenge dismissal under unfair dismissal legislation. Twelve months’ service is not required to challenge dismissal for trade union membership or activity, pregnancy, for taking family leave, exercising rights under minimum wage legislation, or being retaliated against for making a protected disclosure.

To defend an unfair dismissal claim, an employer must show a good reason to dismiss and that due process was observed in implementing the dismissal. Due process, broadly speaking, involves (in disciplinary cases) impartial investigation of the matter prior to discipline, letting the employee have full details of the case against him or her, providing an employee with an opportunity to be heard and to be supported, and allowing an appeal of the decision to dismiss. In the context of dismissal for poor performance, an employee should have been made aware of deficiencies and given adequate opportunity to rectify performance.

There are five potentially fair reasons for dismissal:

1. Capability
2. Conduct

IRELAND



TERMINATION OF EMPLOYMENT

3. Redundancy of the employee's role
4. Illegality
5. Other substantial grounds (situations that do not fit the other categories but in which it would still be reasonable to dismiss)

If the Workplace Relations Commission (WRC) decides that an employee has been unfairly dismissed, it can award the following:

1. Compensation of up to two years' remuneration (or up to five years' remuneration where the unfair dismissal is in relation to making a protected disclosure)
2. Reinstatement
3. Reengagement

Compensation for unfair dismissal is based on actual loss of earnings (but the WRC can take projected loss of future earnings into account). The complainant is obliged to mitigate his or her loss by seeking new employment.

Injunctions to Prevent Dismissal

In certain circumstances (very broadly speaking, involving dismissal in breach of contract or the company's constitutional requirements), an employee can seek to temporarily restrain his or her dismissal by applying to the High Court for an injunction. The injunction would, if granted, preserve the status quo, pending a full hearing of the matter by the High Court.

Redundancy

The employer does not need to show economic hardship, just that its requirements for the role performed by the employee have ceased or diminished, that there is no suitable alternative vacancy, and that any action short of a redundancy (e.g., part-time/job sharing) is not an option. Where applicable (where one or more roles that are comparable or interchangeable with the role proposed to be removed are to be retained in the business), a fair method of selection must be used. Typically, this is done by a manager's fair assessment of skills and experience. Employers are required to consult with the employee about the proposed dismissal before confirming a final decision.

Collective Redundancy Rules

The following are the thresholds for determining whether a collective redundancy situation exists:

- Five proposed dismissals where 21 to 49 are employed
- Ten proposed dismissals where 50 to 99 are employed
- Proposed dismissal of 10 percent of the employees where 100 to 299 are employed
- Thirty proposed dismissals where 300 or more are employed

Where the threshold number of redundancies is proposed to take effect over any consecutive 30-day period, particular procedural obligations are triggered.

IRELAND



TERMINATION OF EMPLOYMENT

Collective Consultation

During a collective redundancy process, the company is obliged to enter into consultations with employee representatives. These consultations must commence at least 30 days before notice of redundancy is given. The aim of the consultation is to consider whether there are any ways to avoid the redundancies or mitigate their impact.

Notification of Authorities

If a collective redundancy situation arises, the company is obliged to notify the appropriate minister providing

prescribed information in relation to the redundancies, no later than 30 days before the redundancies take effect.

Protected Employees

There is enhanced protection against dismissal for employees who are pregnant, on maternity or paternity leave, engaged in protected industrial action, union representatives, health and safety representatives, or employees who have made certain protected complaints under whistleblowing legislation.

EMPLOYMENT REPRESENTATION

There is no general obligation to consult with employee representatives or unions on business decisions, with two exceptions:

1. Collective redundancies (see above)
2. Business or TUPE (Transfer of Undertakings (Protection of Employment) Regulations) transfers

In those two cases, employers must arrange elections for employees to appoint representatives if there is no

existing recognized union or employee representatives. The employer is then required to consult with the representatives, but the representatives have no power to prevent the proposed action.

There is also legislation that requires an employer to set up a local works council (known as an information and consultation forum) when requested by a certain percentage of the workforce; however, such requests are rare.

IRELAND



BUSINESS TRANSFERS

TUPE protects employees who are dedicated to the transferring “undertaking” in a business or asset sale, or, in some instances, in the context of an outsourced service provider appointment or changeover.

Under TUPE, employees wholly or mainly assigned to the transferring undertaking transfer by operation of law to the incoming employer, with unbroken service and with preservation of contractual terms of employment. Certain rights under occupational pension schemes do not transfer under TUPE.

Transferring employees must be informed about the transfer (and, if measures are proposed that will impact employment, consulted with) no later than 30 days prior to the effective date.

Broadly speaking, dismissals because of a TUPE transfer are unlawful, and the legislation generally prohibits the new employer from changing transferring employees’ contractual terms.

NONCOMPETES AND RESTRICTIVE COVENANTS

Restrictions on an ex-employee from seeking or accepting business from customers, or even from working for a competitor, are potentially enforceable through a court injunction and damages. However, the former employer would need to demonstrate to the court the following:

1. The ex-employee was in a role where he or she built relationships with customers or had access to business secrets to a degree that he or she could cause significant damage if left unrestrained.
2. The scope of the covenants is reasonable, and the restrictions go no further than is necessary to protect the employer.
3. The duration of the covenants is reasonable and no longer than necessary for the employer to protect the goodwill of the business (six months is usually acceptable, longer would require justifying, and one year is the limit in terms of what the courts in Ireland have held to be reasonable).

There is no requirement to pay consideration to the ex-employee on termination to enforce the covenants, unless the covenants are being introduced in the context of severance.

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*Catherine O’Flynn, Karen Hennessy, and Alicia Compton of William Fry, Dublin
Roger James of Ogletree Deakins International LLP*

ITALY



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people in Italy without having to set up an Italian company, but it needs to appoint a so-called “social security representative” (sometimes known as a legal representative) based in Italy to handle tax and social security contributions for the employees based in Italy. This legal representative is generally the payroll provider or accountant.

EMPLOYMENT STATUS AND HIRING OPTIONS

Work can be performed as an employee or a self-employed worker. The former enjoys extensive employee rights and protections; the latter does not.

The Italian Civil Code defines an “employee” as a person who, in return for remuneration, undertakes to work in a company by contributing his or her manual and/or intellectual activity in the service and under the control of the employer.

An employee is subject to the organizational, management, supervisory, and disciplinary powers of the employer.

According to article 2095 of the Italian Civil Code, employees belong to one of the following categories based on the duties and tasks undertaken, level of responsibility, autonomy, and decision-making powers:

- Managers (*Dirigenti*) generally report directly to the employer (i.e., to the board of directors or to one of the high-level managers, such as the CEO, CFO, or managing director) and enjoy the corresponding coordination and decision-making powers; for example, by leading a department or a particular function.

ITALY



EMPLOYMENT STATUS AND HIRING OPTIONS

- Middle-managers (Quadri) generally report to managers and enjoy lesser decision-making powers and autonomy.
-
- White-collar employees (Impiegati) usually work in operational, technical, or administrative functions.
- Blue-collar employees (Operai) undertake basic/manual duties, have few if any decision-making powers, and report to managers and middle managers.

The applicable national collective bargaining agreement (NCBA) will also typically set out which jobs fall into which categories.

Managers (Dirigenti) are subject to different NCBA and also to some different laws compared to the other three categories. These include different laws on protection against dismissal, on working time, and in relation to social security contributions.

On the other hand, a self-employed person is an independent contractor who undertakes to perform an activity or service in return for payment, mainly through his or her own work, but without being subject to the principal party's organizational, directive, and disciplinary powers.

The performance of the services must be rendered independently by the consultant, without any relationship of subordination vis-à-vis the company.

As in other countries, there can be a gray area where working relationships have features of both categories.

This can be particularly so with long-term contractors whose work is performed on a continuous basis in favor of the same principal and in compliance with the principal's general direction.

In order to reduce bogus independent contractor relationships, Italian legislation applies employment laws to independent contractor relationships where the contractor's activities are (i) solely performed on a personal basis without any subcontracting to other individuals, (ii) performed on a continuous basis, and (iii) organized by the employer with reference to working time and place of work.

Probationary Period

Employment agreements can provide a probationary period. During the probationary period, each party is free to terminate the contract without notice and without payment of any indemnity in lieu of notice.

The duration of the probationary period is set by the applied/applicable NCBA according to the job level assigned to the related employee and cannot exceed six months.

The probationary period must be agreed in writing, within the employment contract, and signed on or before the commencement date; otherwise, the probation period is null and void.

ITALY



RECRUITMENT

An employer must register a new recruitment with the public employment office no later than the day before the commencement date of employment.

The communication must provide the employee's name and address, the commencement date, the expiry date (if applicable), the type of contract, the job level, the applicable NCBA, and the economic treatment applied (method of payment).

There are administrative sanctions if a company fails to register the employment. There is no need to register an independent contractor.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

The main terms and conditions of employment must be set out in writing within 30 days of the commencement date.

This is usually done by issuing an employment contract, including reference to commencement date, probationary period, the expiry date (if a fixed-term contract), the applicable NCBA, job level, duties and tasks, salary, working time, working place, and any post-employment obligations.

Legally Required Policies

The only legally required policy is having a privacy notice.

Following the COVID-19 outbreak, the government imposed the application of an anti-COVID-19 internal health and safety protocol.

Common Advisable Additional Policies

- Anti-harassment and -bullying
- Bonuses, stocks, and shares
- Disciplinary (code)
- Fringe benefits/company property granted to the employees
- Holidays and paid permits
- IT and communications devices
- Smart working
- Whistleblowing

ITALY



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Language Requirements for Documents

Although not expressly required by law, it is highly advisable to always have an Italian-language version of the most important documents, such as employment agreements, subsequent amendments, and dismissal letters, as the employer will need to demonstrate the employee understood the document in any future lawsuit. Bilingual documents are common in multinational companies.

Italian language employment documentation is, however, mandatory for foreign workers posted to work in Italy.

Other Sources of Terms of Employment

NCBAs are sectorial (for example, retail or car manufacturing) and apply to the employers registered with one of the signing unions or those that referred to the NCBA within the individual employment agreements.

NCBAs specify terms and conditions applicable to the employment relationship, including job categories/levels and applicable duties and obligations, minimum wages, job retention rights during sick leave, salary increases due to length of service, probationary periods, notice periods, criteria to calculate severance payments, nighttime work rules, overtime, maternity and parental leave entitlements, holidays, and permits.

Company-level collective agreements can also be agreed between a company and the applicable local unions to further regulate the employment relationship according to the parties' specific needs. Examples of matters covered by company-level CBAs are working time organization, dates of pay reviews, variable salary arrangements, and fringe benefits. Company-level CBAs cannot provide for less favorable entitlements than the law or the applicable NCBA.

ITALY



HOLIDAY ENTITLEMENT

Employees are entitled to a minimum of four weeks of paid holidays per year. Two of these weeks must be used during the year of reference (consecutively if requested by the employee). The remaining 2 weeks can be carried into following years, but they must be used within 18 months of the end of the year in question.

The above minimum period of four weeks' annual holiday is not replaceable by an indemnity in lieu thereof, unless it relates to fixed-term contracts or in the event of termination of employment.

NCBAs can provide longer annual holidays and regulate the annual holidays in terms of calendar/working days; for example, excluding from the calculation Sundays and public holidays that fall during the annual holidays.

Italy is a country that operates so-called "13 or 14-month payrolls" as provided by the NCBA. These are essentially double salary payments paid twice a year at Christmas and in the summer, and they are a way of providing extra money to employees at those times of year. It is funded by calculating a month's pay by dividing the annual salary into 14 (or 13) instead of 12.

Public Holidays

There are also 12 public holidays in Italy (plus 4 former public holidays now abolished and replaced by paid permits) in addition to the 4 weeks of leave.

Public holidays for all employees are the following:

- New Year's Day – January 1
- Epiphany Day – January 6
- Liberation Day – April 25
- Easter Monday
- Workers' Day – May 1
- Foundation of the Italian Republic Day – June 2
- Assumption Day – August 15
- All Saints' Day – November 1
- Immaculate Conception Day – December 8
- Christmas Day – December 25
- St. Stephen's Day – December 26

Employees who work on Sundays or public holidays are normally entitled to enhanced pay or time off in lieu under the applicable NCBAs.

ITALY



WORKING TIME LAWS

The normal working week is 40 hours, although NCBA's can provide a shorter working week.

The maximum working week is 48 hours, including overtime, and is calculated over a period of 4 months.

However, NCBA's can extend the maximum above this for "objective, technical or organizational reasons."

Overtime work is usually regulated by NCBA's. If not, it is allowed only if covered by an agreement between the employer and the employee. Overtime is limited to 250 hours per year.

Unless the applicable NCBA says otherwise, overtime is also allowed in cases of exceptional technician-productive needs, force majeure, and when dealing with particular events.

NCBA's regulate salary increases and/or paid permits for overtime work.

ILLNESS

Employees are entitled to paid sick leave, which the employer is able to claim back from the National Social Security Institute (INPS). The amount and duration of sick pay depends on the applicable NCBA.

A key feature of Italian employment law is that an employee cannot be dismissed during sick leave for a certain period of time (so-called "*periodo di comporto*"), unless for just cause or closure of the company.

At the end of sick leave, an employee is entitled to come back to the same job or be assigned to the same/equivalent duties and on the same/better conditions.

In cases of injury at work or occupational disease, an employee is entitled to have his or her job held open for a set period, which is established by law (or the applicable NCBA), and to receive a daily indemnity paid by the National Institute for Insurance Against Accidents at Work (INAIL). The amount varies according to the duration of the absence and the applicable NCBA. If more than that is paid by INAIL, the employer must top it up.

ITALY



STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave

A female employee cannot work during the two months prior to the planned birth of her child (three months in the case of a dangerous job, as listed by the Minister of Labour and Social Policies), and also during the three-month period following the birth. However, the commencement of maternity leave may be delayed to one month before the planned birth if permission is given by a competent doctor.

During maternity leave, an employee is entitled to 80 percent of her regular salary. This is paid by the employer, which then claims this back from the state fund INPS.

From the beginning of pregnancy until the child is one year old, a mother cannot do night work or be dismissed unless for i) just cause, ii) expiry of a fixed-term employment agreement, or iii) closure of the company. Mutual termination or resignations filed by the mother during maternity leave or filed by either parent during the first three years of an applicable child's life have to be certified before the public employment office in order to be valid.

Paternity Leave

Fathers are entitled to paternity leave, on the same terms and conditions that apply to a mother on maternity leave, if the mother is seriously ill, and for the residual duration if the mother dies or abandons the child.

A father is also required to take 7 days' paternity leave, during which he receives 100 percent of his regular salary, to be taken during the first 5 months of the child's life. As with maternity allowance, the employer can claim this back from the state fund INPS. An optional one further day of paternity leave may be taken during the mother's maternity leave period (but it comes out of the mother's maternity leave entitlement, which is then reduced by a day).

Parental Leave

During the first 12 years of the child's life, each parent is also entitled to a period of absence from work of 6 months. If both parents take this parental leave, then they are entitled to a maximum period of 10 months combined. If there is only 1 parent, he or she is entitled to parental leave of 10 months. If the parental leave is taken during the child's first 6 years, INPS provides pay (known as an indemnity) equal to 30 percent of the regular salary for a maximum period of 6 months of parental leave, combined between both parents.

Adoption Leave

The above rights to maternity, paternity, and parental leave are all granted in cases of national and international adoption and custody as well.

ITALY



STATUTORY RIGHTS OF PARENTS AND CARERS

Other Family Leave

During a child's first year, the mother is entitled to two paid hours a day to feed the child (one paid hour a day if the working day lasts less than six hours). This time off is granted to the father instead if the child is in his sole

custody, the mother does not take this leave, the mother is not an employee, or the mother is deceased or seriously mentally ill.

Further rights apply in cases of illness of the child and/or depending on the total income of the family.

FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Special rules apply to fixed-term contracts and temporary agency employment in terms of maximum duration, quantitative limits compared with the total number of open-ended employees, and NCBA limits.

Part-timers, fixed-term employees, and agency employees are also protected against discrimination on the grounds of their status.

Part-timers should not have less favorable conditions than equivalent full-time colleagues hired at the same level. They should have the same rights, and their pay and benefits should be calculated on a proportionate basis.

Similarly, fixed-term employees are entitled to the same terms and conditions, including pay and benefits, as comparable permanent colleagues. There is an exception for terms and conditions that are objectively incompatible with the nature of the fixed-term contract.

Agency workers are entitled to equal terms and conditions as regular employees working at the same job level and doing the same duties.

ITALY



DISCRIMINATION AND HARASSMENT

The Workers' Statute prohibits any kind of discrimination based on the following:

- Gender
- Political opinions
- Union-related activity
- Religion
- Race
- Language
- Disability
- Age
- Sexual orientation
- Personal belief

Employers cannot make any detrimental employment-related decision or otherwise cause damage to an employee because of one of these protected characteristics. Doing so would be direct discrimination.

Employers should not undertake investigations, whether before or during employment, into an employee's personal, political, religious, and union beliefs, nor any other fact not strictly necessary to evaluate the employee's professional aptitude.

Indirect discrimination occurs when an apparently neutral provision, criteria, practice, agreement, or conduct creates

a disadvantage to a given employee because of one of the protected characteristics. There is an exception where there is good reason for the provision, criteria, or practice and the employer has acted reasonably and proportionately in following that approach.

Harassment is a form of discrimination that occurs when someone is subjected to certain unwanted, humiliating, or objectionable conduct that is tainted by one of the protected characteristics, such as sex.

There is no minimum length of service required to file a discrimination claim, and even an unsuccessful job applicant who is not an employee can bring one.

In dismissal cases, a discriminatory dismissal is null and void, and the employee is entitled to reinstatement and damages.

In nondismissal cases, employees are entitled to damages, and the employer is obliged to remove the discriminatory measure and its effects.

ITALY



TERMINATION OF EMPLOYMENT

Under Italian law, dismissals must fall within one of three main categories:

- Objective justified reasons are related to the abolition of a job position due to a company's economic situation regarding production, work organization, or proper functioning. Depending on the number of employees and the hiring date, dismissals may require a preemptive settlement procedure before the public employment office.
- Subjective justified reasons occur when the employee commits a breach of his or her contractual obligations or is guilty of negligence or poor performance of his or her duties but the behavior is not so serious as to constitute a dismissal for just cause.
- Just cause (*giusta causa*) involves serious misconduct or a serious breach of employment that renders the continuation of the employment impossible, including theft, riot, serious insubordination, and any other behavior that seriously undermines the fiduciary relationship with the employer.

In cases of dismissal for objective or subjective justified reasons (but not just cause), an employee is entitled to the notice period or payment in lieu thereof (known as an indemnity).

Notice periods are provided by the applicable NCBA and depend on length of service, job level, and, in some cases, age. They range from 7 days to 12 months.

Dismissals are also permissible for exceeding the protected period (*periodo di comporto*) in sickness cases, as provided by article 2110 of the Civil Code.

In addition, and in all dismissals, an employee is entitled to the following:

- TFR, which is a severance payment funded by an amount paid annually on the company's books (unless paid into a separate fund), roughly equal to the annual salary divided by 13.5 plus interest and appreciation
- Indemnity in lieu of holidays accrued and not used
- Indemnity in lieu of paid leave/permits accrued and not used
- 13th and 14th monthly salary *pro quota*, meaning such sums as have accrued but not yet been paid for the 13th and 14th month payments

Disciplinary dismissals (either just cause or subjective justified reasons, depending on the kind and seriousness of the behavior alleged) require a previous disciplinary warning letter followed by a minimum period of five days (usually increased by the NCBA) during which the employee has time to provide justifications for the alleged behavior.

ITALY



TERMINATION OF EMPLOYMENT

Unlawful Dismissal

Different rules apply providing reinstatement and/or damages, depending on the following:

- Kind of dismissal (just cause, objective/subjective reasons, collective dismissal)
- Reason why the judge considered the dismissal to be unlawful
- Company's number of employees (less/more than 15)
- Employee's length of service
- Employee's hiring date

Particular protections are provided for employees hired under protected categories (person with handicap or disabilities, orphans, and parents).

For managers (*dirigenti*), the amount of damages in cases of unlawful dismissal are specified in the NCBA, which varies according to length of service and age.

There is no qualifying period or minimum length of service required to file an unlawful dismissal claim.

Collective Dismissals

Companies with more than 15 employees that intend to dismiss at least 5 employees (including managers) within 120 days, due to reduction, transformation, or closure of the business, must follow the so-called "collective redundancy procedure."

The procedure requires a negotiation phase between the company and the unions aimed at avoiding or reducing the dismissals. If no agreement is reached, there is a second negotiation phase, this time before the public employment office (or Minister of Labour). The maximum duration of the combined phases is 75 days (45 days and 30 days, respectively), after which (i.e., on the 76th day) the company can lawfully serve notice of dismissal on impacted employees.

Any selection of employees to be dismissed must follow criteria provided by the agreement reached during the negotiations phases or, if no agreement was reached, criteria provided by law (family dependents, length of service, business needs).

ITALY



EMPLOYMENT REPRESENTATION

There may be two kinds of work councils—*Rappresentanze Sindacali Aziendali* (RSA) and *Rappresentanze Sindacali Unitarie* (RSU)—within companies or business units with more than 15 employees.

An RSA can be set up on the initiative of employees who are members of a trade union that signed the NCBA applied by the company (or at least participated in the related negotiations as employees' representatives). The Workers' Statute grants all employees the right to form or become members of unions as well as the right to perform union-related activities.

On the other hand, an RSU may be elected by all employees, including those who are not members of any trade union.

Employee representatives are granted specific rights by law, such as the right to pay for performing union-related activities and the requirement that union consent is obtained before moving an employee representative to a different workplace.

