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EMPLOYMENT
LAW OVERVIEWS
GLOBAL EDITION
2019-2020
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INTRODUCTION.

Even in the era of far-reaching international trade agreements and regional economic and political partnerships, the majority of laws and regulations governing the workplace are still determined by the individual countries where employees work.

Spanning 6 continents, L&E Global's member firms are ideally situated to provide clients with pragmatic, commercial advice necessary to achieve their objectives, wherever they operate. Our members work closely with corporate, legal, human resources departments and corporate executives across a variety of sectors and industries to address the strategic and tactical issues that arise in the workplace.

Discover the most important labour and employment rules, regulations and best practices specific to each jurisdiction, conveniently together in one place – L&E Global's Employment Law Overviews 2019-2020. This series of informative and smartly-designed publications have become the relied upon "bible of choice" for employers.

EMPLOYMENT LAW OVERVIEWS 2019-2020 GLOBAL EDITION

The Global Edition guide outlines the employment law regime across 20+ key jurisdictions worldwide. In keeping with the principal themes of Pre-Employment, Employment and Post-Employment issues, the Global Edition delivers invaluable insight into the fundamental labour and employment law matters that national and international employers need to be aware of.

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ARGENTINA.

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- Argentina labor laws are pro employee, designed to protect the rights of employees and workers, by setting rules governing working conditions and working hours, providing for payment of salaries during illnesses, setting surcharges on salaries for overtime, establishing annual vacations, and requiring the payment of severance compensation in the event of unfair dismissal (dismissal without justified cause).
- Argentine labor law is comprised of public order rules and thus cannot be ruled out, or waived by any agreement, or applicable law, or jurisdiction clauses eventually included in any agreements. Therefore, Argentine labor law will apply -and labor courts will have jurisdiction- in respect of any eventual labor court claim filed in respect to work performed in Argentina.
- Employees are entitled to a 13th salary or statutory annual bonus, called “aguinaldo” or “sueldo annual complementario/SAC”. It is payable in two semi-annual installments, falling due on June 30 and December 18. Each installment is equal to 50% of the highest monthly salary accrued during the corresponding semester.
- Employers must pay a compulsory life insurance for all employees.
- The employer can only change the terms and conditions of the labor employment, provided that those changes are not unreasonable and do not either:
- Modify the essential terms of the employment contract; nor
- Cause material or moral damages to the employee.

INTRODUCTION

Labor laws are very comprehensive and rule almost every term of the employment relationship. Labor Laws are public policy and therefore, are mandatory. The employer is obliged to grant employees at least what is provided by labor laws. Therefore, an employer can grant employees benefits on top of what is provided by those laws, but cannot agree with employees in detriment of what is provided by those laws, nor can an employee waive any right included in those laws.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

In Argentina an employer cannot perform a criminal background check on an employee, either directly by the employer or by the use of a vendor. Only the employee can obtain the criminal background and then provide it to the employer. In addition, the Argentine Data Protection Act establishes that personal data referring to criminal records can be processed only by the competent public authorities.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

There is no restriction regarding the employment of foreigners in Argentina. Requirements differ if the employee´s nationality is from a country of Mercosur or affiliated to Mercosur (Uruguay, Paraguay, Brazil, Argentina, Colombia, Chile, Venezuela, Ecuador, Bolivia and Perú) or other countries. Employees that are not nationals of a country member of the Mercosur, or affiliated to

Mercosur, are required to obtain a working visa to work under an employment relationship in Argentina. Employers must first register before a registry of employers that hire foreigners. In order to obtain a working visa, the employee should be registered as an employee of a local company in Argentina. All foreigners have to file a criminal records certificate dully legalized from the country or countries where they have been living in the last 3 years as well as from Argentina.

EMPLOYMENT CONTRACTS

Minimum Requirements

Written employment contracts are not required for permanent, full-time employment relationships, because labor laws are mandatory, very comprehensive and rule almost every term of the employment relationship. Labor laws only require to register the employee in the company labor books and before the tax authorities, pay social security and taxes in respect to all salary payable to the employee, and prepare and deliver to the employee the correspondent salary slips on a monthly basis.