There are certain circumstances prescribed by law when it is mandatory for an employer to provide information to a works council (followed, in some cases, by a consultation

phase). These include proposed collective redundancies, closure of business, state-funded measures and a transfer of undertaking (or part of an undertaking), setting up solidarity contracts, company-level collective agreements, and *contratti di prossimità*.

Other types of employee representative bodies include the following:

- A company European Committee (a Europe-wide works council sometimes required under EU law), so-called *comitato aziendale europeo* (CAE)
- The employees' representative for health and safety, so-called *rappresentante dei lavoratori per la sicurezza* (RLS)
- The employees' representative for health and safety on the production site, so-called *rappresentante dei lavoratori per la sicurezza del sito produttivo* (RLSP)
- The employees' representative for protection and prevention, so-called *rappresentante dei lavoratori per il servizio di protezione e prevenzione* (RSPP)

ITALY



BUSINESS TRANSFERS

Employment protection provisions apply in cases of a transfer of an undertaking or part of an undertaking (Transfer of Undertakings (Protection of Employment) Regulations, or TUPE, transfers). Legislation protects affected employees by providing (i) a mandatory preemptive information phase between the employer and the works councils, if any, and the trade unions that signed the NCBA applied by the transferee and the transferor; (ii) joint and several liability between the transferor and the transferee with reference to employee-acquired rights; (iii) the right to keep the same terms and conditions of employment; and (iv) the right to resign for just cause in certain cases.

NONCOMPETES AND RESTRICTIVE COVENANTS

Noncompete Clauses

Post-employment noncompete covenants are regulated by law, and in order to be valid and enforceable, they must be:

- agreed in writing;
- limited in terms of activities not allowed;
- limited in term of duration (maximum of three years for employees and five years for managers);
- limited in terms of geographical reach; and
- fairly remunerated (usually between 20 percent and 40 percent of annual salary).

Nonsolicitation Clauses

The parties may also agree to a so-called “nonsolicitation covenant” to prevent solicitation of clients and employees. Such covenants are not specifically covered by the Italian Civil Code but are interpreted under a particular aspect of the general ban on unfair competition provided by article 2598 of the Italian Civil Code.

Nonsolicitation covenants must be entered into in writing (generally provided along with the noncompete covenant) and do not require remuneration at the time of enforcement (unlike noncompete provisions).

*Sharon Reilly and Marco Tesoro of Reilly & Tesoro - Employment Law Firm, Milan
Roger James of Ogletree Deakins International LLP*

THE NETHERLANDS



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in the Netherlands and does not need to set up a local subsidiary. Payroll registration is required, and employers must withhold income taxes and social security taxes from payments to employees—in contrast to independent contractors, who are paid gross and responsible for their own taxes.

EMPLOYMENT STATUS AND HIRING OPTIONS

The two main methods of engagement are as an employee or independent contractor (sometimes also called a consultant). Dutch employment law is not fully applicable to independent contractors. Disputes can arise when a contractor claims employment rights (typically on termination), and the tax authorities can also instigate investigations. An agreement will qualify as an employment agreement where three key elements are applicable:

- Personal service: The service must be provided personally, not by another person without consent of the employer.
 - Wages: The employee must receive wages for the service provided.
 - Control: The employer should exercise a certain degree of authority over the employee.
- Typically, not all factors align on one side, and courts can come down on one side based on the overall situation. Whether an agreement will be considered an employment agreement depends on all specific circumstances of the case. The type of contract used can be an influential factor, but it is not of itself decisive.

The Netherlands is unusual in having a third category (nonemployee worker), which sits between employee and independent contractor. This category catches casual workers and many in the gig economy who work too

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EMPLOYMENT STATUS AND HIRING OPTIONS

informally to obtain employment status, yet are also not in business in their own right as independent contractors. These nonemployee workers have little protection under Dutch law. However, they are entitled to discrimination protection, working hours protection, and—in certain circumstances—the minimum wage, but they are not entitled to statutory holidays, rights based on collective labor law (such as the right to strike), maternity pay, or other types of paid leave.

Currently, the enforcement of the Assessment of Employment Relationships (Deregulation) Act (*Wet Deregulerend Beoordeling Arbeidsrelaties*), which regulates the assessment of whether an agreement is considered an employment agreement for tax purposes, has been postponed until at least January 1, 2021. Until that date, the Tax Administration will enforce the act only in cases of “malicious parties” or when instructions from the Tax Administration are not followed. In the meantime, the Dutch government is working on new measures, taking into account the potential future changes of employment law as a result of the evolving gig economy.

Probationary Period

When hiring an employee, parties may agree upon a probation period, during which both the employer and employee have the right to give notice of termination of the

employment agreement with immediate effect. A number of important prohibitions against termination do not apply during probation (the so-called “during prohibitions,” the most famous of which is the ban on terminating during illness). However, termination during the probation period must not be discriminatory.

The maximum probation period depends upon the duration of the employment contract:

- Indefinite contract: a maximum of two months
- Contract of two years or longer: a maximum two months
- Contract of less than two years: a maximum of one month
- Contract of six months or less: no probation period allowed
- Contract for the duration of a project: a maximum of one month

The provisions of a collective bargaining agreement (CBA) may deviate from the statutory maximum probation periods.

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RECRUITMENT

When recruiting an employee, the employer is obliged to register for payroll taxes. Also, the employer is obliged to verify the identification of the employee and to retain a copy of the identification.

When recruiting foreign employees from outside the European Economic Area and Switzerland, the employer must also verify if the employee has a work permit. In some circumstances, foreign employees may still be insured for social security in a foreign country. A so-called A1 certificate is used to show in which country an employee is insured for social security. This form is valid in all other countries of the European Union, the European Economic Area, and Switzerland.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

All employees are entitled to written confirmation of their key terms of employment within one month from the date of commencement of employment. Typically, this is done using an employment contract. This is the main document governing the working relationship, and any offer letter used at the recruitment stage is typically replaced by the contract. The minimum legally required content for the employment contract is the following:

1. Name and place of residence of the employer and the employee
2. Place of work
3. Job title or description of the function
4. Date of commencement of the employment
5. Duration of the employment
6. Hours of work (per day or per week)

7. Salary entitlement and method of payment
8. Duration of the probation period, if applicable
9. Holiday entitlement
10. Holiday allowance
11. Duration of notice period
12. Pension entitlements
13. Any applicable CBAs
14. Noncompetition clause, if applicable

Legally Required Content

1. Grievance policy (if the company has 50 or more employees)
2. Privacy notice (data protection)

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

Common Additional Policies

1. Equal opportunities
2. Anti-harassment and -bullying
3. Anti-corruption and -bribery
4. Whistleblowing
5. Sickness absence
6. Poor performance
7. Maternity and other paid leave
8. IT and communications

Language Requirements for Documents

There are no language requirements for documents in the Netherlands.

Other Sources of Terms of Employment

The vast majority of employees in the Netherlands are covered by a CBAs. If a CBA is applicable, the employer should apply the CBA to all its employees.

A CBA may be concluded at a company level or may apply to a whole business sector. A company must apply a CBA if:

- the company has concluded a CBA with the trade unions itself;
- the company is a member of an employer's organization that has concluded a CBA; or
- if the Ministry of Social Affairs and Employment has declared a CBA binding on the entire sector in which the company operates.

Within these categories, there are two types of CBAs: a "standard" CBA, which sets standards that cannot be deviated from, and a "minimum" CBA, which sets minimum standards, but an employer may choose to provide higher standards. A CBA may include deviations from many statutory employment rules. If a CBA and an employment agreement are contradictory, the CBA will prevail.

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HOLIDAY ENTITLEMENT

An employee's entitlement to holiday is at least 4 times his or her period of work per week (20 days for someone who works 5 days a week). It is common to award additional holidays, which are then nonstatutory holidays. The statutory holidays expire six months after the end of the year in which they have been accrued, so they are forfeited if the employee has not taken them by then. Nonstatutory holidays expire only after five years.

There is an option to buy out the nonstatutory holidays at the end of the year, but minimum statutory holidays must actually be taken and cannot be bought out apart from on termination of employment.

Employees retain full entitlement to the accrual of statutory holidays during illness and may therefore take as many statutory holidays as they would have done if not ill.

There is no legal recognition of public holidays. If an employer provides a paid holiday on a public holiday, it can count that toward the statutory entitlement. Most employers recognize the following seven public holidays:

- New Year's Day
- Easter Monday
- King's Day
- Ascension Day
- Pentecost Monday (Whit Monday)
- Christmas Day
- Boxing Day

On top of the right to holidays, employees are also entitled to 8 percent of annual salary paid as a holiday allowance, normally paid in May or June of each year.

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WORKING TIME LAWS

Maximum Working Hours

An employee may work a maximum of 12 hours per shift. The maximum working hours per week is 60, which can never be exceeded in any week. However, an employee may not work the maximum number of hours every week. Looked at over a longer period, the working hours are as follows:

- Per week during a 4-week period: on average, 55 hours per week; exceptions to this can be made in a CBA
- Per week during a 16-week period: on average, 48 hours per week

Rest Periods

After a working day, an employee must have 11 consecutive hours of nonwork time. This rest period may be shortened to eight hours once in a seven-day period if the nature of the work or the business circumstances so require.

In the event of a 5-day workweek, an employee must have 36 consecutive hours of nonwork time after the end of the workweek.

A longer workweek is also possible, provided that the employee has at least 72 consecutive hours of nonwork time in a period of 14 days. This period may be split into 2 periods of at least 32 hours each.

Breaks

If an employee works more than 5.5 hours, he or she is entitled to at least 30 minutes of break time. This may be split into 2 15-minute breaks. If an employee works more than 10 hours, he or she must have at least 45 minutes of break time. This may be split into several breaks, each of which must be at least 15 minutes.

A collective arrangement may include agreements on fewer breaks, but if the employee works more than 5.5 hours, he or she must have at least 15 minutes of break time.

An employer and employee are free to determine whether overtime will be paid, unless a CBA determines otherwise. However, when working overtime, it must be ensured that the average wage per hour (calculated over all worked hours, including overtime) is at least the minimum wage.

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ILLNESS

An ill employee is entitled to a period of 104 weeks of payment of his or her salary.

The rate of pay is 70 percent of the gross salary plus holiday allowance, as long as this salary does not exceed the maximum daily wage and that during the first 52 weeks, the employee is at least entitled to the minimum wage. However, it is not unusual for the employer to pay a higher percentage of salary, e.g., 100 percent of the salary in the first year and 70 percent in the second year. Sometimes a CBA provides for a higher percentage as well. It is possible to agree that the first two days of incapacity for work shall be waiting days, during which the employee is not entitled to continued payment of wages.

An employee is not entitled to salary where the incapacity for work was caused deliberately or if the employee does not cooperate with his or her reintegration.

After the 104-weeks period ends, the Employee Insurance Company (UWV), a government agency, will pay sickness benefits. However, if the UWV is of the opinion that the employer did not do enough to reintegrate the employee, the employer risks being required to pay beyond 104 weeks.

Reintegration is the main objective of the procedure during sickness (if possible). In cases of long-term disability, employers may need to report the sickness to the company doctor, who will qualify and monitor the incapacity of the employee. The employer may want to draft an action plan together with the employee on how to proceed, and schedule a periodic meeting with the company doctor to evaluate the status of the employee's incapacity to work.

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STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

A pregnant employee is entitled to at least 16 weeks' paid maternity leave. The maternity leave starts between four and six weeks before the due date. This period before the birth and the 10 to 12 weeks after the birth are financially covered by the maternity allowance, paid by UWV.

Paternity/Partner Leave and Pay

Partners of mothers who have given birth are entitled to one week paid birth leave. Birth leave must be taken within four weeks after the birth. After the partner has taken paid birth leave, he or she is entitled to five weeks of unpaid additional birth leave. During these 5 weeks, the partner is entitled to 70 percent of his or her daily wage, paid by the UWV. Additional birth leave must be taken during the first six months after the birth.

Parental Leave

Parents of children up to the age of eight are entitled to (unpaid) parental leave. Each parent may take off 26 times his or her weekly working hours. This time can be distributed in many different ways, and the employee must decide the arrangement of his or her hours together with the employer.

Adoption Leave

An employee is entitled to adoption leave of 4 weeks, which can be spread across a period of 26 weeks. The period of 26 weeks starts 4 weeks before the adoption. During adoption leave, an employee is entitled to 100 percent of his or her daily wage, paid by the UWV.

Other Family Leave

An employee is entitled to take (short-term) care leave to look after a sick relative, such as a child, partner, or parent. Within a 12-month period, an employee is entitled to take short-term care leave equal to twice his or her weekly working hours. During this time, the employer is obliged to pay (at least) 70 percent of the gross salary.

In circumstances of life-threatening illness of a family member or someone with whom the employee lives, an employee is entitled to long-term care leave of up to six times his or her weekly working hours. During long-term care leave, the employer is not obliged to pay salary, and nothing is payable by the UWV.

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FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Special rules apply to agency workers, fixed-term employees, and part-time workers, who are all, broadly speaking, entitled to the same pay and benefits as comparable permanent, full-time employees.

DISCRIMINATION AND HARASSMENT

The characteristics protected by law are gender, age, race, nationality, religion or belief, political views, disability, sexual orientation, gender reassignment, pregnancy, and marital status. Any detrimental action because of one of these characteristics is unlawful.

In addition, if an employer has a practice or procedure that subjects people who share one of these characteristics to a disadvantage, such as requiring job applicants to be six feet tall, which disadvantages women, then that is unlawful indirect discrimination unless it can be justified.

Harassment is a form of discrimination and arises when there is unwanted conduct related to a person's protected characteristic (e.g., sex or race) that violates his or her dignity or is otherwise hostile, humiliating, degrading, intimidating, or offensive.

Claims for discrimination can be brought by any employee or worker regardless of length of service, as well as potential recruits and ex-employees. Employees can also file a complaint before the Institute of Human Rights (*Het College voor de Rechten van de Mens*).

Compensation awards are uncapped but seem to be relatively low in comparison to those in other countries. A person who has alleged discrimination (or given evidence in support of another) is protected from retaliation or detriment (victimisation).

Employers of disabled employees are required to consider—and—make reasonable adjustments to remove a disabled person's disadvantage in the workplace.

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TERMINATION OF EMPLOYMENT

Statutory Notice

A fixed-term contract cannot be terminated prematurely unless this has been agreed upon in writing.

All fixed-term employment agreements of six months or longer are subject to an obligation to notify. This means that the employer is obliged to notify an employee in writing, at least one month before the end of the employment agreement, as to whether the employment agreement of the employee will be continued and, if so, on what conditions. The obligation to notify will apply to all subsequent fixed-term employment agreements. The employee does not have an obligation to notify the employer. If an employer fails to notify the employee, the employer will owe the employee a penalty of one month's salary. If the employer fails to notify the employee on time, the compensation will be payable pro rata. It does not matter whether the employment agreement is continued; the penalty will be due anyway. An employee has to claim this compensation or late notification within three months after the day when the notification should have been made.

Statutory notice periods for permanent employees are dependent on the duration of the employment agreement:

- Duration of up to five years: one month
- Duration from 5 to 10 years: 2 months
- Duration of 10 to 15 years: 3 months
- Duration of 15 or more years: 4 months

The notice period to be observed by the employee is one month. However, there is a shorter notice period for zero-hours contracts. On-call workers with a zero-hours contract have the same notice period as the call period of the employer. As a rule, this is four days.

The employment contract may provide for longer notice periods (or shorter in the case of the employee giving notice). If the notice period is extended, the notice period to be given by the employee may not exceed six months, and the notice period to be given by the employer may in that case not be shorter than twice the notice period for the employee. Notice must be given at the end of a month, unless a different day has been agreed upon in the employment contract.

Severance Payments

An employee is entitled to a transition payment when the employment agreement is terminated, dissolved, or not extended by the employer. This payment will also be due when the termination, dissolution, or nonrenewal happens on the employee's initiative as a result of serious acts or omissions on the part of the employer.

The transition payment amounts to one-third of the monthly salary for each year the employee has been employed and a proportionate further payment for any additional partial year of employment. The transitional allowance is limited to €83,000 gross (2020) or a maximum of one annual

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TERMINATION OF EMPLOYMENT

salary if the annual salary exceeds €83,000 gross.

Various transitional arrangements and exceptions have been made regarding the transition payment:

- If the employer is declared bankrupt or if other insolvency proceedings apply, the transitional allowance is no longer due and payable. Businesses undergoing financial distress may pay the transition payment in instalments.
- Part-time workers under the age of 18 who are working 12 hours or less per week and workers reaching the pensionable age are not entitled to receive a transition payment.
- Parties may stipulate other arrangements in the employment contract deviating from the above. CBAs may also deviate from the statutory rules on the transition payment.

Dismissal

Dutch law offers a high degree of protection to employees working in the Netherlands. Apart from termination by the expiration of time of a fixed-term contract and giving notice during a probation period, the employer can only terminate the employment agreement unilaterally if there is a reasonable ground to do so and reemployment into a different suitable position within a reasonable term, whether or not with the help of training, is not possible or logical.

Dutch law provides nine grounds for dismissal:

- Commercial or financial reasons
- Long-term occupational disability
- Frequent sickness absence
- Inadequate performance
- Imputable acts or omissions
- Conscientious objections
- Disturbed working relationship
- Other circumstances
- A combination of grounds c through e, g, or, h

Unless the employee agrees to the dismissal or a termination agreement is concluded, the employer requires the permission of the UWV for dismissal on the ground of commercial or financial reasons or because of long-term occupational disability. A termination without permission or agreement based on any of the other grounds for dismissal requires a dissolution by the court.

Permission of the UWV

The UWV will assess whether the requirements for the ground for dismissal concerned are met and whether the employee might still be reemployed within a reasonable time.

If an absolute prohibition against termination applies—a so-called “during prohibition”—as in the event of illness, pregnancy, or membership of the works council, the UWV

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will not give permission to terminate the employment agreement. Exceptions apply when it may reasonably be expected that the prohibition against termination will not apply anymore within four weeks after the day on which the UWV renders a decision on the application.

After permission has been granted, the employer can terminate the employment agreement, taking into account the notice period (see above). If the employee does not agree to the termination, he or she can request the subdistrict court to restore the employment agreement or to grant him or her fair compensation. After these proceedings, the parties may lodge an appeal to a higher court or to the Supreme Court of the Netherlands.

Termination by the Court

If the employer wishes to terminate the employment agreement on the basis of a ground for dismissal other than commercial or financial reasons or long-term occupational disability, an application must be filed with the subdistrict court. The employer can also file an application if the UWV has refused permission or when there is a fixed-term employment agreement that cannot be terminated early.

If an absolute prohibition against termination applies—the above-mentioned “during prohibition” (for instance, in connection with illness)—the subdistrict court may grant the termination if the application is not related to circumstances related to the prohibition against termination or if there are exceptional circumstances of such a nature

that the employment agreement should be terminated in the employee’s interest (for example, if continuation of employment will impede an employee’s recovery).

In the dissolution proceedings, the employer and the employee may submit related claims to the court simultaneously with the dissolution; for example, disputes regarding the amount of the transition payment, back wages, the fixing of a bonus, or disputes on (the validity of) a noncompetition clause. The parties may lodge an appeal to a higher court or to the Supreme Court against the judgment of the subdistrict court.

Termination With Mutual Consent

An employer and employee may also separate with mutual consent. The employee can agree to the notice of termination of the employer, or the parties can conclude a termination agreement. It is necessary that a termination agreement is concluded in writing. Although no transition payment is legally required in a termination through a termination agreement, in reality the employee will not accept the agreement without the offer of (at least) the transition payment.

The law grants employees a reflection period of two weeks, both for considering their consent to a termination and for agreeing to a termination agreement. Within this period, the employee may withdraw his or her consent or dissolve the termination agreement without stating reasons. The employer is obliged to point out the reflection period in

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the termination agreement or to point out to the employee after his or her consent to the termination that he or she has a right of withdrawal. If not, the period will be extended to three weeks.

Termination Without Consent or Permission

In the event that the employee does not consent to termination of the employment agreement and there is neither permission of the UWV nor a dissolution ruling of the subdistrict court, but the employer terminates the agreement nevertheless, the employee has two months to request either the annulment of the termination or fair compensation with the subdistrict court. Again, the parties may appeal to a higher court or to the Supreme Court against the judgment of the subdistrict court.

Summary Dismissal

A summary dismissal is the termination of an employment agreement with immediate effect, without needing the permission of the UWV and without having to observe a notice period. A summary dismissal must be regarded as a last resort. For a summary dismissal to be legally valid, a number of strict requirements apply. First, there has to be an “urgent reason.” The law specifies several examples of urgent reasons, such as drunkenness at work, gross insult, or theft. It is required that the employer cannot be expected to continue the employment. The circumstances of the case are decisive, and the personal circumstances of the employee, such as the consequences of the summary dismissal, are also relevant.

Notice of summary dismissal must be given “forthwith.” This means that an employer is not allowed to wait too long after the discovery of the urgent reason. If an employee disagrees with a summary dismissal, the employee may request that the subdistrict court annul the dismissal.

Redundancy

When several jobs become redundant, it must be determined which employees are eligible for dismissal by means of the so-called “principle of proportionality.” Briefly summarized, the employer must first try to achieve the necessary reduction of employees by not renewing fixed-term employment contracts. Should this measure be insufficient, the employer must then categorize employees who perform the same or an interchangeable position into age groups; namely from 15 to 25, 25 to 35, 35 to 45, 45 to 55, and 55 and older. Within each age group, the employee who has the shortest length of service (seniority) will be the first to be made redundant. The distribution of redundancy across the age groups must be made in such a manner that the age structure within the category of interchangeable positions is proportionally as equal as possible before and after the reorganization. Exchangeable positions are comparable in terms of job content; the knowledge, skills, and competences required for the position; and the temporary or structural nature of the position. In addition, the level of the position and the remuneration belonging to the position must be equivalent.

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If an employee becomes redundant, the employer must examine whether reemployment into a suitable position within a reasonable term is possible. A suitable position is one that matches the employee's education, experience, and capabilities. In principle, this should be a position that matches the level of the employee's own work, but this is not decisive.

When assessing whether a suitable position is available, jobs will be taken into account where a vacancy exists or will arise within a reasonable time. In addition, jobs of employees on temporary contracts and of temporary workers are also taken into account. These employees will have to make room for a permanent employee whose job becomes redundant. If the employer's company is part of a(n international) group of companies, jobs in the other companies belonging to this group will also be involved in the assessment of whether there is a suitable position available.

If an employee is not suitable for a specific position, but this position can be made suitable for him or her within a reasonable term through training, this position may still be designated as suitable.

Collective Redundancy Rules

When an employer proposes 20 or more redundancies within a 3-month period, additional requirements to consult with employee representatives apply. This may result in a

so-called "social plan," which contains the regulations and provisions for the employees who will become redundant.

Notification of Authorities

Apart from the requirement to request prior approval of the UWV, there is no obligation to notify the authorities in case of redundancies.

Protected Employees

There is enhanced protection against dismissal for employees who are ill (only during the first two years of illness), pregnant, on maternity or paternity leave, engaged in protected industrial action, trade union representatives, certain types of works council representatives and similar, health and safety representatives, prevention advisors, data protection officers, conscripted for military service, or employees who have made certain protected complaints.

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EMPLOYMENT REPRESENTATION

There is no general obligation to consult with employee representatives or unions on business decisions, with two exceptions:

1. Collective redundancies (redundancy of 20 or more employees within 3 months)
2. Business transfers

Works Council

In case of collective redundancies or business transfers, the employer is obliged to ask the works council's prior advice. When requesting advice, the employer must specify in writing (i) the contents of the proposed decision, (ii) its motives, (iii) the consequences of this decision for the employees, and (iv) the measures it is planning to take regarding these consequences. The employer must ask the advice of the works council at such a point in time that the advice can still significantly affect the decision to be taken.

If multiple employees are to be made redundant, it is common to draft a so-called "social plan" and present this to the works council as part of the request for advice. This plan normally contains stipulations on the relocation of the redundant employees and the benefits they may be entitled to, such as the payment of a severance benefit in the case of dismissal.

After having obtained the advice of the works council, the employer has to inform the council about its decision in writing. If the advice of the works council was negative, but the employer decides to go ahead anyway, the employer must explain in writing why it deviated from the advice. The works council has the right to appeal against the decision at a special division of the court of appeal in Amsterdam (enterprise section) within one month of hearing the employer's decision. The same procedure applies if the employer has mistakenly not asked the advice of the works council about its decision, did not wait for the advice, or—after the decision has been made—facts are revealed that would have influenced the advice had the works council known about these facts beforehand.

Trade Unions

In case of collective redundancies or business transfers, the employer is obliged to involve any recognized trade unions as well as any works council. However, approval of the trade unions is not required. When no CBA is applicable and fewer than 20 employees will become redundant, there is no obligation for the employer to involve the trade unions.

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BUSINESS TRANSFERS

The Transfer of Undertakings (Protection of Employment) Regulations, known as TUPE, provides employees with protection when there is a business transfer or in outsourcing/service provision change situations. Broadly speaking, TUPE requires employers to consult with employee representatives prior to the change and prevents them from making dismissals or changing terms of employment, subject to some exceptions.

NONCOMPETES AND RESTRICTIVE COVENANTS

Dutch law provides that a clause between an employer and an employee restricting the latter's rights after termination of the employment agreement to work in a certain capacity is valid only if the employer had agreed to such clause in writing with an adult employee. Dutch law does not distinguish between a noncompetition clause and a nonsolicitation clause. If the position of an employee has changed significantly, the noncompetition clause and/or nonsolicitation clause must be agreed upon again.

A noncompetition or nonsolicitation clause can only be included in a fixed-term employment agreement if a written explanation to the clause reveals that it is necessary due to serious interests of the business or the service. If no reasons are given, the clause will be null and void. If the reasons given are insufficient, the clause will be voidable. Also, when a fixed-term employment agreement is renewed, a reason for the clause must be given again.

A noncompetition or nonsolicitation clause may not be unfairly detrimental to the employee when balanced with the

employer's interest to be protected. Therefore, the interests of the employer and the employee will have to be weighed. The court may nullify all or part of the noncompetition or nonsolicitation clause if it is of the opinion that the clause is unfairly detrimental to the employee. In the event of a partial nullification, a restriction on the prohibited activities or a restriction as to the duration or geographic scope of the clause may be considered. The restriction that is deemed reasonable will depend, inter alia, on the relevant industry and the position held by the employee, as well as on the duration of the relevant employment agreement.

Violation of restrictive covenants may be made subject to a penalty. The stipulated penalty may be reduced by the court. The possibility of imposing a penalty is without prejudice to the right to compensation under the law. However, an employer may not both impose a penalty and claim compensation in respect of the same fact.

In the Netherlands, it is not common to award compensation for the duration of a restrictive covenant.

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NONCOMPETES AND RESTRICTIVE COVENANTS

Apart from a noncompetition or nonsolicitation clause, it is common to agree upon a confidentiality clause, which restricts the employee from disclosing company matters to third parties.

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*Soo-Ja Schijf and Marieke Opdam of Kennedy Van der Laan, Amsterdam
Roger James of Ogletree Deakins International LLP*

NORWAY



CORPORATE REGISTRATION REQUIREMENTS

Foreign businesses that are doing business in Norway are obliged to register in the Register of Business Enterprises. They have the option to register as a Norwegian-registered foreign business (NUF) or to set up a local subsidiary in Norway.

Payroll registration is required, and employers are required to withhold income taxes and social security taxes from payments to employees, which is in contrast to independent contractors, who are paid gross and responsible for their own taxes. Employers are required to file the commencement and termination of employment for each employee with the State Register of Employers and Employees (Aa-registeret) no later than the fifth day of the following month.

EMPLOYMENT STATUS AND HIRING OPTIONS

The main method of engagement is ordinary employment, with fewer cases of engagement of an independent contractor (sometimes also called a consultant). Statutory rights do not apply to independent contractors. Disputes can arise when a contractor claims employment rights (typically on termination), and the tax authorities can also instigate investigations. Key factors used to determine these disputes are the following:

1. Control: An employee is typically told not just what to do, but also how to do it.
2. Responsibility for the result: A contractor will normally perform the work at his or her own risk and with a responsibility for the result.
3. Integration: A contractor would not normally have company business cards or a company email address.
4. Set hours of work: A contractor is more likely to manage his or her own time.
5. Pay: A contractor is often paid on completion of a project or task, rather than based on time spent.
6. Operating as a business: A contractor may have other clients, a business name, and a higher degree of financial risk than a salaried employee.

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7. Personal service: Contractors are sometimes able to supply a substitute to perform services. This is never consistent with an employment relationship.

Typically, not all factors align on one side, and courts can come down on one side based on the overall situation. Whether an independent contractor contract has been used can be an influential factor, but this is not of itself decisive.

Certain business sectors, such as construction and building, also have a high level of agency workers, where the workers are typically employees of the employment agency and loaned out to the end user company. The use of agency workers is considered a problem, especially

in some regions, mainly because the workers usually do not have any income between assignments. This has resulted in a change to the Norwegian Working Environment Act (*Arbeidsmiljøloven*) (WEA), which is the main statute governing employment rights in Norway and came into force on January 1, 2019. The new legislation demands that agency workers are given an employment contract containing predictability of hours of work and payment. Employment contracts without payment between assignments for agency workers will no longer be accepted.

There are limited statutory rights during probationary periods. The probationary period cannot be longer than six months.

RECRUITMENT

On recruitment of a new employee, an employer is required to file details of the employment relationship within the NAV State Register of Employers and Employees (EE register).

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

All employees are entitled to a written employment contract. This is the main document governing the working relationship, and any offer letter used at the recruitment stage is typically replaced by the contract. The minimum legally required content for the employment contract is the following:

1. Name of employer and employee
2. Place of work
3. A description of the work or the employee's title, post, or category of work
4. The date of commencement of employment
5. If the employment is of a temporary nature, its expected duration and the basis for the appointment
6. Where appropriate, provisions relating to any probationary period
7. Holiday entitlement
8. Notice required by each side to end the contract
9. Method of payment and payment intervals for salary payments, any supplements, and other remuneration not included in the pay (for example, pension payments and allowances for meals or accommodations)
10. Duration of the agreed daily and weekly working hours
11. Length of breaks

12. Any agreement concerning a special working-hour arrangement
13. Any applicable collective agreements (If an agreement has been concluded by parties outside the undertaking, the contract of employment shall state the identities of the parties to the collective agreement.)

Legally Required Policies

1. Whistleblowing policy for any undertaking with more than five employees
2. Policies for health, environment, and safety of work

Certain business sectors may also be subject to other legally required policies.

It is also common to have policies for sickness absence, maternity, and other paid leave.

Language Requirements for Documents

There are no language requirements for documents.

NORWAY



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Other Sources of Terms of Employment

Collective bargaining agreements (CBAs) concerning pay and working conditions are common in Norway. The major collective organizations are the Confederation of Norwegian Enterprise (NHO) and the Norwegian Confederation of Trade Unions (LO). There are a variety of unions and employer organizations that are entitled to enter into collective agreements. Where applicable, they set terms of employment, but only to the extent the particular employer has entered into a CBA with the applicable union.

There is no general minimum wage in Norway, although minimum wages have been introduced in certain sectors via collective agreements. Generally, collective

agreements apply to everyone who works in the specific sector concerned, regardless of whether they or their employer is a party to the agreement. The following sectors have generally applicable collective agreements:

- Construction
- Maritime construction
- Agriculture and horticulture
- Cleaning workers
- Fish processing enterprises
- Electricians
- Freight transport by road
- Passenger transport by tour bus
- Hotel, restaurant, and catering

NORWAY



HOLIDAY ENTITLEMENT

Under the Annual Holidays Act, employees are entitled to a minimum annual holiday of 25 “workdays.” Saturdays are considered workdays, so the minimum annual holiday is four weeks and one day. Employees who are 60 years old or older are entitled to 1 additional week. Holidays are paid as if the employee were working, which means that holiday pay totals 10.2 percent of the annual remuneration for employees entitled to 25 workdays’ annual holiday.

Although 25 workdays is the requirement under the Annual Holidays Act, a majority of Norwegian enterprises provide five weeks of vacation based on collective agreements, individual employment contracts, or as an employer policy. The holiday pay would then amount to 12 percent of the annual remuneration.

In addition, Norway has the following public holidays:

- New Year’s Day – January 1
- Maundy Thursday
- Good Friday

- Easter Monday
- Labour Day – May 1
- Constitution Day – May 17
- Ascension Day
- Whit Monday
- Christmas Day – December 25
- Boxing Day – December 26

Most employers will allow employees to take paid holiday on these days in addition to their holiday entitlement, although there is no legal obligation on the employer to provide paid holidays on these days except for May 1 and 17. If either of those days falls on a workday, the employee is entitled to full salary.

If the employee has to work, the employee is entitled to the same extra payment (at least 50 percent) as for work on Sundays.

NORWAY



WORKING TIME LAWS

Normal working hours must not exceed 9 hours per 24 hours and 40 hours per 7 days. “Working time” means the time when the employee is at the disposal of the employer. The employer and the employee may agree in writing to longer working hours (up to 10 hours per day and 48 per week), calculated as an average over a period not exceeding 52 weeks, provided that normal working hours do not exceed 50 hours in any 1 week.

Work in excess of these agreed working hours must not take place except in cases when there is an exceptional and time-limited need for it. In general, any such overtime work must not exceed 10 hours per 7 days, 25 hours per 4 consecutive weeks, or 200 hours during a period of 52 weeks. In these exceptional cases, working hours must still not exceed 13 hours per 24 hours or 48 hours per 7 days. The limit of 48 hours can be calculated as an average over 8 weeks, meaning that some weeks may be over 48 hours, but the total working hours may not be more than 69 hours in any week. However, collective agreements may allow for slightly higher limits on overtime work—up to 20 hours per 7 days, 50 hours per 4 consecutive weeks, and 300 hours during a period of 52 weeks.

The Labour Inspection Authority may on application in special cases permit even higher limits on overtime work of up to 25 hours per 7 days and 200 hours during a period of 26 weeks. An employee cannot legally agree to overtime exceeding these limits.

The WEA also contains provisions regarding daily and weekly off-duty time. An employee must have at least 11 hours of continuous off-duty time per 24 hours.

NORWAY



ILLNESS

For sick leave of up to three days, an employee can furnish a self-certification note to his or her employer. When leave exceeds three days, an employee must provide a medical certificate from a doctor.

Sick pay is payable by the employer at 100 percent of normal pay for the first 17 days of sickness (Employer's Period). Beyond that, the National Insurance Scheme pays up to one year from the start of the sickness, but at an amount capped at six times the basic amount of National Insurance. Many employers provide more generous payments, and it is not unusual to enhance the National Insurance Scheme payments up to full salary. The employer cannot recover from the state any sick pay paid during the Employer's Period or any payment given in addition to the legal limit.

STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

A pregnant employee is entitled to time off with pay for prenatal examinations if they cannot reasonably take place outside of working hours. A pregnant employee is also entitled to a leave of absence for up to 12 weeks during the pregnancy with payment from the National Insurance Scheme. If this is taken up, the right to payment during maternity leave is reduced accordingly.

Pregnant employees are entitled to start maternity leave three weeks prior to the date they are due to give birth (they may have effectively begun their leave earlier using the leave referred to in the paragraph above, which is not technically maternity leave). After giving birth, an employee must take at least six more weeks of leave unless she produces a medical certificate stating that it is better for her to resume work. If an employee wants to take more leave, she should take shared parental leave.

Maternity leave is paid by the National Insurance Scheme, in accordance with the description set out in the Shared Parental Leave section below.

A nursing mother with at least a 7-hour working day is entitled to a 1-hour leave of absence each day without wage deduction until the child is 12 months old.

Paternity Leave and Pay

Fathers are entitled to two weeks' leave of absence in order to assist the mother. If the parents do not live together, this right to leave can be exercised by another person who assists the mother. This leave is unpaid, and the father is not entitled to financial support. However, many employers continue to provide normal pay for these two weeks.

NORWAY



STATUTORY RIGHTS OF PARENTS AND CARERS

Shared Parental Leave

Either parent may extend his or her leave by taking shared parental leave (known as parental benefit). The total period for parental benefit is up to 49 weeks at 100 percent coverage or, alternatively, 59 weeks at 80 percent coverage. These periods include the maternity leave period, but not the paternity leave period.

A couple can split this 49- (or 59-) week period how they wish—except that they each have 15 weeks allocated exclusively to them, which they cannot pass to the other. “Coverage” refers to pay but is limited to six times the basic amount of National Insurance. However, many employers will supplement the amount paid by the National Insurance Scheme and provide full payment. Both parents must choose the same degree of coverage—either 80 percent

or 100 percent. Shared parental leave need not be taken immediately following maternity or paternity leave as long as it is taken before the child’s third birthday. In addition to this, each parent is entitled to an additional unpaid absence for up to 12 months for each child.

Adoption Leave

Generally, the same rights to leave and pay apply to parents who are adopting.

Other Family Leave

There are statutory entitlements to leave in cases of sick children; necessary care for a parent, spouse, cohabitant, or registered partner; and terminal illness of a close family member.

FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Special rules apply to agency workers, fixed-term employees, and part-time workers, who are all, broadly speaking, entitled to the same pay and benefits as comparable permanent, full-time employees.

There are strict limitations to the use of fixed-term contracts, including fixed-term employees working through agency arrangements. Fixed-term or agency arrangements that do not meet legal requirements will in general be considered permanent employment.

NORWAY



DISCRIMINATION AND HARASSMENT

The characteristics protected by law are gender, age, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy, and marital status. Any detrimental action because of one of these characteristics is unlawful.

In addition, if an employer has a practice or procedure that subjects people who share one of these characteristics to a disadvantage, such as requiring job applicants to be six feet tall, which disadvantages women, then that is unlawful indirect discrimination unless it can be justified.

There is no qualifying period for discrimination claims. Claims for discrimination can be brought by any employee or worker regardless of length of service, as well as by potential recruits and ex-employees. Compensation awards are uncapped and shall cover financial loss resulting from the discrimination. Further sums may be awarded for damage of a nonpecuniary nature, based on the extent and nature of the discrimination, the circumstances of the parties, and other facts of the case.

TERMINATION OF EMPLOYMENT

Statutory Notice

Unless otherwise agreed in writing or laid out in a collective pay agreement, a period of one month's notice applies to either party, calculated from the first of the following month. However, this increases as follows:

- Two months' notice from either party for employees with over five years' continuous service
- Three months' notice from either party for those with over 10 years' service
- Four months' notice upon dismissal from the employer for those with over 10 years' service if they are also over 50 years of age, and 3 months' notice upon termination from the employee

- Five months' notice upon dismissal from the employer for those with over 10 years' service if they are also over 55 years of age, and 3 months' notice upon termination from the employee
- Six months' notice upon dismissal from the employer for those with over 10 years' service if they are also over 60 years of age, and 3 months' notice upon termination from the employee

Norwegian employment contracts often provide for a minimum of three months' notice regardless of length of service. Employees are entitled to work during the notice period, and any "garden leave" must be agreed between the parties.

NORWAY



TERMINATION OF EMPLOYMENT

The parties may agree a 14-day notice period during any probationary period.

Severance Payments

There is no legal entitlement to severance pay, but it is not unusual to negotiate agreements on severance pay when reductions in the workforce are implemented.

Unfair Dismissal

Employees cannot be dismissed unless this is objectively justified on the basis of circumstances relating to the company, the employer, or the employee. If an employee is dismissed without a good reason, he or she may bring a claim for unfair dismissal and claim reinstatement or compensation (which is not subject to a maximum cap). Employees have a right to bring an unfair dismissal claim without any requirement to have a minimum length of service.

A warning is recommended where appropriate so that an employee is given an opportunity to correct his or her performance before dismissal.

Before making a dismissal decision, an employer must discuss the matter with the employee and the employee's elected representatives unless the employee does not want this to happen. The employer must explain why dismissal is being considered and give the employee an opportunity to present any arguments before a final

decision is made. This procedure applies regardless of the reasons for the possible dismissal.

Termination notices must be given in writing and delivered in person or be forwarded by registered mail to the address given by the employee. The notice must contain information on:

- the employee's right to demand negotiations and to institute legal proceedings;
- the employee's right to remain in his or her post pending a court's decision under the provisions of sections 17-3, 17-4, and 15-11 of the WEA;
- the time limits applicable for requesting negotiations, instituting legal proceedings, and remaining in a post; and
- the name of the employer and the appropriate defendant in the event of legal proceedings.

Compensation for unfair dismissal shall cover financial loss and compensation for damage of a nonpecuniary nature. Employees may also claim reinstatement.

An important feature of Norwegian law is that an employee who brings an unfair dismissal claim is generally entitled to be reinstated and remain in his or her post until the court gets to hear the unfair dismissal claim. That can result in many months of further employment. This principle does not apply to summary dismissals (those without notice) for serious misconduct.

NORWAY



TERMINATION OF EMPLOYMENT

Redundancy

Redundancies are generally defined as the dismissal of staff where the situation in the undertaking makes it necessary to reduce staffing levels. The employer does not need to show economic hardship but must have justifiable reasons for a redundancy, and any person made redundant should not be replaced.

An employer with at least 50 employees that is contemplating one or more redundancies must enter into consultations with the applicable employees' elected representatives in addition to the usual requirement to consult with the affected employees personally before making a final decision on a redundancy termination.

Employers must consider whether there is suitable alternative employment before making anyone redundant.

Fair selection procedures must apply if not all employees are being made redundant. The selection pool is usually all jobs in the entire legal entity (not just employees doing the same type of work). A fair method of selection is required, and it should be as objective as possible. The person holding a position that will be removed is not necessarily the person that will be dismissed.

Employees are entitled to work and receive pay during their notice period unless they agree otherwise.

An employee who is made redundant has a preferential right if circumstances change and the employer needs to recruit to fill a position the employee is qualified for in the 12-month period following the expiry of the period of notice.

Collective Redundancy Rules

When an employer proposes to dismiss for reason of redundancy at least 10 employees within a 30-day period, there are some additional specific requirements. The employer must enter into consultations with the employees' elected representatives, with a view to reaching an agreement to avoid collective redundancies or to reduce the number of persons made redundant. There is also a requirement to notify the authorities and provide certain information, as specified in section 15-2 of the WEA.

Notification of Authorities

There is no need to inform the authorities of other terminations.

Protected Employees

There is enhanced protection against dismissal for employees who are pregnant; on maternity, paternity, or parental leave; doing military service; union representatives; or employees who have made certain protected complaints.

NORWAY



EMPLOYMENT REPRESENTATION

In companies employing at least 50 employees, the employer must provide information on important issues concerning the employees' working conditions and discuss those issues with the employees' elected representatives and the company's working environment committee. Sometimes similar requirements are set out in CBAs regardless of the number of employees in the company.

The employees of a limited liability company or public limited liability company have a right to be represented on the board of directors and/or in a corporate assembly if there are more than 30 employees in the company.

BUSINESS TRANSFERS

Norway has implemented the EU Transfers of Undertakings Directive, and statutory protection is in line with the directive. When a business is transferred in a way covered by the directive, the employees are automatically transferred to the new employer and protected against changes to their terms of employment. They also have a right to be consulted. A business transfer cannot by itself justify a dismissal, but that does not prevent dismissals on a business transfer where they are necessary for "economic, technical or organisational reasons."

NONCOMPETES AND RESTRICTIVE COVENANTS

Post-employment noncompetition clauses for up to 12 months are legal under certain circumstances. A noncompetition clause cannot be more extensive than necessary to protect the employer against competition.

Noncompetition clauses cannot be invoked in situations where the employee has been dismissed on the basis of either a reorganization or a workforce reduction, or if the employee has had reason to terminate the employment relationship because of the employer's breach of contract.

An employer must compensate the employee during the restriction period. The employee is entitled to monthly compensation equal to 100 percent of his or her monthly salary, subject to a cap that is revised by the government annually. Monthly salary is based on the employee's salary over the preceding 12 months, excluding any variable amounts.

NORWAY



NONCOMPETES AND RESTRICTIVE COVENANTS

If an employee receives any payment for work from his or her new employer during the period the employer pays compensation, the employer is entitled to make a reduction in the agreed compensation equal to 50 percent of the payment that the employee receives for such work.

In addition, restrictive covenants to protect an employee dealing with customers are legal for up to 12 months after termination. This applies to any customers the employee had been in contact with or been responsible for during the last 12 months of his or her employment. There is no requirement for compensation for such clauses, and they may therefore be more practical for many companies than noncompetition clauses.

If an employee contemplates performing work that may be in breach of a restrictive covenant, he or she can request in writing that the employer state whether it has any objections against the work in question. The employer must reply within four weeks and state its reasons for the decision. The reasoning given shall be binding on the employer for three months. If an employee terminates his or her employment without having requested a written reason, the termination shall have the same effect as a written request, and the employer must respond within four weeks.

If it is the employer that dismisses an employee (rather than the employee resigning), the employer's reasoning must be provided within one week of the dismissal. Otherwise, the employer will lose its right to invoke the restrictive covenants.

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*Nina Gundersen Sandnes, Sunniva Nising Sandvold and Kristin Bjørlo Moe of Kluge, Bergen
Roger James of Ogletree Deakins International LLP*

POLAND



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in Poland and does not need to set up a subsidiary. Different requirements apply to European Union (EU) and non-EU employers.

An employer from an EU country that employs an employee to work in the territory of Poland must register as a Polish ZUS (Social Insurance Institution) payer and pay social security contributions for such employee. There is also an option to transfer these duties to an employee.

An employer from outside the EU that has no head office or branch in Poland is not obliged to pay social security contributions for an employee who performs work in the territory of Poland. An employee is also not obliged to do so, although he or she may take out voluntary insurance.

EMPLOYMENT STATUS AND HIRING OPTIONS

Polish law distinguishes several categories of workers; i.e.:

Each of these types of employment contract may be preceded by a separate probationary period of up to three months, which cannot be extended.

(i) employment contract for:

- indefinite period, and
- definite period (fixed term).

No more than 3 consecutive fixed-term contracts can be used, and the total duration of fixed-term work cannot exceed 33 months.

POLAND



EMPLOYMENT STATUS AND HIRING OPTIONS

(ii) civil law contract (this category includes independent contractors—sometimes referred to as consultants—as well as others not conducting economic activity or working on specific tasks); and

(iii) agency workers: arrangements involving three parties concluding two agreements between: (1) a temporary worker and an agency, and (2) an agency and a temporary employer.

Labor law protection covers only employees ((i) above), while civil law contracts are subject to the Civil Code ((ii) above).

Generally, there is no obligation to engage people as employees rather than independent contractors. However, Polish law requires individuals to be treated as employees (and benefit from employment rights) when:

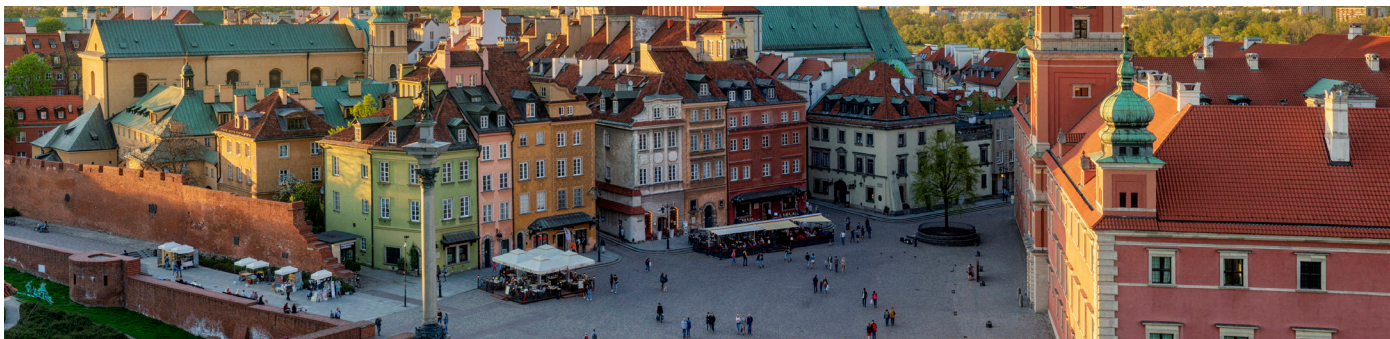
- they are obliged to perform their duties personally;
- the work they perform is supervised and performed at the time and place specified by the employer; and
- they receive remuneration in exchange for their availability at the specified time.

In such circumstances, their work will be considered work performed under an employment relationship, regardless of the title given to the contract by the parties.

RECRUITMENT

Registration for social security and payroll taxes is obligatory, save some specific exceptions (employment by a foreign employer).

POLAND



REGULATION OF THE EMPLOYMENT RELATIONSHIP

An employer must provide employees with written confirmation of the type of employment contract and core employment conditions, including remuneration. This is usually done by providing a written employment contract and so-called “work particulars.” A failure to provide written confirmation of key terms is considered a labor law offense punishable by a fine.

The terms to be set out in writing are:

1. the parties to the contract;
2. date of conclusion;
3. type of employment contract (whether fixed-term or not);
4. type of work/position to be held by the employee;
5. the place of work;
6. the start date;
7. working time status (i.e., whether an employee is employed full time or part time);
8. remuneration details;
9. the daily and weekly working time standards applicable to the employee;
10. the frequency of payment;
11. vacation leave details;
12. the duration of the notice period applicable to the employee; and
13. the applicable collective labor agreement.

In addition, if the employer is not obligated to determine workplace regulations, the work particulars should also include information on applicable night work periods, any procedure to confirm arrival and presence at work, and procedures relating to absence from work.

Language Requirements

The employment contract and any other document related to employment must be in Polish language, although bilingual versions are acceptable but subject to specific limitations. The version in Polish will prevail in case of discrepancies.

The employment contract or other document may in certain circumstances be drawn up in a foreign language at the request of an employee if he or she is from outside of Poland.

POLAND



HOLIDAY ENTITLEMENT

Minimum annual holiday leave entitlement for a full-time employee is as follows:

- (i) 20 working days during the first 10 years of service
- (ii) 26 working days thereafter

The timing of vacation leave is at an employer's sole discretion, in accordance with a vacation schedule and the employees' requests, save for four days of vacation leave where the employee can—by the beginning of his or her working time on the given day—request a “holiday on demand,” which in general should not be refused by the employer.

These four days are included in the number of days of annual holiday leave applicable to a given employee.

Employers may not include public holidays in the entitlements referred to above and they are therefore enjoyed in addition.

The public holidays in Poland are as follows:

- New Year's Day – January 1
- Epiphany – January 6
- Easter
- Easter Monday
- Labour Day – May 1
- Constitution Day – May 3
- Pentecost Sunday
- Feast of Corpus Christi
- Assumption Day
- All Saints' Day – November 1
- Independence Day – November 11
- Christmas Day – December 25
- St. Stephen's Day – December 26

POLAND



WORKING TIME LAWS

Subject to some exceptions, the basic working day may not exceed 8 hours, and weekly working hours may not exceed an average of 40 hours over a 5-day week. The average is calculated over a reference period, which generally should not exceed four months. Overtime hours may exceed these levels but cannot result in total hours of more than 48 hours in any 1 week.

Following completion of a working day, an employee must be given at least 11 hours of uninterrupted daily rest before starting work the next day. An employee shall also be entitled to at least 35 hours of uninterrupted rest each week, including the 11 hours of uninterrupted daily rest due for the day in question. Furthermore, the weekly rest period shall fall on Sunday or on another day of the week, if work on Sunday is permitted.

Employees who work for 6 hours or more per day are entitled to a 15-minute break, which is included in their working hours. As this break is deemed to be working time, an employee should not in fact work longer than 7 hours and 45 minutes per day.

An employer may also introduce 1 break for meals, not exceeding 60 minutes, which will not be included in working hours.

POLAND



ILLNESS

Employees are entitled to 80 percent of normal pay for periods of incapacity due to illness or isolation because of a contagious disease for up to 33 days in total per calendar year (decreasing to 14 days for employees who are 50 years of age or older). The sick pay is paid by the employer. Sometimes a collective bargaining agreement, remuneration regulations, or employment contract may provide for more generous entitlement. In some cases, the 80 percent is replaced by 70 percent (e.g., hospitalization) or 100 percent (e.g., pregnancy or occupational illness). For illness exceeding the aforementioned 33 or 14 days in a calendar year, employees receive sick benefit from the state (at the same amount as sick pay).

STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave

A female employee is entitled to 20 weeks of maternity leave. The duration goes up in cases of multiple births and can reach 37 weeks when 5 or more children are born in one birth.

The leave may start during the six weeks leading up to the expected birth date and no later than the date of birth. Subject to specific conditions, a woman may return to work 14 weeks after the birth.

Costs of the leave are borne by the state. When employers have more than 20 employees, the leave is paid directly by the state. Smaller employers pay the leave to the employee but can claim a reimbursement from the state.

A father has a right to take the balance of the leave not taken by the mother (paid on the same basis) in addition to his right to paternity leave (see below). Under certain circumstances, other family members have a right to part of unused maternity leave.

Paternity Leave

An employed father bringing up a child shall have the right to up to 2 weeks of paternity leave, generally to be taken within 24 months of the child's birth (or adoption) in 1 block or in 2 blocks of at least one week each.

The leave is paid by the state.

POLAND



STATUTORY RIGHTS OF PARENTS AND CARERS

Parental Leave

Both parents can take advantage of parental leave, which lasts for 32 weeks (34 weeks if more than 1 child) after the expiration of maternity leave.

Parental leave shall be granted either in one block or in up to four parts, and used before the child reaches the age of six. There are several restrictions to the usage of this leave.

The leave is paid by the state as a percentage of salary.

Parental Leave for Caring Purposes

Additional unpaid parental leave may be taken for caring purposes, lasting for up to 36 months. It can be divided between the parents, but at least 1 month is for the exclusive use of each parent, so if only 1 parent takes the entire leave, he or she can take only 35 months. As with ordinary parental leave, it must be taken by the end of a calendar year in which the child reaches the age of six.

Adoption Leave

Comparable rules apply to parents after an adoption.

FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Fixed-term employees and part-time workers are, broadly speaking, entitled to the same pay and benefits as comparable permanent, full-time employees.

Special rules apply to agency workers, who are generally entitled to equal pay with comparable permanent employees.

POLAND



DISCRIMINATION AND HARASSMENT

The characteristics protected by law are sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, religious convictions, sexual orientation, and the fact of being employed for a fixed term or an indefinite period or on a full-time or part-time basis. Any detrimental action because of one of these characteristics is unlawful.

Polish law distinguishes two types of discrimination: (i) direct, when an employee is treated less favorably than other employees because of one or several of the protected characteristics above; and (ii) indirect, when a seemingly neutral regulation, criterion, or commenced action causes a detriment to a significant number of employees who belong to a group sharing one or several of the protected characteristics and that regulation, criterion, or action

cannot be justified. An example of indirect discrimination is a requirement that job applicants must be six feet tall, which could discriminate against women and be unlawful unless it can be justified as necessary for the job.

An employee who succeeds with a discrimination claim shall receive compensation no lower than the monthly minimum wage (2.600 złoty (PLN), or approximately EUR 578, in 2020). There is no ceiling on awards, which can run to hundreds of thousands of PLN. Compensation is calculated to cover both damage borne and the lost profit.

Claims for discrimination can be brought by any employee or worker, regardless of length of service, as well as by unsuccessful job applicants.

TERMINATION OF EMPLOYMENT

Statutory Notice

The statutory notice periods applicable to both fixed-term and permanent employment contracts increase gradually depending on length of service:

1. Less than six months' service (calculated to the end of the notice period): two weeks' notice
2. At least six months' service but less than three years' service: one month's notice
3. Three years or more of service: three months' notice

These notice periods apply whether it is the employer or employee giving notice.

Notice periods during any probationary period depend on the length of the probationary period (rather than length of service):

1. Three working days' notice for a probationary period of up to two weeks
2. One week's notice for a period between two weeks and three months

POLAND



TERMINATION OF EMPLOYMENT

3. Two weeks' notice for a period of three months (this is the maximum probationary period)

Notice periods expressed in weeks start running on the day of receipt of notice and are counted in full calendar weeks. This means that regardless of the day on which the letter is delivered, the notice period will not expire earlier than on the Saturday following the completion of the period.

A similar principle applies to periods expressed in months. The notice period will not end earlier than on the last day of the month during which the notice expires.

Unfair Dismissal

Termination of a permanent contract requires a fair and objective reason based on personal performance/conduct or an economic redundancy. This applies from day one of employment, as there is no qualifying period of service required before an individual can bring an unfair dismissal claim. The compensation award for a successful unfair dismissal claim is between two weeks' and three months' pay, but not less than the employee's remuneration for the statutory notice period. It is granted regardless of actual damage borne by the terminated employee.

An employer shall notify in writing the establishment's trade union organization representing the employee about the intention to terminate the employment contract (other than on the expiry of a fixed-term contract), giving the reason for the termination. If the trade union organisation believes that the termination would be unjustified, it may, within five days of receiving the notification, raise

reasoned objections in writing with the employer, which is then required to consider the objections.

Termination Without Notice

An employer may terminate employment without notice due to the fault of an employee who:

- (i) seriously violates basic employment duties;
- (ii) commits an offence that renders further employment impossible, if the offence is obvious or has been established following a proper investigation and process; or
- (iii) due to his or her own fault loses the license necessary for the performance of duties connected with the post.

Termination of employment without notice for one of these reasons must be effected within one month of the employer's discovery of the circumstances.

An employer must consult with the establishment's trade union organization representing the employee before making a termination decision. The union must be informed of the reasons for the proposed termination. If the union has objections, it shall state that immediately, but not later than within three days. While an employer should consider the view of the union, the union cannot prevent a dismissal.

Additionally, subject to specific limitations, an employer may terminate a contract of employment without notice:

1. if the employee's incapacity to work by reason of illness:

POLAND



TERMINATION OF EMPLOYMENT

- a. lasts longer than three months, if the employee has been employed for less than six months; or
 - b. lasts longer than the period of receiving remuneration and welfare benefits or rehabilitation benefits, if the employee has at least six months' employment or if the incapacity was caused by an accident at work or an occupational disease; and
2. in the case of a justified absence from work due to reasons other than ill health for a period longer than one month (but excluding maternity and similar family-related authorized leave).

Constructive Dismissal

An employee may terminate the contract of employment without notice if:

1. a medical certificate has been issued stating that the work performed by the employee constitutes a health hazard, and the employer does not transfer him or her within the time limit specified in the medical certificate to other work appropriate to his or her health condition and occupational qualifications; or
2. the employer has committed serious violations of basic duties toward the employee.

In these cases, the employee will have the right to compensation equal to remuneration for the period of notice. In the case of termination of a fixed-term employment contract, the compensation is payable in the amount of remuneration for the period until which the contract was to last, but not more than for the notice period.

Collective Redundancy Rules

Additional collective redundancy rules apply when an employer with at least 20 employees terminates employment relationships for reasons not related to the employees (including terminations by agreement) over a period not exceeding 30 days if the number of proposed terminations reaches the following thresholds:

1. 10 or more employees, if the employer employs less than 100 employees;
2. 10 percent or more of employees, if the employer employs at least 100 but fewer than 300 employees; or
3. 30 or more employees, if the employer employs at least 300 employees.

When the collective redundancy rules apply, there is a need to:

- (1) consult with applicable employee representatives;
- (2) notify the appropriate government authorities; and
- (3) make severance payments.

The severance payments depend on length of service and range from 1 to 3 months' remuneration, but no more than 15 times the statutory minimum remuneration in the given year. So the total severance payment should not exceed 39.000 PLN in 2020. From June 2020, during the period of an epidemic or emergency due to COVID-19, in the event of a decrease in economic turnover at the employer, the amount of the severance may not exceed 10 times the minimum wage, therefore should not exceed 26.000 PLN.

POLAND



TERMINATION OF EMPLOYMENT

Severance is also due when fewer than 10 employees are terminated if the employer employs 20 or more employees and the terminations are for reasons not related to the employees.

Protected Employees

Subject to specific limitations, a termination letter cannot be delivered to an employee while he or she is:

1. on holiday leave;
2. on justified absence from work;
3. on maternity, paternity, or parental leave;
4. absent due to incapacity caused by illness, unless the duration of the absence has exceeded: three months (if the employee was employed by the employer for less than six months or six months (if the employee has been employed by the employer for at least six months) or if the inability to work was caused by an accident at work or an occupational disease, both increased by three months if followed by rehabilitation;
5. pregnant;
6. due to qualify for retirement within four years;
7. classified by trade union resolution as protected against termination (typically used for trade union activists, but often their “friends” too);
8. a member of the works council of a state-owned or mixed enterprise;
9. a member of certain supervisory boards;
10. a person directed to work in the fight against the COVID-19 epidemic;
11. a pharmacist performing a function of choice in the organs of the Pharmaceutical Chambers;
12. a nurse or midwife serving at the discretion of the authorities of the relevant chambers of local government;
13. a physician exercising an elected function in the bodies of medical chambers and veterinary surgeons exercising an elected function in the bodies of medical and veterinary associations;
14. a senator or councillor;
15. a soldier called up for active military service;
16. a social labour inspector;
17. a member of a staff council;
18. a member of a special negotiating body or a European Works Council; or
19. a member of the special negotiating body, representative body or employee representatives in the European company, the European cooperative society, and the supervisory board of the company resulting from the cross-border merger.

POLAND



EMPLOYMENT REPRESENTATION

There is no general obligation to consult/agree with employee representatives or unions on business decisions, save from certain situations specified by law, such as:

1. collective redundancies;
2. business transfers;
3. introduction or changes of telework regulations;
4. waiver of establishment of a company social benefits fund;
5. consultation on health and safety measures;
6. establishment of an occupational health and safety committee;
7. agreeing on the conditions for using the company social benefit fund; and
8. signing an agreement to establish an occupational pension scheme.

BUSINESS TRANSFERS

Similar to the protocol in other EU countries, when an employing establishment (or a part thereof) is transferred to another employer, the new employer shall, by operation of law, become a party to the previous employment contract. The new employer may make terminations or change terms of employment only in exceptional circumstances, but the transfer itself cannot be the reason for such termination.

The former employer and new employer shall be jointly and severally liable for the liabilities resulting from the employment relationship that originated before the transfer, and the new employer is responsible alone for obligations after the transfer. Both employers must notify their respective employees in writing in advance of the expected date of transfer, the reasons, and the legal, economic, and social consequences thereof. The notification should also set out any intended changes to conditions of employment. The notification should be provided at least 30 days before the expected date of transfer. Additional rules apply if the workforce is unionized.

POLAND



NONCOMPETES AND RESTRICTIVE COVENANTS

Noncompete agreements are possible. They can cover the term of employment as well as a time period following termination. Post-termination restrictions must be in writing and be reasonable in terms of duration and scope. For the post-termination agreements to be enforceable, the employer will need to show that the employee had access to particularly important information, the disclosure of which could cause damage to the employer. An employer that suffers damage as a result of an employee violating a noncompetition clause may claim compensation for the damage.

An employee restricted post-termination from competing is entitled to compensation, which must be no less than 25 percent of the remuneration received by the employee before the termination of the employment relationship for a period corresponding to the duration of the competition ban.

Provisions preventing an employee from doing business with customers are also permissible in Poland.

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***Małgorzata Wysocka & Tomasz Suwara of KKS Legal, Warsaw
Roger James of Ogletree Deakins International LLP***

ROMANIA



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly or through a local subsidiary or a representative office. The option of hiring employees directly is often rejected due to the risk of having a permanent establishment in Romania for tax purposes.

Payroll registration is required, and employers are required to withhold income tax and social security from payments to employees—in contrast to independent contractors, who are paid gross and responsible for their own taxes. The foreign entity may keep or may delegate to the subsidiary/representative office the powers to keep the electronic general registry of employees (REVISAL).

EMPLOYMENT STATUS AND HIRING OPTIONS

The two main methods of engagement are as an employee or independent contractor.

According to the Romanian Labour Code, an “employee” is a person who performs work in return for consideration under the authority of an employer. Thus, the employee is subordinated to the employer and follows the instructions of the employer (i.e., the allocated tasks, the place of work, and the working schedule—collectively known as “dependent activity”).

Contractors, on the other hand, maintain a high degree of freedom regarding their working schedule, workplace, and clients, but assume the risks inherent to their activities (known as “independent activity”).

Statutory rights and the implied obligation of loyalty do not apply to independent contractors. Disputes can arise if a contractor claims employment rights (typically on termination), and the tax authorities can also instigate investigations and reconsider an independent activity

ROMANIA



EMPLOYMENT STATUS AND HIRING OPTIONS

as dependent activity with the consequence of payment of the related social contributions. Key factors used to determine an activity as independent activity, according to the Romanian Fiscal Code, are:

1. freedom to choose the working hours and workplace;
2. freedom to collaborate with different clients;
3. taking on the performance risk;
4. freedom to use their own equipment;
5. independent use of physical and intellectual capacities;
6. adhesion to a freelancer category of contractor; and
7. freedom to collaborate with other parties.

At least four of the above criteria must be met in order to qualify an activity as independent.

Types of Employment

There are two types of individual employment agreements in Romania, regardless of whether the individuals are residents or nonresidents:

- Individual employment agreement for indefinite period
- Individual employment agreement for definite period (fixed-term employees)

RECRUITMENT REGISTRATION

An employer must register any new employment agreement with the electronic general registry of employees (REVISAL), which is electronically transmitted to the labor authorities, and must also submit certain statements with the fiscal authorities for income tax and social contributions purposes.

A medical check before concluding an employment agreement is mandatory. If this obligation is not met, the agreement will become null.

As a rule, employment agreements should be concluded for an unlimited duration. By way of exception for certain projects or situations, an individual employment agreement may be concluded for a limited duration. However, there is a legal maximum of 3 successive fixed terms, and the maximum period is 36 months.

Probationary Periods

Maximum probationary periods depend on the type of employment agreement:

- 90 calendar days for employees with nonmanagement positions (known in Romania as “execution positions”)
- 120 calendar days for employees with management positions
- 30 calendar days for employees with disabilities

Probationary periods for fixed-term contracts may be agreed upon as long as they do not exceed:

- 5 working days for a contract less than 3 months;
- 15 working days for a contract of 3 to 6 months;
- 30 working days for a contract longer than 6 months; or
- 45 working days for a contract longer than 6 months for employees occupying management positions.

ROMANIA



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Individual employment agreements must be concluded in writing, in the Romanian language, and signed no later than the day prior to the commencement of work. The obligation to conclude the individual employment agreement in writing is on the employer. An employee must be provided with an original copy of the individual employment agreement prior to starting work.

The individual employment agreement must set out the following essential conditions of employment:

1. Identity of the parties
2. Workplace
3. Employer's headquarters
4. Job position, according to the Classification of Occupations in Romania, and job description
5. Criteria of employee's appraisals
6. Any job-related risks
7. Starting date of the agreement
8. Duration of the agreement, where applicable
9. Holiday entitlement
10. Notice period
11. Salary and other indemnifications
12. Work schedule
13. Any collective bargaining agreement that is applicable
14. Any probationary, trial period

Legally Required Policies

Every employer must have a handbook of policies (known as an "Internal Regulation"), irrespective of the number of employees. The Internal Regulation is drafted

by the employer, but in consultation with employees' representatives (where they exist), and must be communicated to all employees. The Internal Regulation must include, at a minimum:

1. rules on the protection, hygiene, and safety at work in the unit;
2. rules on nondiscrimination and the removal of all forms of violation of dignity;
3. rights and obligations of employers and employees;
4. procedure for claim/complaint settlement of individual employees;
5. specific rules on labor discipline in the unit;
6. disciplinary offenses and penalties;
7. rules relating to disciplinary proceedings;
8. other ways of implementing specific legal or contractual provisions; and
9. criteria and procedures for evaluating professional employees.

In order to ensure safety and health at work and to prevent work accidents and occupational diseases, employers also have to:

1. draft and enforce a prevention and protection plan consisting of technical, sanitary, organizational, and other measures, based on a risk assessment; and
2. develop their own instructions for completing and/or applying health and safety regulations at work, taking into account the nature of the activities and jobs under their responsibility.

ROMANIA



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Employers must ensure that each worker is adequately and appropriately trained in safety and health matters in a form that is job-specific.

Language Requirements for Documents

Employment agreements, the Internal Regulation, and other employment documents must be in the Romanian language. Bilingual versions may be used, but the Romanian language version will apply in the event of any inconsistencies.

Other Sources of Terms of Employment

The main sources of employment laws are the Labour Code and Law no. 62/2011, regarding social dialogue. Additional legislation covers labor, occupational health and safety,

protection of maternity in the workplace, nondiscrimination, social security, and the protection of employees in the case of transfer of undertakings.

Collective bargaining agreements (CBAs) may also apply and may be negotiated at the level of the unit, group of units, or sector of activity, but always only in workplaces where the employer has signed the applicable CBA.

Negotiation of CBAs at the unit level is mandatory for companies with at least 21 employees. It is not mandatory to conclude a CBA if negotiations fail, only to enter into the related negotiation.

ROMANIA



HOLIDAY ENTITLEMENT

The Labour Code entitles employees to a minimum of 20 working days' holiday per year. Public holidays, as well as paid days off established by a CBA, are not included in this number.

How and when leave is taken is governed by the employment agreement and any applicable CBA.

Leave does not need to be taken in one block, but an employee must be granted at least 10 consecutive working days of leave. If an employee has justified reasons not to take all of his or her leave during a calendar year, carried-over leave must be granted within 18 months of the end of that leave year. Leave must actually be taken and cannot be "paid in lieu," except upon termination of employment.

If an employee is sick or requires leave for reasons of maternity (risk) leave or attending a disabled child during any annual leave, the annual leave days are credited back to the employee to use another time.

Annual leave is paid at base salary plus any other permanent allowances or additional payments normally due for the period in question, as stipulated in the individual employment agreement, and it is calculated based on the daily average of these payments in the last three months.

There are 15 public holidays in Romania, and employees are normally entitled to paid leave on these days in addition to their 20 days' entitlement. The days are New Year's Day, New Year Holiday, Union of the Romanian Principalities, Orthodox Good Friday, Orthodox Easter Sunday, Orthodox Easter Monday, Labour Day, Orthodox Whit Sunday, Orthodox Whit Monday, Children's Day, Assumption Day, Feast of St. Andrew, National Day of Romania, Christmas Day, and Second Day of Christmas. Where employees are required to work (for example, the emergency services), they are entitled to compensatory days off or extra pay if, for justified reasons, days off cannot be granted.

Employees belonging to religions other than the Orthodox Christian ones have the right to two paid leave days for each of the three annual religious holidays, recognised by their religion. These paid leave days must be granted by the employer on other days than the days of legal holiday established according to the law or annual rest leave.

ROMANIA



WORKING TIME LAWS

The normal work time is eight hours per day, or an average of 40 hours per week. The maximum legal work time may not exceed an average of 48 hours per week, including overtime work.

Employers may establish individualized, flexible working hours with employees' consent.

Overtime may be performed at the request of the employer and with the consent of employees, except for force majeure cases or other cases where urgent work is required such as to prevent accidents.

Overtime hours (any hours beyond 40) are compensated with paid time off within the following 60 calendar days. If that is not possible, overtime must be paid at 175 percent of base salary.

In the case of part-time contracts, overtime work is permitted only for force majeure cases or for other urgent work such as to prevent accidents.

ILLNESS

Employees are entitled to sick leave allowance at 100 percent or 75 percent of their regular remuneration, depending on the cause of the incapacity. This is payable for 90 days, with the potential to be extended to 183 days upon qualifying medical approval—and potentially beyond that for certain diseases.

Employers are obliged to pay for the first five days of incapacity. After that, payment is made through the Romanian state, although this is still actually paid by the employer, which can recover these amounts from the National Health Insurance Fund. Claims for reimbursement should be made to the National Health Insurance House of Romania within 90 days.

ROMANIA



STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

Maternity leave consists of 126 calendar days, usually 63 days before birth (pregnancy leave) and 63 days after birth (nursing leave). However, a woman may choose to split the total leave in a different proportion than 50/50 if she wants, subject to a doctor's approval, but the nursing leave must not be fewer than 42 calendar days.

The right to maternity leave and maternity allowance (maternity pay) is dependent on the woman having contributed for at least 6 months to the Sole National Fund for Health Insurance in the 12 months leading up to the start of maternity leave. Maternity allowance is paid at 85 percent of total gross remuneration, calculated as an average for the previous 6 months (capped at RON 26,760 – EUR 5,528 in 2020).

Maternity allowance is paid at 85 percent of total gross remuneration, calculated as an average for the previous six months (capped at RON 22,800 – EUR 4,850 in 2018).

In reality, the vast majority of women will use Additional Parental Leave to delay their return to work following maternity leave.

Pregnant employees who have returned from nursing leave or who are breastfeeding and are working in hazardous conditions are entitled to reallocation to a safer position, or to the improvement of their working conditions. If neither

is possible, these employees are entitled to maternity risk leave, which is paid leave of up to 120 days.

Women who have recently given birth or are breastfeeding may not be compelled to perform night work and may request a two-hour deduction to their daily normal working time, which is therefore reduced to a maximum of six hours instead of eight.

Paternity Leave and Pay

Fathers are entitled to five working days of paternity leave. The paternity leave must be granted upon request and be taken within eight weeks of the birth of the baby. It is paid at full pay by the employer.

If a father has taken an approved course on the rearing of children, he is entitled to an additional 10 working days of paternity leave.

In addition, in situations where the mother dies at birth or during nursing leave, the father is entitled to the rest of the mother's leave and pay.

Additional Parental Leave (Child Raising Leave)

Mothers and fathers who have qualifying earnings may take Additional Parental Leave if they have children under the age of two (three in the case of disabled children). This can last until the child's second birthday (third birthday in

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STATUTORY RIGHTS OF PARENTS AND CARERS

the case of disabled children) and is paid by a monthly allowance from the Romanian state at 85 percent of net total income (capped at RON 8,500 – EUR 1,765).

Protection for Family Leave

Employers cannot dismiss employees during maternity or parental leave, or for a period of six months after their return to work from parental leave, unless it is because of judicial reorganization or bankruptcy of the company. Note that this six-month protection does not apply to a return from maternity leave, although most women take parental leave immediately after their maternity leave, so they will be protected.

Adoption Leave

Parents who adopt are generally entitled to the same rights as those above.

Other Family Leave

Leave may also be available for other family events, such as weddings, funerals, and child sickness (when the child is under 7 years of age or 18 if disabled), as set by law, any applicable CBA, or by internal regulations.

FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

All the rights and obligations applicable to full-time workers and to workers employed for an unlimited period of time are applicable to part-time workers and fixed-term workers as well, subject to proportional adjustments where applicable. Agency workers generally enjoy the same rights as regular employees.

Agency work arrangements are regulated by the Labor Code and by Government Decision no. 1256/2011.

Employment agencies must be authorized by the Ministry of Labor and Social Protection for providing temporary skilled and/or unskilled personnel. A temporary position must not last longer than 24 months but can be renewed as long as the total duration does not surpass 36 months.

ROMANIA



DISCRIMINATION AND HARASSMENT

Employers must comply with the principles of equal treatment, nondiscrimination, and equal opportunities for all their employees.

Protected characteristics in Romania are gender, citizenship, language, sexual orientation, genetic characteristics, age, national origin, race, color of skin, ethnic origin, religion, political orientation, social origin, disability, chronic noncontagious disease, HIV infection, family conditions or responsibilities, trade union membership, or the fact of belonging to a disadvantaged category.

Employers must observe the nondiscrimination principles during the recruitment process, when concluding individual employment agreements, and for the entire term of employment, including termination.

Indirect discrimination is also unlawful. This is any provision, action, criterion or seemingly neutral practice that has the effect of disadvantaging a person compared to another person based on one of the criteria provided above, unless that provision, action, criterion, or practice is objectively justified by a legitimate aim, and if the means to achieve that aim are proportionate, appropriate, and necessary.

For example, indirect discrimination arises when an employer applies a “provision, criteria or practice” that applies equally to all but is harder for people with

a particular characteristic to achieve (for example, a requirement for employees to be at least 1.8 metres tall is potentially indirectly discriminatory against women). It is unlawful if it cannot be justified by a valid business reason.

Moreover, harassment is also prohibited. Harassment consists of any type of behavior based on one of the protected criteria that has as its purpose or effect the damage of a person’s dignity and leads to the creation of an intimidating, hostile, degrading, humiliating, or offensive environment.

If an employee considers that he or she has been discriminated against, he or she is entitled to file a formal complaint with the National Council for Combating Discrimination within one year of the date when the discriminatory action took place or from the time he or she learned of such an action.

If the employee is not satisfied with the result of the complaint, he or she is entitled to file a discrimination claim to a court of law. The claim may be settled amicably by the parties, if they reach an agreement, even after the litigation is initiated.

There is no period of service required before an individual can bring a claim, and claims can be brought by nonemployee job applicants who were unsuccessful.

ROMANIA



TERMINATION OF EMPLOYMENT

Statutory Notice

As a general rule, an individual employment agreement may be terminated by the employer or employee giving notice, by mutual consent, or by right of law.

In cases of dismissal, employers must give notice of termination (at least 20 working days in advance) in the following cases:

- Dismissal due to employee's incapacity to work
- Dismissal for professional inadequacy
- Dismissal for reasons unrelated to the employee (i.e., restructuring of his or her position)

When dismissal is for serious misconduct (cause), there is no need for the employer to honor a notice period.

Grounds for Dismissal

An employer must have adequate grounds to dismiss an employee. An individual employment agreement may only be terminated by the employer in limited situations set by the Labour Code (employee-related reasons and nonemployee-related reasons—"business-related reasons"). This rule applies to both indefinite-term employment agreements and terminating fixed-term agreements before expiry of the term.

The acceptable reasons for dismissal are the following:

1. Employee-related reasons (individual):
 - a. Severe disciplinary breach or regular breaches of the employment obligations
 - b. Preventive or home arrest of the employee, for a period exceeding 30 days
 - c. Physical or mental inability to perform the work duties, as attested by the competent medical bodies
 - d. Professional inadequacy

2. Business-related reasons (individual or collective):

Under Romanian law, dismissal may occur in cases where an employee's position is being eliminated. However, the elimination should be (i) effective (the position should be eliminated from the organizational chart of the company); and (ii) determined by a real and serious cause.

In practice, courts have held that a position is effectively eliminated if it is removed from the organizational chart of the company. However, such removal has not been considered effective if the position was reinstated under a different designation (with similar or identical job-related tasks) or within a short period of time (after its previous removal).

Procedurally, the following steps must be taken when dealing with a position elimination:

- a. Adopting the internal decision to eliminate the position from the company's organizational chart

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TERMINATION OF EMPLOYMENT

- b. Modifying the organizational chart
- c. Serving notice of termination on the employee (with the observance of the relevant notice period)
- d. Issuing the formal dismissal decision at the expiry of the notice period

Other Termination Specifics

An employee may resign at any time by notifying the employer in writing, without the need to provide any reason. An employee must generally give an employer notice of resignation up to the statutory maximum period:

- up to 45 working days for management positions; or
- up to 20 working days for nonmanagement positions.

The termination of an employment agreement may also occur by mutual consent between employer and employee. In such cases, no special procedural conditions are required under Romanian law. The written agreement is sufficient for the termination of employment relationship.

Individual Claims

There is no period of service required before an individual can bring a claim.

Collective Redundancy Rules

Additional collective redundancy procedures apply for mass layoffs. These apply when the employer proposes to terminate at least (i) 10 employees, if the employer has between 21 and 99 employees; (ii) 10 percent of employees, if the employer has between 100 and 299 employees; or (iii) 30 employees, if the employer has at least 300 employees, over a period of 30 days. A specific procedure, including specific timelines and obligations, has to be rigorously followed by the employer.

In addition, the employer must consult any trade union/ employee representatives regarding the intended layoff and must notify the labor authorities of such dismissal.

In cases of collective redundancies, as is also the case with individual dismissals, the employer's failure to comply with this obligation entitles the dismissed employees to challenge the dismissal decision in court. This can result in the cancellation of the dismissal and reinstatement.

Furthermore, in cases where an employer has failed to pay compensation to which an employee is entitled, the employee may request such payments in court at any time up to three years from the payment due date.

ROMANIA



TERMINATION OF EMPLOYMENT

Notification of Authorities

There is no requirement for permission from the labor inspectorate, the government, or other state body for the termination of an individual employment agreement. However, in cases of collective redundancies, the Labour Code requires that employers notify the labor authorities. Nonetheless, all cases of termination of an employment relationship require the date and legal grounds for termination to be registered by the employer in the general employment record (REVISAL).

Protected Employees

The dismissal of an employee during sick leave, pregnancy (provided the employer has been informed of the pregnancy), maternity leave, parental leave (including six months after the return of the employee to work), child sickness nursing leave, or annual leave, or whilst holding an elected position within a trade union body, is prohibited.

However, exceptions apply for insolvency, legal reorganisation, or winding-up.

Special protections exist for employees dismissed as part of collective redundancies. Should the employer recreate the position eliminated or resume the activity performed by the employee within 45 days of the dismissal, the dismissed employee has the right to be rehired without interview.

Severance Payments

There is no legal obligation to pay any compensation in cases of termination of the individual employment agreement, unless otherwise provided in the individual employment agreement or any applicable CBA.

ROMANIA



EMPLOYMENT REPRESENTATION

Trade Unions

Trade unions are independent and apolitical legal entities established for the protection and promotion of collective employment rights, as well as the individual rights of their members.

In order for a trade union to be recognized, it must be registered with the territorial competent court of law. This requires at least 15 employees of the employer to sign the minutes of the organisation.

In addition to representing employees in collective bargaining, trade unions must meet the following requirements:

- At company level: to be legally established its membership must be at least 50 percent plus 1 of the number of employees
- At industry level or group companies level: to be a representative organisation for that particular industry, requiring membership of at least 7 percent of all employees in that industry
- At national level: to be a nationally representative trade union confederation membership of at least 5 percent of the total number of employees in the country.

Trade unions have the right to submit, on behalf of their members, petitions and motions of claims based on a power of attorney issued by such members.

Representative trade unions also have the right to take part in collective bargaining and to be consulted with respect to significant measures envisaged by the employer, such as collective layoffs and business transfers.

Employee Representatives

In the absence of union recognition, employees may elect employee representatives to promote and defend their legal rights if there are more than 20 employees and no trade union is established at employer level.

Employee representatives cannot perform some activities that are recognized by law as exclusively the domain of trade unions. They are elected for a period that must not exceed two years. The employees decide on the specific tasks, the manner of accomplishing them, and the duration and limits of their mandate, according to the law. However, the number of actual representatives has to be decided in agreement with the employer, based on the total number of employees.

The main tasks of employee representatives include (i) engaging in consultation on mass redundancies and business transfers; (ii) upholding employment rights; (iii) participating in drafting the Internal Regulation; (iv) promoting the interests of employees in terms of salary, working conditions, working time and rest, work stability, and any other occupational, economic, and social interests related to the employment relationship; (v) notifying the

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EMPLOYMENT REPRESENTATION

labor inspectorate about any noncompliance; and (vi) negotiating CBAs.

Works Councils

Works councils may only be set up pursuant to European Union (EU) regulations regarding employers/groups of employers. They are rare.

Where works councils exist, the members are appointed by any existing employee representatives or recognized trade

unions, or, in the absence of either of these, elected directly by the employees.

When there is a works council, it must be informed of any measures that will affect the interests of employees. The works council is entitled to voice any concerns it may have, but it does not have so-called “co-determination rights”; thus, it cannot prevent measures from proceeding.

Once a works council is set up, it should collaborate with any recognized trade unions or existing employee representatives to simplify consultation arrangements.

BUSINESS TRANSFERS

Law no. 67/2006 defines a business transfer as the transfer of an undertaking, business, or part thereof from the ownership of the transferor (seller) to the ownership of the transferee (buyer), with the aim of continuing the main or ancillary activity, including nonprofit organizations.

Prior to any transfer, both the seller and the purchaser have an obligation to inform employee representatives or, in their absence, the employees directly about the transfer and any implications for employees. This should include any envisaged “measures,” such as terminations or changes to working conditions.

After the transfer, all of the seller’s rights and obligations arising from individual employment agreements and collective labor agreements transfer to the purchaser, although this does not apply where the seller is a bankrupt company or a company subject to judicial reorganisation.

Prior to a transfer, a seller is obliged to notify the buyer of all the rights and obligations that will be transferred, such as details of salaries and bonus schemes.

Employees are protected from dismissal or changes to terms of employment on a transfer. However, a purchaser may seek to renegotiate collective agreements with employee representatives once a year has passed from the date of the transfer.

ROMANIA



NONCOMPETES AND RESTRICTIVE COVENANTS

Noncompete obligations are valid only if they are limited to a period of two years from the termination and reasonable in respect to the issues listed in (i) to (v) below.

In addition, the former employer must pay a noncompeting indemnification of at least 50 percent of the average gross salary for the 6 months prior to the termination date.

For the enforcement of a noncompete obligation, the parties must expressly provide in the individual employment agreement, or in an addendum to the individual employment agreement, certain elements stipulated by law: (i) the prohibited activities; (ii) any third party in favour of which the employee is restricted to perform such activities; (iii) the duration; (iv) the amount of the noncompete monthly indemnification; and (v) the applicable geographic area.

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***Andreea Bibu and Bruno Leroy of Leroy si Asociatii, Bucharest
Roger James of Ogletree Deakins International LLP***

SPAIN



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in Spain and does not need to set up a local subsidiary. Before employing local workers, a foreign employer must be registered as an employer with the Spanish tax authorities and the social security authorities. An employer wanting to register must file several documents, some of which need to be legalized and translated.

Social security contributions are compulsory for employers and employees. Employers must withhold their employees' contributions from their salaries and are liable for this withholding. The monthly social security contribution is determined by applying the rates provided by law to the adjusted income (the social security base) of the employee. The law establishes a minimum and a maximum social security base for each professional group.

EMPLOYMENT STATUS AND HIRING OPTIONS

The two main methods of engagement are as an employee or as an independent contractor. The Spanish legal system draws a narrow distinction between relationships that are categorized as dependent or subordinate (labor or employment relationships) and those that are independent or autonomous (commercial relationships).

Employment rules and regulations apply to the former category where an employee renders services for a

company under the managerial powers and organization of the employer, subject to the criteria of dependence and subordination.

Independent contractors are typically autonomous, decide themselves how to undertake the professional services, and are not subject to the managerial powers of the company. Contractors are liable for their own social security contributions as self-employed workers.

SPAIN



EMPLOYMENT STATUS AND HIRING OPTIONS

In order to differentiate between an employee and an independent contractor, one should not only bear in mind the contract signed by the parties, but also the characteristics of the relationship itself, such as time control and organization of tasks or schedules. In this sense, heavy dependence of the contractor on the company would imply the existence of an employment relationship, while autonomous development of such activities would suggest a commercial relationship as an independent contractor. Dependence must be understood as the faculty of the employer to organize in detail the activity of the employees and the exercise of managerial powers upon them.

As a matter of practice, the usual test would look at the following features:

- Who organizes working time, daily weeks, and schedules

- Whether the individual has a professional organization
- Whether the company supervises and controls the performance of the services and whether there is a clear reporting line
- Who bears the costs of the payment of taxes and social security contributions

Spain also has a third category, called “economically dependent contractors,” which applies to an independent contractor who receives a substantial part of his or her earnings from one company.

It is a hybrid structure in between an employee and an independent contractor, but it is not widely used in practice.

RECRUITMENT

There are no filings required when employing someone, except for registering for payroll taxes and for social security contributions.

SPAIN



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Contract of Employment

Employers are obliged to provide written confirmation of the key terms and conditions of employment (e.g., identification of employer and employee, basic salary, working time, place of work, type of contract, probationary period).

This is usually done by providing a written employment contract. Employers that prefer to label this document an “offer letter” may do so provided that the letter is signed by the employer and the employee, and mentions the applicable terms and conditions.

The contract of employment (offer letter) may be written in English, although it is advisable to draft the agreement in both Spanish and English.

Probationary Period

Any probationary period has to be agreed in writing. Collective agreements provide for six-month limits for qualified personnel and two-month limits for other employees.

In companies with fewer than 25 employees, unqualified personnel may have a probationary period of up to 3 months.

Collective Agreements

In addition to the contract of employment, the terms and conditions of employment are governed by the applicable collective agreements. Collective agreements are binding on a sector (i) whether or not an employee is a member of a union and (ii) whether or not the employer is a member of the employer’s association that signed the collective agreement. Collective agreements are negotiated between employers or employers’ associations and employee representatives. They have an industry-level scope (e.g., chemical or construction industry) and a territorial scope (they may be negotiated for the whole country or at a lower territorial level). Some collective agreements are entered into at the company level and apply only to that company.

Collective agreements cover matters such as minimum salary, working conditions, overtime hours, per diem expenses, seniority bonuses, working hours, probationary periods, professional training, professional classification, reasons of dismissal, employee trade union rights, health and safety regulations, and substantial changes in working conditions. They are generally entered into for periods of one or two years, although they can be extended for longer periods.

SPAIN



HOLIDAY ENTITLEMENT

In addition to public holidays, employees are entitled to annual paid leave of at least 30 calendar days (equal to 23 business days).

Collective agreements will also often specify circumstances where additional leave can be taken (some common examples are 15 calendar days for an employee's wedding, two days for the death of a relative and one day for moving house).

WORKING TIME LAWS

The maximum number of normal working hours per week is 40. These may be computed on an annual average basis, subject to a maximum of nine hours per day. Employees cannot opt out of the working time limits but can work a limited number of additional, overtime hours.

As a general rule, overtime must not exceed 80 hours per year and has to be compensated with money or an equivalent amount of time off. The amount paid per hour of overtime cannot be below the rate paid for ordinary working hours.

In any case, employers are prohibited from requiring employees under the age of 18, night workers, and part time employees, among others, to work overtime.

It is common for executives to work without a set working schedule, and in reality, many exceed the maximum weekly limit without it being monitored.

ILLNESS

Employees who are unable to work because of sickness or injury are required to submit a doctor's certificate (colloquially known as *parte de baja*) obtained from the doctor appointed by the social security office after two days of absence. Employers will typically accept the employee's written confirmation of sickness for shorter periods of sick leave (self-certifying).

Employees are entitled to sickness pay, which is paid by the social security office and which usually covers a percentage of the employee's monthly salary. Applicable collective agreements may oblige companies to supplement the sickness pay paid by the social security office. The terms of this supplementary payment may vary for each collective agreement.

SPAIN



STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

Maternity leave can last up to 16 weeks.

It is mandatory for the birth mother to take 6 weeks of the total 16 weeks on a full-time basis and immediately after the birth of the child. The remaining 10 weeks can be taken either before the child is born or after the six mandatory resting weeks past the birth.

During the year 2020, it is possible for mothers to share two weeks of maternity leave with the other parent, with the exception of the mandatory 6 weeks of rest.

However, from 1 January 2021, no weeks of maternity leave may be shared with the other parent.

In cases of multiple births, maternity leave is increased by two weeks for each additional baby. Two additional weeks is also granted when the child is suffering a degree of disability equal or exceeding 33 percent.

During maternity leave, a public maternity leave benefit is paid by the state, which is 100 percent of the employee's base of contribution to social security.

Paternity Leave and Pay

The period of paternity leave depends on the year of the child's birth.

1. During the year 2020, the parent other than the mother is entitled to 12 weeks of leave. Four of those weeks must be taken on a full-time basis and immediately after the birth of the child.
2. However, from 1 January 2021, paternity leave will be extended to 16 weeks. Six of those weeks will be mandatory after the child's birth.

In both cases, the remaining weeks can be taken after the mandatory resting weeks, until the child reaches the age of 12 months.

During paternity leave, a public paternity leave benefit is paid by the state, which is 100 percent of the employee's base of contribution to social security.

Adoption and Foster Care Leave

The period of this leave depends on the date of the adoption or foster care:

1. During the year 2020, both parents are entitled to mandatory leave of six weeks, on a full-time basis and immediately after the court/administrative decision that constitutes the adoption or foster care.
In addition to these six mandatory weeks, both parents may have a total of sixteen voluntary weeks, which must be enjoyed without interruption within twelve months after the court/administrative decision.

SPAIN



STATUTORY RIGHTS OF PARENTS AND CARERS

Each parent may individually enjoy a maximum of ten weeks of those sixteen total weeks, leaving the remaining weeks at the other parent's disposal.

2. From 1 January 2021, each parent shall take the same period of leave: 16 mandatory weeks for each adopter or foster parent, and 10 voluntary weeks within 12 months after the court/administrative decision.

In cases of international adoption, the period of leave may begin up to four weeks before the decision that constitutes the adoption.

In cases of multiple adoptions or foster care, the period of the leave is increased by two weeks for each additional child. Two additional weeks is also granted when the child is suffering a degree of disability equal or exceeding 33 percent.

Other Family Leave

There are also statutory entitlements to leave in cases of emergency involving a close family member and also additional unpaid parental leave to spend additional time with children over and above maternity and paternity entitlements.

SPAIN



FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Fixed-term contracts of employment are acceptable only in certain circumstances:

- To carry out a specific task or service
- Due to an extraordinary increase in production levels
- To temporarily replace an employee on absence with a right to return to work (e.g., maternity leave)
- For apprenticeship or training purposes

Part-time employment contracts are also allowed and may either provide for a reduced number of hours or work for certain months only (i.e., during the high season only).

Agency workers and temporary employment agencies are permitted, subject to some limitations. Besides providing all kinds of temporary employment, temporary work agencies usually also act as outplacement agencies.

DISCRIMINATION AND HARASSMENT

The characteristics protected by law are gender, age, ethnic or racial origin, marital status, social status, religion or religious beliefs, political orientation, sexual orientation, membership in a union, and language. Any detrimental action because of one of these characteristics is unlawful.

Harassment is a form of discrimination and arises when there is unwanted conduct related to a person's protected characteristic (e.g., sex or race) that violates his or her dignity or is otherwise hostile, humiliating, degrading, intimidating, or offensive.

Claims for discrimination can be brought by any employee or worker regardless of length of service, as well as by potential recruits and ex-employees. Compensation awards may vary significantly. A person who has alleged discrimination (or given evidence in support of another) is protected from retaliation or detriment (known as victimization).

SPAIN



TERMINATION OF EMPLOYMENT

Termination of Employment Based on Disciplinary Reasons

A disciplinary dismissal must be based on gross misconduct, such as neglect of duty, disobedience of legitimate orders, intentional and continuous decrease of productivity, absence or lateness without good cause, disorderly conduct, turning up for work in a state of intoxication, or a significant breach of trust.

A disciplinary dismissal must follow certain formal requirements. The employer must notify the employee of the dismissal in writing, including a complete description of the circumstances justifying the termination and specifying the effective date of termination. There is no need to give the employee an opportunity to explain his or her actions before making a decision on whether to dismiss, unless that is a requirement of an applicable collective agreement.

There is no need to observe any notice period or to pay any severance.

Termination of Employment Based on a Business-Related Reason (Redundancy)

This type of termination may arise where either an economic, technical, organizational, or productive reason exists to make the employee redundant:

1. Economic grounds require a negative economic situation, and normally, the company will be showing losses.

2. A technical redundancy exists when technical advancement means fewer employees are required.
3. An organizational reason exists where, for example, positions may be duplicated.
4. A productive reason includes a situation where a supplier contract is terminated by a third party, resulting in less work.

In relation to procedure, 15 days' prior written notice (or payment in lieu) has to be given to the employees, and the grounds for the dismissal must be clearly and precisely stated in the termination letter. There is no need for any consultation prior to giving notice (apart from collective redundancies).

A redundancy payment equals 20 days of salary per year of service. Salary includes base salary, commissions, and bonuses (those earned in the last year), plus some benefits paid either in cash or in kind. A redundancy payment is capped at 12 months' pay.

Termination of Employment Without Cause

This type of employment termination allows a company to terminate an employment relationship with immediate effect, regardless of whether there is cause to do so. The employee is entitled to a severance payment equal to (i) 45 days of salary per year of service accrued until 2012 and (ii) 33 days of salary per year of service accrued after 2012. The payment is usually capped at 24 months' pay (certain exceptions apply).

SPAIN



TERMINATION OF EMPLOYMENT

Restrictions for Certain Categories of Employees: Discrimination and Employee Representation

Some employees are protected against termination under Spanish law:

- Workers' representatives (members of works council and health and safety council)
- Handicapped employees
- Pregnant women
- Employees working reduced hours to care for a child or children (for children up to eight years of age) or a handicapped relative
- Employees who are taking or have taken maternity leave or paternity leave within a period of nine months
- Employees who have made whistleblower claims or formal litigation complaints against their companies

Collective Redundancies

If redundancies affect a significant number of employees, they may be considered a collective dismissal. The thresholds for collective redundancies are as follows: (i) 5 terminations if a workplace is closing completely and all jobs will be lost, (ii) 10 terminations if the company / work center employs fewer than 100 employees, (iii) 10 percent

of the employees if the company / work center employs between 100 and 300 employees, and (iv) 30 terminations if the company / work center employs more than 300 employees.

In the case of a collective dismissal, workers' representatives, or ad hoc designated workers' representatives, must negotiate the collective redundancy process. This process includes a negotiation period of 30 days (15 days for companies employing fewer than 50 employees) and the involvement of the labor authorities. During negotiations with the workers' representatives, employers must consider alternative measures to reduce the number of terminations and seek to agree on the selection criteria.

As in the case of individual redundancies, minimum severance payments are set at 20 days of salary per year of service, capped at 12 months' pay, although during the negotiation with the workers' representatives, severance per employee is often increased.

If a collective redundancy affects more than 50 employees, the company must offer an external outplacement program of at least 6 months' duration through an authorized outplacement company.

SPAIN



EMPLOYMENT REPRESENTATION

Trade unions play an important role in Spain. Employee representatives have a significant presence in companies and are consulted on many decisions.

Employee representatives are elected by the employees. If the company has 50 or more employees, representatives will be organized in works councils, with a minimum of 5 members and a maximum of 75 members in very large companies.

The representation of employees in businesses with between 10 and 49 employees is undertaken by between 1 and 3 individual employee representatives, depending on the size of the company. The rights, functions, and obligations of individual employee representatives are the same as those of the members of a company's works council.

The works council and individual employee representatives have rights regarding information they are entitled to receive, and they must be consulted on any significant employment issues.

Trade unions are represented in a company by union sections and union delegates. Union sections are groups of all the company's employees who are members of the same trade union. These sections can be created at a work center or at the company level. Among other rights, union sections have the right to participate in the negotiation of collective bargaining agreements at a certain level.

SPAIN



BUSINESS TRANSFERS

Under the Acquired Rights Directive, as implemented in Spain, employment relationships cannot terminate because of the transfer of the business. Instead, employees are automatically transferred to the transferee, preserving all their employment rights. Similarly, the transfer does not justify changes to employees' working conditions. The new company assumes the position of employer, with the same obligations as the previous employer, becoming a party to the employment agreements.

Broadly speaking, the protection in the case of a transfer of a business requires employers to consult with employee representatives prior to the change and prevents them from making dismissals or changing terms of employment, subject to some exceptions.

NONCOMPETES AND RESTRICTIVE COVENANTS

Restrictive covenants, in the form of noncompetition, nonsolicitation of clients, and nonsolicitation of employees, can be enforceable after the termination of employment provided the following legal requirements are met:

- The employer must have a real business interest in enforcing the restrictions.
- The maximum length of the restrictive covenant is two years following the termination date.
- The employer must make a payment to the employee in consideration of the restrictions. The amount usually ranges from 40 percent to 60 percent of salary, determined on a case-by-case basis.

Restrictive covenants are typically industry related, company related, or geographical. For example, someone shall not render services for any utility company in Europe, or for certain companies.

Last updated July 2020.

Juan Bonilla and Ana Campos of Cuatrecasas, Madrid
Roger James of Ogletree Deakins International LLP

SWEDEN



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in Sweden and does not need to set up a local subsidiary, although it may do so. Another alternative for the foreign entity would be to open a branch office, which means that it has a local office in Sweden with its own administration and corporate identity number. Opening a branch office will in some instances achieve administrative advantages, as it simplifies regulatory processes regarding social contributions, state pension benefits, and withholding tax. The branch office does not constitute a separate legal entity, but a part of the foreign company. A branch office needs to be registered at the Swedish Companies Registration Office, *Bolagsverket*.

If a foreign company engages people in Sweden for remuneration, it generally has to register with and pay the employers' contribution to the Swedish tax authority, *Skatteverket*. In addition, if a company has a permanent establishment in Sweden, it needs to pay tax on the income assignable to the establishment.

EMPLOYMENT STATUS AND HIRING OPTIONS

An agreement to perform work can fall into one of two major categories: employment work agreements (employees) and contract work agreements (independent contractors). Labor laws and certain specific tax laws apply only to employment work agreements, which means it can be necessary to determine the status of a worker. When disputes on status arise, the type of contract used is of

minor importance. The reality of the working arrangements will carry more weight, and an "independent contractor" can still, from both tax and employment status perspectives, be considered an employee instead.

Court rulings have developed some key factors used to determine the status of a worker. An individual is an

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EMPLOYMENT STATUS AND HIRING OPTIONS

employee when all or the majority of the following apply:

- The services must be performed by the individual personally.
- The employer decides when and how the individual should perform the work.
- The work is performed under the supervision of the employer.
- The relationship is permanent in nature.
- The individual is not entitled to perform work for others, either because of a contractual obligation or because of labor standards.
- Facilities, tools, equipment, and raw materials are provided by the employer.
- Remuneration is received for direct expenses such as travel.
- The individual receives, at least partly, guaranteed remuneration.

- The individual is on equal terms with regular employees from economic and social points of view.

Agency Workers

An agency worker has an employment agreement with his or her agency instead of the company for which he or she provides services. It is the agency that pays the agency worker. An agency worker can still be considered an employee of the end user company if he or she fulfills enough of the criteria above, which results in the agency worker being granted employment rights.

Probationary Periods

Probationary periods are limited to six months, after which the employment automatically becomes an indefinite-term employment.

RECRUITMENT

There are no filings required when employing someone. The first time the company is about to pay for any performed work in Sweden, it has to register as an employer at *Skatteverket*.

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

An employment relationship does not need to be regulated in a written employment contract; it can be entered into by oral agreement and still be legally binding. However, if the employment is intended to last for more than three weeks, the employer must provide certain key terms of employment in writing. This is commonly set out in a written employment contract. The statutory minimum legally required content for the written terms (contract) is the following:

1. Name and address of employer and employee
2. Start date of employment
3. Place of work
4. Job title and duties of the employee
5. Information about the type of employment, including notice periods, termination period, and probationary period
6. Salary and other benefits, as well as the intervals of payment
7. Length of paid annual leave
8. Working hours
9. Where relevant, the applicable collective agreement

If any of these terms change during employment, the written information must be updated.

Legally Required Policies

- Privacy policy or similar with respect to data protection, in order to inform the employees of their rights and to comply with the General Data Protection Regulation (GDPR)
- Work environment policy (according to the Work Environment Act)

Common Additional Policies

- Anti-discrimination
- Anti-harassment and bullying (relates to work environment policy)
- Anti-corruption and bribery
- Whistleblowing
- Grievance
- Public holidays
- Equal opportunities
- Rehabilitation
- Crisis and emergency management

Language Requirements for Documents

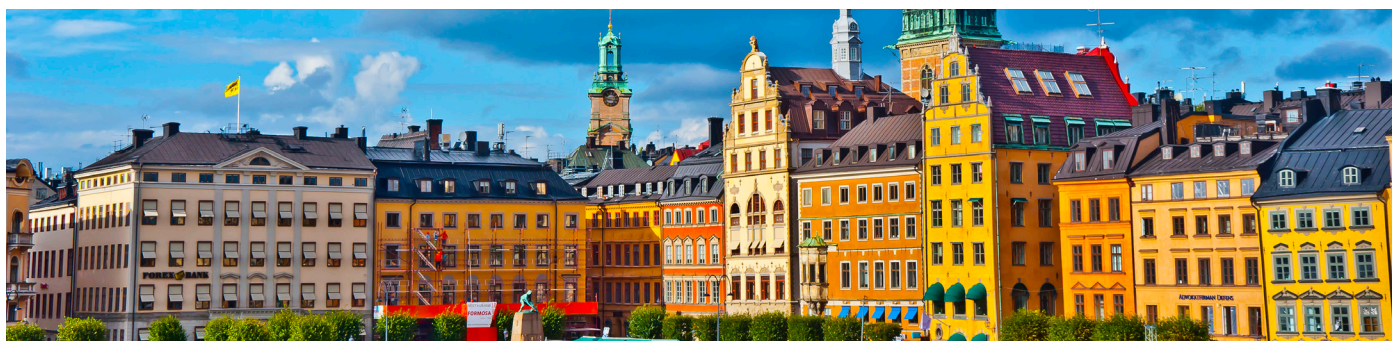
There are no language requirements for documents; however, if an employee has difficulty understanding the English language, the employment agreement should be drafted in Swedish.

Other Sources That Govern the Terms of Employment

Collective agreements are common in Sweden. They exist in all types of industries and cover about 80 percent of Swedish employees in the private sector and 100 percent in the public sector. They often contain general terms of employment and, since Sweden does not have a statutory minimum wage, conditions of salary. In 2019, approximately 72 percent of all white-collar workers and 60 percent of all blue-collar workers were members of a trade union. An employer can become a party to a collective agreement in two ways: by becoming a member of an employer organization that has entered into a collective agreement with a union, or by entering into a separate agreement with a union.

Some mandatory labor laws can be set aside by collective agreements.

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HOLIDAY ENTITLEMENT

Annual Leave

In general, all employees are entitled to 5 weeks (25 days for someone who works 5 days a week) of paid annual leave. Four of these weeks are required to be consecutive during the summer (June through August) if the employee so requests. If someone works fewer than five days a week, he or she receives fewer days of vacation.

Individual employment contracts and collective agreements can replace the legislation and provide exceptions to the statutory entitlement. For white-collar workers, 6 weeks (30 days) is common in order to compensate for irregular working hours and unpaid overtime.

Public Holidays

There are a number of public holidays in Sweden. The public holidays are not recognized by law, but typically, a right to leave during public holidays is regulated in the individual employment contract or the collective agreement. If an employee takes leave on a public holiday, the employer may not count it toward the 25-day entitlement.

Most employers recognize the following public holidays:

- New Year's Day – January 1
- Epiphany – January 6
- Good Friday
- Easter Monday
- May Day – May 1
- Ascension Day (usually in May)
- National Day – June 6
- All Saints' Day
- Christmas Day – December 25
- Boxing Day – December 26

Under many collective bargaining agreements, the following days are also without obligation to attend work:

- Midsummer's Eve
- Christmas Eve
- New Year's Eve

Many employees, especially those in the public sector, are in addition entitled to half-days the day before a public holiday.

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WORKING TIME LAWS

The statutory maximum working week is 40 hours. The statutory maximum overtime is 48 (40 + 8) hours per week calculated as an average over 4 weeks, or 50 (40 + 10) hours per week calculated over a calendar month. The maximum amount of overtime work in 1 year is generally 200 hours but can be extended to 350 hours in certain circumstances.

Generally, employees are entitled to 11 hours of break in every period of 24 hours, which for most people must include the hours between 12:00 a.m. and 5:00 a.m. They are also entitled to 36 hours of consecutive rest a week and a rest break every 5 hours.

Working time can be regulated in individual employment contracts and collective agreements where exceptions can be made. Employees under the age of 18 are regulated differently.

There are no statutory rules that require payment for overtime or work during inconvenient working hours. Any entitlement that may exist would come from the employment contract or, more commonly, a collective agreement.

ILLNESS

Employees who are prevented from performing work because of illness or injury are entitled to sick leave. If an employee is absent for more than seven days, he or she needs to present a physician's certificate. Sometimes employers can demand a certificate at an earlier point.

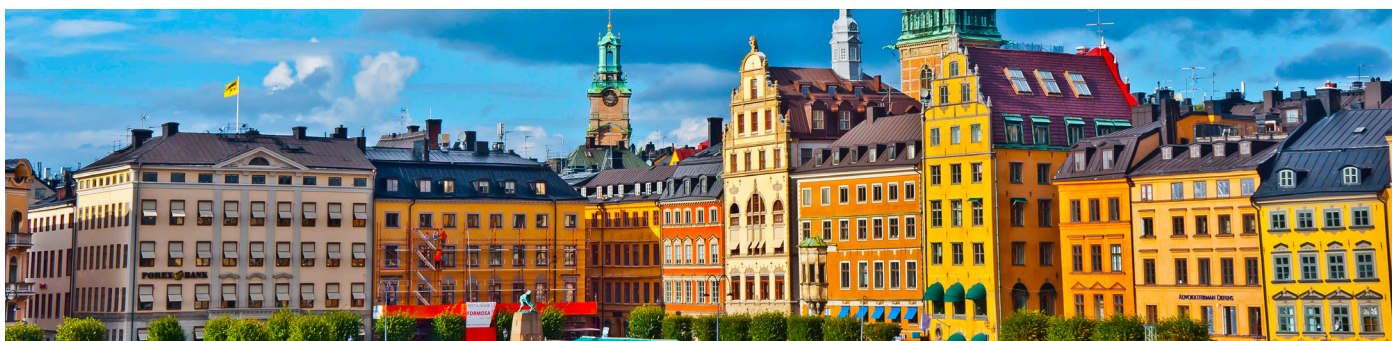
Employees are entitled to sick pay instead of salary from the employer from day 2 to day 14 of their absence. Generally, there is a qualification period the first day of absence, where neither sick pay nor salary is paid to the employee. To receive sick pay, an employee must notify the employer about his or her condition on the first day of his or her absence. The right to have time off during illness is granted to every employee from the first day of work.

The sick pay paid by the employer amounts to approximately 80 percent of the employee's salary, regardless of how much the employee's salary actually is. After 14 days of absence, sickness benefit is paid by the state. This also amounts to about 80 percent of the employee's salary, but is capped at approximately 354 700 SEK per annum (in 2020).

Some collective agreements entitle an employee to further sick pay from the employer after 14 days of absence, in addition to sickness benefit from the state.

An employer may recoup some of the sick pay it pays from the Swedish Social Insurance Agency.

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STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

A female employee is entitled to leave for seven weeks before the expected date of delivery and seven weeks after the delivery. Two weeks of maternity leave is mandatory, either before or after the delivery. A female employee is also entitled to time off for breastfeeding.

The social security system entitles an employee to compensation from the state for lost income during the maternity leave, called parental benefits. Parental benefits amount to about 80 percent of an employee's salary, but are capped when his or her annual income exceeds 473 000 SEK (in 2020).

There is no other statutory right to pay during time off. However, collective agreements, individual employment contracts, and an employer's policy can provide more generous entitlements.

Paternity Leave and Pay

An employee who has become a parent but has not been pregnant is entitled to leave for 10 working days connected to the child's birth, per child. This right must be taken within 60 days of the date of the child's birth.

An employee on paternity leave receives the same pay as a mother on maternity leave from the social security system.

Shared Parental Leave and Pay

Both parents have a right to leave with parental benefits (paid by the state) to attend parent education sessions prior to the child's birth.

In addition, both parents may take time off until a child is 18 months old, although this time is unpaid when parental benefits expire. Parents have a right to parental benefits for 480 days per child, which the parents may share between them as they see fit. However, 90 of these days are reserved for each parent, and only 96 days can be used after the child turns 4 years old (and must then be used before the child is 12 years old or finishes the fifth grade in school).

An employee should normally give his or her employer two months' notice before using his or her right to leave.

Parental benefits for the first 390 days of shared parental leave are based on the parent's salary. During the last 90 days of leave, the parental benefit always amounts to 180 SEK per day. If a parent has used any parental benefits in connection with the child's birth, these days are included in the total of 480 days.

For the first 8 years of a child's life, or until the child finishes the first grade in compulsory school if later, the parents are also entitled to request part-time hours by shortening their working hours by up to 25 percent of regular full-time hours. An employer may refuse a request if it has a

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STATUTORY RIGHTS OF PARENTS AND CARERS

justifiable reason to do so. Employees may use parental benefits to “top up” their pay beyond the 75 percent the employer continues to pay. They also have a right to leave for temporary care of children in case of illness.

Individual employment contracts and collective agreements can provide better rights and benefits for employees.

Adoption Leave

An employee who has adopted a child has the same right to leave and parental benefits as an employee who is a biological parent. The entitlement to 480 days of parental benefits and time off starts the day the employee has the child in his or her care.

Other Family Leave

Employees are entitled to leave when a relative is seriously ill. A relative is not only the employee’s family, but also others to whom he or she has a close relationship, such as

friends or neighbors. Employees are entitled to time off as long as they are eligible for compensation from the social security system, which will pay for up to 100 days of care per person requiring care. This can be split between the employee and any other eventual caregivers. A caregiver can also request a reduction of normal working hours by up to 50 percent, which an employer may refuse if it has good reason. The employer does not have to pay the employee during the leave, and any compensation will be received from the social security system.

The compensation from the state during the care of a relative amounts to approximately 80 percent of an employee’s salary. An employee has to give notice to the employer about the leave as soon as possible.

SWEDEN



FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Fixed-Term and Part-Time Employment

Employees with fixed-term or part-time employment contracts enjoy the same benefits as those with indefinite-term employment. There is legislation that prevents both direct and indirect discrimination of such employees. Less favourable conditions for fixed-term or part-time employees can be used only when justified on reasonable grounds.

There are also rules that prevent employers from using repeated fixed-term employment contracts. In general, the rules state that temporary employment automatically converts to continuous employment after a certain amount of time.

Agency Employment

Agency workers are employed by their agencies and are not entitled to the same statutory protective rights in the Employment Protection Act as employees of the company. An agency worker may, however, be found to be an employee of the company under certain circumstances.

DISCRIMINATION AND HARASSMENT

The characteristics protected by discrimination legislation are gender, transgender identity or expression, ethnic origin, religion or other system of belief, disability, sexual orientation, and age. It is forbidden to directly or indirectly discriminate against a person who is an employee, is enquiring about or applying for a job or traineeship, is available to perform work, or is performing work as temporary or hired laborer. Any form of disadvantage or wrongdoing in connection with any of the seven characteristics is prohibited. An employer is also prohibited from providing inadequate accessibility for people with disabilities, allowing harassment, or giving instructions to discriminate.

If it is suitable and necessary to achieve certain public policy goals, certain forms of positive discrimination can be allowed. An example of a public policy goal is to authorise positive discrimination to achieve equality between women and men. Under certain circumstances, discriminating because of age or due to specific demands of the work can be acceptable; for example, when casting for a movie. The discrimination cannot be implemented in connection with conditions of salaries or employment.

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DISCRIMINATION AND HARASSMENT

There is no period of service required before an individual can bring a claim about discrimination, and even a job applicant is protected by the legislation. If a claim or allegation is brought forward, the employer has an obligation to examine the circumstances and to prevent any future harassment. A person who has alleged discrimination or filed a complaint has a statutory right to be protected from any retaliation.

TERMINATION OF EMPLOYMENT

Grounds for Dismissal

An employer must have an objective ground for giving notice of termination to an employee, regardless of the length of service of the employee. An objective ground for terminating an employment can be either (1) redundancy or (2) personal reasons attributable to the employee.

A termination is never acceptable where it is reasonable to require the employer to provide other work, such as filling another role within the employer's organization. The possibility of other work must therefore always be investigated by the employer.

Where notice of termination is given without an objective ground, the notice can be declared invalid upon an application from the employee.

Redundancy

Redundancy normally arises due to reorganization or restructuring of a company, by a closedown of business, relocation, lack of financial funding, or political decision.

It is the employer that has the right to determine how the company should be structured and whether the redundancy is necessary.

Personal Reasons Attributable to the Employee

Personal reasons attributable to the employee arise when the employee's employment obligations are not fulfilled. Examples are assault, threat of violence, theft, fraud or malpractice, poor performance, and a refusal to work or follow instructions. The employee's duties, position of trust, and responsibilities are of significance to the assessment of the objective ground raised by the employer. An employee who is suffering from a mental or physical condition, including alcoholism, that affects his or her working abilities has a right to rehabilitation from the employer. The condition does not constitute an objective ground for dismissal.

Generally, dismissal because of personal reasons may not be based solely on circumstances that were known to the employer for more than two months before the notice or termination date.

SWEDEN



TERMINATION OF EMPLOYMENT

An employee should normally be warned before termination and given an opportunity to adjust and remedy the situation. This is a far-reaching obligation for the employer. Further, in cases of poor performance, an employer must show that it has taken reasonable measures to ensure that the employee has been able to perform the work in question.

Notice of Termination

Notice of termination from the employer must be in writing and contain information about the procedure to be followed by the employee in the event he or she wishes to claim that the notice of termination is invalid or to claim damages as a consequence of the termination. The notice also has to state whether or not the employee has rights of priority concerning reemployment. The employer also has to inform the employee that a notification is required to exercise such rights. If requested by the employee, a notice of termination must state the grounds for termination.

A notice of termination must be delivered personally if possible. Oral dismissals are not invalid but can make the employer liable for damages.

The employer is often required to notify and consult any relevant trade union before terminating. The notification to the trade union must be delivered at least two weeks in

advance of the notice of termination to the employee. If this is not done, the employer can be liable to pay damages to the trade union and the employee.

Statutory Notice Period

An employee has a statutory right to a notice period of:

- one month, if length of service is less than two years;
- two months, if length of service is at least two years but less than four;
- three months, if length of service is at least four years but less than six;
- four months, if length of service is at least six years but less than eight;
- five months, if length of service is at least 8 years but less than 10; and
- six months, if length of service is at least 10 years.

An individual employment contract or collective agreement may, however, provide longer notice.

Employees who are dismissed for personal reasons (such as misconduct) have a reduced right to two weeks' notice (one week for gross misconduct and potentially no notice at all if providing notice would cause the employer further damage).

SWEDEN



TERMINATION OF EMPLOYMENT

Generally, there is no notice period applicable during probation.

Fixed-term employment contracts terminate at the end of the period and cannot generally be terminated in advance by either party, except in cases of gross misconduct.

Severance Payments

An employee is entitled to receive his or her salary and other benefits during the notice period. In exchange, he or she also needs to continue to perform work if requested by the employer.

There is no statutory entitlement to severance or redundancy pay. However, it is not uncommon for an employer to pay severance in order to terminate employment by mutual agreement. This may be done to avoid litigation and the risk of paying damages or because an employer does not wish to give the statutory priority for reengagement in any new employment that may arise in future.

An entitlement to severance or redundancy pay may also be provided by a collective agreement. Where this applies, severance pay is provided by an insurance system collectively financed by the employer community.

Collective Redundancy Rules

Additional rules apply in mass (collective) redundancy cases.

A collective redundancy arises when an employer proposes to dismiss 5 or more employees in the same county (typically a geographical area within Sweden) or at least 20 in total within a 90-day period.

Collective redundancy rules require an employer to provide written notice to the Employment Office before serving notice of termination on employees. How long in advance depends on the number of employees that the employer proposes to dismiss:

- If 5 to 25 employees are concerned, the notice shall be provided 2 months before the redundancy of the first employee takes effect.
- If 26 to 100 employees are concerned, the notice shall be provided 4 months before the redundancy of the first employee takes effect.
- If more than 100 employees are concerned, the notice shall be provided 6 months before the redundancy of the first employee takes effect.

In addition, the employer must provide information of the planned redundancy to the relevant trade unions at the same time.

SWEDEN



TERMINATION OF EMPLOYMENT

Notification of Authorities

There is no obligation to notify authorities before a notice of termination, except for the rules regarding collective redundancy above.

Protected Employees

During redundancies, an order of priority must be followed in order to select employees for redundancy. This order is set by law or alternatively by collective agreement.

Generally, the employees with the shortest employment service leave first.

Safety delegates and employee representatives enjoy certain protections from being dismissed or being prevented from performing their duties. Furthermore, it is prohibited to provide them with less beneficial conditions of employment because of their roles as safety delegates or representatives.

EMPLOYMENT REPRESENTATION

Employment Representation on the Board of Directors

Employees in a private limited company or economic association are entitled to representation on the board of directors under certain circumstances. First of all, the company must be of a certain size. If the company engages at least 25 people in Sweden during a financial year, the employees are entitled to be represented on the board by 2 representatives and 2 deputy officers. If the company operates in 2 or more different industries and engages at least 1,000 people in Sweden during a financial year, the employees are entitled to be represented on the board by 3 representatives and 3 deputy officers.

In principle, employee representatives on the board of directors have the same rights and obligations as other

directors of the board. However, they are prohibited from participating in certain decisions, such as matters concerning collective agreements and industrial action.

Consultation With Trade Unions

Employers who are bound by collective agreements can be obligated to consult with relevant trade unions on all important decisions concerning the business. The obligation to consult also exists regarding all important changes of employment for any employee belonging to the trade union.

Employers who are not bound by collective agreements are still obligated to consult with those trade unions with members employed by those employers in cases of termination due to redundancy or a transfer of undertaking.

SWEDEN



EMPLOYMENT REPRESENTATION

In certain cases, trade unions are entitled to demand consultation on matters concerning one of their members employed by the employer. The consultation can be demanded both before and after a decision concerning the employee has been made, as long as the decision has not been fully executed. The employer is not normally entitled to make a decision or execute the decision until

the consultation has ended, although there are some exceptions.

If the obligation to consult with trade unions is set aside, the employer could be liable to pay damages to the relevant trade unions. The decisions are, however, still legally binding on the employer and employee.

BUSINESS TRANSFERS

A business transfer that qualifies as a transfer of undertaking guarantees the employees certain rights. On a transfer of undertaking, employees are transferred to the new employer with their rights and obligations under their contracts of employment preserved, including continuous service. A transfer will not take place for any employee who opposes the transfer. However, in such cases, the employee remains employed by the previous employer (and will most likely end up being terminated by reason of redundancy).

The new employer is bound by any collective agreements applicable to the previous employer.

The transfer of undertaking is not an objective ground for notice of termination. Any termination still has to be based on either redundancy or personal reasons on the employee's side.

SWEDEN



NONCOMPETES AND RESTRICTIVE COVENANTS

Noncompetition covenants are generally accepted by the law of contracts. The covenants are valid as long as they are considered reasonable. Key factors that can be used when determining whether a covenant is reasonable include the following:

- Eventual compensation during the period of the covenant of at least 60 percent of the salary prior to termination
- The salary of the employee
- The employee's employment status and position in the company
- The length of the employment
- The employee's education level
- The extent of geographical area that is covered by the covenant (for example, a noncompete that covers Sweden or parts thereof is more likely to be upheld than a noncompete that covers all the Nordic countries)
- The duration of a covenant; a covenant that restricts the ex-employee for a longer period than two years is generally considered invalid

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Jakob Nortoft of Glimstedt, Göteborg
Roger James of Ogletree Deakins International LLP

SWITZERLAND



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in Switzerland and does not need to set up a local subsidiary. There is even a special scheme to administrate this from a social security, insurance, and pension perspective, the so-called ANOBAG (employee without employer in Switzerland) scheme.

An employer needs to run a Swiss payroll and is required to withhold social security taxes from payments to employees.

Independent contractors (i.e., self-employed individuals) are paid gross and responsible for their own social security and other taxes. However, the requirements to qualify as a self-employed individual are very strict in Switzerland, and many contractors are requalified as de facto employees.

EMPLOYMENT STATUS AND HIRING OPTIONS

The two main methods of engagement are as an employee or as a service provider (also called an independent contractor or consultant; i.e., a self-employed individual). Statutory employment rights and the implied obligation of loyalty do not apply to service providers.

Disputes can arise when a service provider claims

employment rights (typically on termination), and both the social security and tax authorities can instigate investigations. Key factors used to determine these disputes are the following:

1. Control: an employee is typically told not just what to do, but also how to do it

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EMPLOYMENT STATUS AND HIRING OPTIONS

2. Integration: a service provider does not normally have company business cards or a company email address
3. Set hours of work: a service provider is more likely to manage his or her own time
4. Pay: a service provider is often paid on completion of a project or task, rather than based on time spent
5. Equipment: a service provider typically uses his or her own equipment (phone, computer, laptop, machinery, etc.)
6. Operating as a business: a service provider would normally have other clients, a business name, investments into a business, and a higher degree of financial risk than an employee
7. Personal service: service providers are sometimes able to supply a substitute to perform services; this is never consistent with an employment relationship

Typically, not all factors align on one side. Courts can come down on one side based on the overall situation. Whether a service provider contract has been used can be an influential factor, but it is not of itself decisive.

Under Swiss law, the civil (contractual) status and the social security status do not need to be aligned, though they are in most cases. The social security authorities use mainly the same criteria as outlined above, but they also require, inter alia, that a self-employed individual has at least 3 clients and does not generate more than 50 percent of the turnover with only one client.

RECRUITMENT

A new law requires employers to inform the responsible unemployment agency of open positions in professions where the unemployment rate is above 5 percent. The unemployment agency then has a window of five business days to submit CVs or suitable candidates, and the employer has the duty to assess such CVs. Only after the expiration of this exclusivity period can the job be advertised.

Upon hiring, an employee has to be registered with social security. Employees who are subject to payroll withholding tax must be registered with the tax authorities.

SWITZERLAND



REGULATION OF THE EMPLOYMENT RELATIONSHIP

Employment contracts can be entered into orally, and there is no requirement to enter into a written contract, with some exceptions.

However, all employees are entitled to written confirmation of their key terms of employment within one month of the start of the employment. Such confirmation needs to include the following:

1. Name of employer and employee
2. Date employment started
3. Position
4. Pay and surcharges
5. Weekly working time

Some contracts (e.g., apprenticeship contracts) require written form, which means they must be signed by hand or by using a qualified digital signature approved by the Swiss authorities (and many providers do not qualify under such rules). Further, some deviations from the statutory law and some special clauses (e.g., noncompetition undertakings, shortening of statutory notice period) require written form. Hence, it is standard to enter into a written employment contract before the start of the employment containing the legally required written content and other clauses an employer may want. This is the main document governing the working relationship. Other than the terms that must be confirmed in writing referred to above, there is no legally required minimum content for the employment contract. If the contract is silent on a point, the missing parts will be substituted by statutory law.

It is not standard practice to use offer letters.

Legally Required Policies

There are no policies required by mandatory laws, except for a health and safety policy. However, the employer needs to inform the employee what personal data is collected and how it is processed and/or transferred. This is typically done in an employee privacy notice.

Common Additional Policies

1. Code of conduct
2. Equal opportunities
3. Anti-harassment and -bullying
4. Anti-corruption and -bribery
5. Whistleblowing
6. Expense, travel, and entertainment
7. Car
8. Disciplinary and performance management
9. IT and communications

Language Requirements for Documents

There are no language requirements for documents, except that employees need to understand the content of any documents. Further, labor courts may require a translation into the applicable court language (German, French, or Italian, depending on the location).

Other Sources of Terms of Employment

Employment law in Switzerland is mainly based upon the following sources, set out in order of priority: the Federal Constitution; cantonal constitutions; public law, in

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REGULATION OF THE EMPLOYMENT RELATIONSHIP

particular the Federal Act on Work in Industry, Crafts and Commerce (Working Act); and five ordinances issued under this act regulating work, health, and safety conditions; civil law containing the main contractual employment provisions, in particular the Swiss Code of Obligations; collective bargaining agreements (governing nearly 50 percent of all employment relationships); standard employment contracts issued by the government; individual employment agreements; usage, custom, and doctrine; and case law.

HOLIDAY ENTITLEMENT

The statutory entitlement is 4 weeks (20 business days for someone working 5 days a week) and is adjusted pro rata for part-time employees. Employees up to the age of 20 get 5 weeks of holiday.

In addition, employees get paid time off on Swiss National Day (August 1) and the cantonal public holidays at their place of work (between 8 and 14 such days).

If a cantonal public holiday falls on a weekend, there is no substitution of such public holiday.

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WORKING TIME LAWS

The Working Act determines the maximum weekly hours of work (subject to limited exemptions; see reference to special overtime below), distinguishing between two categories of employees:

- a. 45 hours per week for employees employed in industrial enterprises and white-collar workers (office employees, technical staff, and other salaried employees), as well as sales staff in large retail undertakings
- b. 50 hours per week for other employees, mainly employees in the construction sector, craftsmen, and workers in commerce, as well as sales staff in small retail undertakings

Within the limits above, the normal hours of work are fixed by collective agreements and individual contracts, usually between 40 and 42.5 hours per week.

So-called “higher leading employees,” meaning the management board and the board of directors, are exempt from the Working Act.

The Labour Act imposes a strict obligation to maintain detailed timekeeping records (including the start and end times of the working day as well as break times) of nearly all employees. Employees can opt out of this, but only if they earn a salary in excess of CHF 120,000 per year and if a collective bargaining agreement provides for such an option.

There are two categories of overtime work. The first category includes all hours in excess of the agreed weekly working time up to the maximum working time allowed under the Working Act. Any such normal overtime not compensated by time off must be paid by the employer with a surcharge of at least 25 percent of the applicable wage, unless there is an agreement to the contrary in writing (e.g., a collective agreement or individual employment contract). Thus, an agreement may provide that no supplement applies or that any such normal overtime is included in the base salary.

The second form of overtime, so-called “special overtime,” is the hours worked in excess of the Working Act limits of 45 or 50 hours, which can be permitted in certain circumstances. The payment of a surcharge of 25 percent of the hourly wage is normally a mandatory provision from which the parties may not depart by agreement (in contrast to standard overtime).

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ILLNESS

An employee who is unable to work because of sickness or injury is required to submit a medical certificate (colloquially known as a sick note) obtained from his or her doctor.

The employer will typically accept the employee's written confirmation of sickness for the first two or three days (self-certifying).

An employee is entitled to continued salary payments for a period that varies by region. Swiss law determines that salary is paid for at least three weeks' sick leave during the first year of service, but other than that, it is left to the cantonal courts to determine a schedule from the second year of service onward.

Most employers replace the statutory salary continuation scheme with insurance, typically covering 80 percent of salary for up to 2 years after a waiting period of 30 days, during which the employer pays 100 percent of the salary.

SWITZERLAND



STATUTORY RIGHTS OF PARENTS AND CARERS

Maternity Leave and Pay

An employee is entitled to up to 16 weeks of maternity leave after childbirth. A woman can return early if she wants, but not during the first 8 weeks after the birth. There is no entitlement to maternity leave prior to the birth of the child. Any leave at that stage is considered sick leave.

A woman on maternity leave is entitled to Statutory Maternity Pay, which lasts for 14 weeks and is paid at 80 percent of the last salary but is capped at CHF 196 per day. Many employers will provide more generous maternity pay.

Paternity Leave and Pay

There is no statutory paternity leave, although fathers have a statutory right to paid time off to attend childbirth. Many employers provide more generous rules, often one week of paid paternity leave. As of summer 2020, the parliament is discussing a right to two weeks' paternity leave.

Shared Parental Leave

There is no statutory shared parental leave.

Adoption Leave

There are not the same rights in case of an adoption. Employers have to grant only some very limited paid time off.

Other Family Leave

There are statutory entitlements to leave in cases of emergency involving a close family member.

Further, in case of a sickness of a child, either the father or mother may take up to three days' paid time off if there is no alternative for suitable child care.

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FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Special rules apply to agency workers. There is a mandatory collective bargaining agreement for agency workers.

Fixed-term employees and part-time workers are all, broadly speaking, entitled to the same pay and benefits as comparable permanent, full-time employees.

DISCRIMINATION AND HARASSMENT

The constitution generally prohibits any form of discrimination. The characteristics protected by law are gender, age, race, religion or belief, disability, sexual orientation, pregnancy, and marital status. Any detrimental action because of one of these characteristics is unlawful. However, Swiss law requires that the constitutional rules are enacted into statutory law; hence, enforcement is not always straightforward.

Claims for discrimination can be brought by any employee regardless of length of service, as well as by potential recruits and ex-employees.

Compensation awards depend on the area of law and the specific statutory rules. For instance, an unfair dismissal based on discrimination can lead to an award of up to six months' full compensation. Further, in the case of gender discrimination, there can be an order for reinstatement.

Employers of disabled employees are required to consider—and make—"reasonable adjustments" to remove a disabled person's disadvantage in the workplace.

SWITZERLAND



TERMINATION OF EMPLOYMENT

Statutory Notice

There is essentially an employment-at-will concept in that an employer can terminate an employee at any time as long as it provides notice and the termination is not tainted by discrimination or other protected ground (see unfair dismissal below). The minimum notice periods to be observed by law vary according to length of service (seniority):

- During the probation period: seven days
- During the first year of service: one month
- During the second and up to and including the ninth year of service: two months
- Thereafter: three months

Longer notice provisions may be agreed upon in writing. The parties can also agree upon less than the prescribed one month of notice during the first year if done by collective agreement. That flexibility applies only to notice applicable during the first year of employment.

Payment in lieu of notice cannot be agreed upon in advance, but it can be agreed upon at the time of termination via a termination agreement.

“Garden leave” (notice runs and employment continues for that period, but the employee is required to stay at home and stay away from customers) can be implemented at the employer’s discretion, regardless of whether there is an express “garden leave” clause in the contract, except

in cases of very long notice periods where courts have determined otherwise.

Severance Payments

There is a statutory entitlement to severance pay only if an employee has more than 20 years of service and is above 50 years of age. However, the employer can usually offset employer pension contributions from the amount so that in practice the statutory severance pay is usually fully offset.

In mass dismissals, there is an obligation to negotiate and implement a social plan, including severance pay.

Unfair Dismissal

The law defines certain grounds based on which terminations are considered abusive, triggering indemnity sanctions. Termination is considered abusive if it is based on the following grounds:

- Because of a protected personal characteristic of the other party (e.g., gender, race, age), unless that trait is severely impairing the employment relationship
- Because the employee exercises a right guaranteed by the Swiss Federal Constitution (e.g., religion or membership in a political party) unless the exercise of this right violates an obligation of the contract of employment or is seriously prejudicial to the work climate

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TERMINATION OF EMPLOYMENT

- To prevent the employee from filing or asserting in good faith claims arising out of the employment relationship (e.g., a claim for a bonus payment)
- Because the employee is discharging compulsory military service, civil service, women's military service, Red Cross service, or a compulsory statutory duty (e.g., appearing as a witness in a court proceedings)
- Because of the employee's affiliation, or nonaffiliation, with a union, or lack thereof, or because he or she performs work for a union
- While the employee is an elected employee representative or representative of a labor organization, unless the employer proves grounds for notice
- When the employer has not complied with consultation obligations in cases of collective dismissal

An abusive termination entitles the employee to up to six months' full compensation (two months' in mass dismissal cases).

Redundancy

Swiss law provides for an employment-at-will concept. As long as a termination is not void or abusive (see above), then the employer can terminate an employment relationship. However, the employer has to provide the reasons for a termination in writing upon request, so it is recommended to have a valid business argument for any redundancy.

Collective Redundancy Rules

When an employer proposes 20 or more redundancies within a 90-day period, additional requirements to consult with employee representatives over a minimum period of 30 days apply (45 days where 100 or more redundancies are contemplated).

Notification of Authorities

There is no need to inform the authorities of terminations, with the exception of mass dismissals.

Protected Employees

During certain blocking periods, any termination is void. Such blocking periods apply in the following situations:

- During compulsory Swiss military or civil defense service, if such service lasts for more than 12 days, and also the 4 weeks before and after the service
- During the first few weeks of sick leave, for periods that vary based on length of service from 30 protected days in the first year of service to 90 days during the second to fifth years to 180 days during and after the sixth year of service
- During pregnancy and during the 16 weeks following childbirth
- During participation in certain foreign aid service assignments abroad where such service is agreed with the employer

SWITZERLAND



EMPLOYMENT REPRESENTATION

Under Swiss law, employees have the right to a vote on the creation of employee representation (a works council) if the company employs at least 50 employees in Switzerland and if more than a fifth of the employees request a vote. A vote has to be held if the company has more than 100 employees in Switzerland. A works council must be established if the majority of the employees who vote are in favor of its establishment.

There is no general obligation to consult with employee representatives or unions on business decisions, with three exceptions:

1. Collective redundancies
2. Business transfers (but only if changes to employment terms and conditions are proposed)
3. Termination and conclusion of any accession agreement to a pension scheme

BUSINESS TRANSFERS

The law also provides specific rules for transfers of undertakings, known as TUPE (Transfer of Undertaking (Protection of Employment) Regulations). Such rules provide employees with protection when there is a business transfer or in outsourcing/service provision change situations. Broadly speaking, TUPE requires employers to consult with employee representatives prior to any changes to the employment terms and conditions and/or any terminations.

SWITZERLAND



NONCOMPETES AND RESTRICTIVE COVENANTS

Restrictions on an ex-employee from seeking or accepting business from customers, or even from working for a competitor, are potentially enforceable through a court injunction and damages. However, the former employer must demonstrate to the court the following:

1. The ex-employee was in a role in which he or she had access to customer data or business secrets to a degree that he or she could cause significant damage if left unrestrained
2. That the wording of the covenants is reasonable and goes no further than is necessary to provide reasonable protection
3. The duration of the covenants is no longer than necessary to plug the gap before a replacement has a chance to secure the business (six months is usually acceptable; any longer would require justification)

Where a covenant is overly broad, a court may amend the scope of the provision to make it enforceable.

There is no requirement to pay compensation to an ex-employee on termination to enforce the covenants, but such compensation helps to enforce it.

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Ueli Sommer of Walder Wyss, Zürich
Roger James of Ogletree Deakins International LLP

UNITED KINGDOM



CORPORATE REGISTRATION REQUIREMENTS

A foreign entity can engage people directly in the United Kingdom and does not need to set up a local subsidiary. Payroll registration is required and employers are required to withhold income tax and social security from payments to employees—in contrast to independent contractors, who are paid gross and are responsible for their own taxes.

EMPLOYMENT STATUS AND HIRING OPTIONS

The two main methods of engagement are as an employee or independent contractor (sometimes also called a consultant). Statutory rights and the implied obligation of loyalty to one's employer do not apply to independent contractors. Disputes can arise when a contractor claims employment rights (typically on termination), and the tax authorities can also instigate investigations. Key factors used to determine these disputes are the following:

1. Control: A contractor is typically not told what to do or how to do it.
2. Integration: A contractor would not normally have company business cards or a company email address.
3. Set hours of work: A contractor is more likely to manage his or her own time.
4. Pay: A contractor is often paid on completion of a project or tasks, rather than based on time spent.
5. Operating as a business: A contractor may have other clients, a business name, and a higher degree of financial risk than a salaried employee may have.
6. Personal service: A contractor is sometimes able to supply a substitute to perform services. This is never consistent with an employment relationship.

Typically, not all factors align on one side, and courts come down on one side based on the overall situation. Whether

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EMPLOYMENT STATUS AND HIRING OPTIONS

an independent contractor contract has been used can be an influential factor, but this is not of itself decisive.

The United Kingdom is unusual in having a third category, “nonemployee worker,” which sits between employee and independent contractor. This category catches casual workers and many in the gig economy who work too informally to obtain employment status, yet are also not in business in their own right as independent contractors.

These workers are entitled to statutory holidays, the minimum wage, discrimination protection, and working hours protection, but not rights to maternity pay or other types of paid leave.

There are no statutory rights covering probationary periods, which accordingly have no legal effect, although they are often included in contracts simply to emphasize that suitability will be reviewed—often at three or six months.

RECRUITMENT

There are no filings required when employing someone, except for registering for payroll taxes.

UNITED KINGDOM



REGULATION OF THE EMPLOYMENT RELATIONSHIP

All employees as well as nonemployee “workers” are entitled to written confirmation of their key terms of employment. Typically, for employees this is done using an employment contract. This is the main document governing the working relationship, and any offer letter used at the recruitment stage is typically replaced by the contract. The minimum legally required content for the employment contract is the following:

- Name of employer and employee
- Date employment started (and any earlier start date where previous continuous service is recognized)
- Pay (and intervals of payment)
- Hours of work
- Holiday entitlement
- Job title
- Place of work
- Sick pay entitlement
- Notice required by each side to end the contract
- Statement on disciplinary and grievance procedures
- Pension entitlements
- Any applicable collective agreements
- Any other benefits (including noncontractual benefits)
- Any probation period
- Details about any training required by the employer

Legally Required Policies

- Disciplinary policy, or commitment to follow Advisory, Conciliation and Arbitration Service (ACAS) procedures (set by a government agency)
- Grievance policy, or commitment to follow ACAS procedures
- Fair processing notice (data protection)

Common Additional Policies

- Equal opportunities
- Anti-harassment and -bullying
- Anti-corruption and -bribery
- Whistleblowing
- Sickness absence
- Poor performance
- Maternity and other paid leave
- IT and communications

Language Requirements for Documents

There are no language requirements for documents in the United Kingdom.

Other Sources of Terms of Employment

Collective bargaining agreements (CBAs) are rare in the United Kingdom and tend to apply only in the public sector and some larger traditional private sector industries such as steelmaking. Where applicable, they set terms of employment, but only to the extent the particular employer has entered into a CBA with the applicable union. The United Kingdom does not have CBAs that apply across an industry regardless of employer participation.

UNITED KINGDOM



HOLIDAY ENTITLEMENT

Holiday statutory entitlement is 5.6 weeks, which is 28 days for someone working a 5-day week (22.5 days for someone working 4 days a week and so on). There is no legal recognition of public holidays. If an employer provides a paid holiday on a public holiday, it can count that day toward the statutory entitlement.

Most employers recognize the following eight public holidays:

- New Year's Day (or next working day)
- Good Friday
- Easter Monday
- May Day: first Monday in May
- Late May Bank Holiday: last Monday in May
- Late Summer Bank Holiday: last Monday in August
- Christmas Day (or next working day)
- Boxing Day (or next working day)

Scotland and Northern Ireland have local variations.

UNITED KINGDOM



WORKING TIME LAWS

The maximum working week is 48 hours, calculated over 17 weeks, which means employees can be required to exceed 48 hours in some weeks as long as the average remains below the limit calculated over 17 weeks. Employers should keep such records as necessary to show compliance.

Employees can choose to opt out of the limit by signing a written opt-out agreement. There is then no maximum limit to their hours and no record-keeping requirement. Employees are protected from detriment for refusing to sign an opt-out agreement or revoking an earlier one.

Detailed rules also exist in relation to rest periods. Generally, employees and workers are entitled to 11 hours' break between shifts, 2 days off work per week, and a rest break every 6 hours worked. However, numerous exceptions apply.

There are no statutory rules on overtime, which is a matter for agreement in the employment contract.

ILLNESS

Employees who are unable to work because of sickness or injury are required to submit a statement of fitness for work (colloquially known as a “fit note” or “sick note”) obtained from their doctor after seven days of absence. Employers will typically accept the employee’s written confirmation of sickness for shorter periods of sick leave (self-certifying).

Employees are entitled to Statutory Sick Pay (SSP) from the fourth day of sickness absence, which lasts up to 28 weeks (note that a special regulation amended this so that it is payable from the first day of absence in cases of sickness or self-isolation caused by COVID-19). SSP is set at a flat rate (£95.85 per week in 2020) and replaces their normal salary. However, many employers will provide a contractual right to more generous payments, such as a period of full pay followed by a further period of 50 percent pay. Employers can no longer get their SSP payments reimbursed by the state.

UNITED KINGDOM



STATUTORY RIGHTS OF PARENTS AND CAREGIVERS

Maternity Leave and Pay

A pregnant employee is entitled to up to 52 weeks of maternity leave, to commence at a time of her choice, but no earlier than 11 weeks before the expected birth date and no later than the date of birth. A woman can return early if she wants, but not during the first two weeks after the birth (four weeks for factory workers).

A woman on maternity leave is entitled to Statutory Maternity Pay (SMP) for up to 39 weeks paid at 90 percent of salary for the first 6 weeks, followed by a further 33 weeks paid at a flat rate (£151.20 per week in 2020). Employers can reclaim a portion of their SMP payments from the state. Many employers will provide more generous maternity pay.

Paternity Leave and Pay

Statutory Paternity Leave lasts for two weeks and is paid at a flat rate (£151.20 per week in 2020). Employers may provide more generous entitlements.

Shared Parental Leave

Shared Parental Leave (SPL) is an entitlement that allows parents to divert a proportion of the woman's maternity leave and pay to the father or her partner, enabling him or her to take longer time off with a corresponding cut to the mother's entitlement.

Adoption Leave

The same rights to leave and pay are generally provided for parents adopting.

Other Family Leave

There are statutory entitlements to leave in cases of emergency involving a close family member as well as additional unpaid parental leave to spend additional time with children over and above maternity and paternity entitlements.

Under the Parental Bereavement Leave Regulations 2020, parents who suffer the loss of a child or a stillbirth have a right to two weeks' paid bereavement leave.

UNITED KINGDOM



FIXED-TERM, PART-TIME, AND AGENCY EMPLOYMENT

Special rules apply to agency workers, fixed-term employees, and part-time workers, who are all, broadly speaking, entitled to the same pay and benefits as comparable permanent full-time employees.

DISCRIMINATION AND HARASSMENT

The characteristics protected by law are gender, age, race, religion or belief, disability, sexual orientation, gender reassignment, pregnancy, and marital status. Any detrimental action based on one of these characteristics is unlawful.

In addition, if an employer has a practice or procedure that subjects people who share one of these characteristics to a disadvantage, such as requiring job applicants to be six feet tall, which disproportionately disadvantages women, then that is unlawful indirect discrimination unless it can be justified.

Harassment is a form of discrimination and arises when there is unwanted conduct related to a person's protected characteristic (e.g., sex and race) that violates the individual's dignity or is otherwise hostile, humiliating, degrading, intimidating, or offensive.

Claims for discrimination can be brought by any employee or worker regardless of length of service, as well as from potential recruits and ex-employees. Compensation awards are uncapped and can run to tens of thousands of pounds or more. A person who has alleged discrimination (or given evidence in support of another) is protected from retaliation or detriment (known as "victimisation").

Employers of disabled employees are required to consider—and make—"reasonable adjustments" to remove a disabled person's disadvantage in the workplace.

UNITED KINGDOM



TERMINATION OF EMPLOYMENT

Statutory Notice

The notice either party must give to terminate the employment contract is required to be set out in the contract, and it must not be less than “statutory notice,” which is the following:

- One week’s notice from the employee
- Between 1 and 12 weeks’ notice from the employer, being a week’s notice for each complete year of service, subject to a cap at 12 weeks for those with over 12 years’ service

Employment contracts will often provide more generous entitlements and allow for payments in lieu of notice (allowing instant termination in return for a lump-sum payment of notice pay) or “garden leave” (which means notice runs and employment continues for that period, but the employee is required to stay at home and stay away from customers).

Severance Payments

There is no legal entitlement to severance pay unless the reason for termination is redundancy, in which case statutory redundancy payments must be paid. These range from £538 to £16,140 (2020 figures), depending on length of service. Some employers may be contractually committed to more generous payments.

Unfair Dismissal

Employees are protected against being unfairly dismissed once they have acquired two years’ service with their employer, although there is no length of service requirement for dismissals as retaliation for making protected complaints or for some protected categories, such as union representatives and pregnant employees.

Once an employee has two years’ service, an employer needs a reason to dismiss and must follow a specified procedure aimed at providing an employee with an opportunity to comment on the situation and a full enquiry into the facts before a final decision to dismiss is taken. There are five potentially fair reasons for dismissal:

1. **Misconduct:** Misconduct needs to be serious to justify dismissal for a first offence (known as “gross misconduct”), such as stealing from an employer. Lesser misconduct requires warnings before dismissal.
2. **Capability:** This covers incapacity, sickness (requires medical evidence), and poor performance (requires warnings before dismissal).
3. **Redundancy:** The employer’s need for the employee has ceased or diminished.
4. **Illegality:** This covers instances such as the withdrawal of a work permit.
5. **“Some other substantial reason”:** This covers situations that do not fit the other categories but where it would still be reasonable to dismiss. Dismissal of a senior

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TERMINATION OF EMPLOYMENT

executive with an extremely difficult personality has been found fair on this basis.

Unfair dismissal compensation is made up of two parts:

1. Basic award: ranges from £538 to £16,140 (2020 figures) depending on length of service
2. Compensatory award: based on financial loss suffered and capped at the lower of one year's salary or £88,519 (2020 figure)

An Employment Tribunal also has the power to order reinstatement, but it is used extremely rarely. If a reinstatement order is made, the employer can choose to pay additional compensation instead of reinstating the employee.

Redundancy

The employer does not need to show economic hardship, just that its requirements for the employee have ceased or diminished and that there is no suitable alternative vacancy. Where appropriate, a fair method of selection is required when some, but not all, jobs are to be lost. Typically, this is done by a manager's fair assessment of skills and experience. Employers are required to discuss the proposed termination with the employee in a consultation meeting before making a final decision.

Collective Redundancy Rules

When an employer proposes 20 or more redundancies within a 90-day period, additional requirements to consult with employee representatives over a minimum period of 30 days apply (45 days if 100 or more redundancies are contemplated).

Notification of Authorities

There is no need to inform the authorities of terminations, with the exception of mass terminations under the collective redundancy rules, where there is a requirement to notify the authorities using Form HR1.

Protected Employees

There is enhanced protection against dismissal for employees who are pregnant, on maternity or paternity leave, engaged in protected industrial action, pension trustees, union representatives, health and safety representatives, or employees who have made certain protected complaints.

UNITED KINGDOM



EMPLOYMENT REPRESENTATION

There is no general obligation to consult with employee representatives or unions on business decisions with two exceptions: collective redundancies and business transfers which meet certain size thresholds.

In those two cases, employers must arrange elections for employees to appoint representatives if there is no existing recognized union or there are no employee representatives. The employer is then required to consult with the representatives, but the representatives have no power to prevent the proposed action.

There is also legislation that requires employers to set up works councils (known as an information and consultation forum) when requested by a certain percentage of the workforce; however, such requests are extremely rare.

BUSINESS TRANSFERS

The Transfer of Undertakings (Protection of Employment) Regulations, known as TUPE, provide employees with protection when there is a business transfer or an outsourcing/“service provision change” situation. Broadly speaking, TUPE requires employers to consult with employee representatives prior to the change and prevents them from making dismissals or changing terms of employment, subject to some exceptions.

UNITED KINGDOM



NONCOMPETE AGREEMENTS AND RESTRICTIVE COVENANTS

Restrictions on an ex-employee from seeking or accepting business from customers, or even from working for a competitor, are potentially enforceable through a court injunction and damages. However, the former employer would need to demonstrate the following to the court:

1. The ex-employee was in a role where he or she built relationships with customers, or had access to business secrets, to a degree that he or she could cause significant damage if left unrestrained.
2. The wording of the covenant is reasonable and goes no further than is necessary to provide reasonable protection.
3. The duration of the covenant is no longer than necessary to plug the gap before a replacement has a chance to secure the business (six months is usually acceptable; any longer would require justification).
4. There is no requirement to pay compensation to the ex-employee on termination to enforce the covenant.

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Roger James of Ogletree Deakins International LLP, London



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