Fixed-term/Open-ended Contracts

For a fixed-term contract: a written employment contract must be executed; it requires an extraordinary need that duly justifies executing a fixed term contract; and there is a maximum term of 5 years, among other requirements. A temporary contract can be used when extraordinary and transitory production demands or requirements are foreseeable, although a specific term for the contract termination cannot be foreseen. The contract will also take place when the relationship begins and ends with the specific job execution or with the specific service for which the employee was hired to execute.

Trial Periods

Trial periods can be up to 3 months for indefinite term contracts. Termination during the trial period can be decided without paying any compensation or severance payment liability for the employee (except that a 15-day prior notice and the wages are due).

Notice Periods

Employers must give a prior written notice to the employee in the event of a termination of employment with no justified cause. Decree 1043/2018, published on November 13, 2018, provides that up to March 31, 2019, employers in Argentina must follow a procedure before dismissing, without justified cause, employees hired under an indefinite term employment. The employer must serve notice of that dismissal upon the Ministry of Production and Labor of Argentina no less than 10 business-days before the dismissal becomes effective.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

A minimum wage has been established and is adjusted at intervals. However, said minimum wage is generally exceeded by the basic salaries established in the collective bargaining agreements. A particular collective bargaining agreement is applicable to all employees working in activities such as industrial, commerce, health, and others. In general, employees who work as managers, supervisors or other hierarchy positions are excluded from the legal framework of the collective bargaining agreement.

Health and Safety in the Workplace

Employers are obliged to grant mandatory life insurance and working accident insurance to employees. Employers are also obliged to provide a healthy and safe workplace (both physical and psychological).

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

Employers can restrict the employees' Internet use and/or social media use during working hours, instructing employees that it can only be used for labor purposes.

Can the employer monitor, access, review the employee's electronic communications?

Employers can monitor, access and review only labor/corporate employees' electronic communications, provided that the employee is

notified in advance (by signing a corporate policy in that respect) that the electronic communications are to be used only for working purposes and can be monitored and therefore, the employee should have no expectation of privacy.

EMPLOYEE BENEFITS

Social Security

All employees are covered by a national retirement pension scheme funded through mandatory contributions by both employer and employee. Employees are eligible for retirement and collect governmental pension when they reach retirement age (65 years for men and 60 years for women) and have made contributions to this system for 30 years. Employers can only demand employees to obtain retirement when they reach 70 years old and have made contributions to this system for 30 years.

Healthcare and Insurances

Health care schemes exist for all employees, entitling them to free medical treatment and hospital care. These are funded through employer contributions and employee withholdings, both a percentage of the employee´s salary. Employers must obtain a mandatory insurance that covers the employee's death, illness or disability in connection to work.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Employees are entitled to an annual paid vacation period. Vacations are compulsory and the employer must grant them between October 1 and April 30. National holidays must be observed, and the corresponding salary should be paid twice whenever services are actually performed during those days.

- ***MATERNITY / PATERNITY LEAVE***

Female employees are entitled to 90 days' paid maternity leave. This is usually taken in the 45 days before giving birth and the 45 days afterwards. However, the employee can instead choose to take 30 days' leave before giving birth and 60 days' leave afterwards. Leave is paid by the social security system as a family allowance. Female employees can request additional unpaid leave between three and six months. While a newborn baby is breastfeeding, a female employee can take two half-hour periods a day to feed her baby, for up to one year after the birth. Paternity leave is 2 days.

- ***SICKNESS LEAVE***

In the event of sickness leave or injury related to work, the employer must pay the employee's salary for the first fifteen days. After the fifteenth day, the working insurance company will pay the sick leave to the employee. In respect to accidents or illnesses not related to work, employees that have served for up to 5 years are entitled to 3 months of paid sick leave. If the employee has a family, the paid sick leave is 6 months. For those employees that have served for more than 5 years, the paid sick leave is 6 months and if the employee has a family, the paid sick leave is 12 months. These paid sick leaves, since they are not related to work, are not covered by any insurance nor by the government, and are paid by the employer.

- ***DISABILITY LEAVE***

In the event of sickness leave or injury related to work, employers must pay the employee's salary for the first fifteen days. After the fifteenth day, the working insurance company will pay the sick leave to the employee. In respect to accidents or illnesses not related to work, once the paid sick leave term has elapsed, in case the employee is not able to return to work, the employer is obliged to keep the employee on its payroll as in leave, but without paying any salary to him/her, for up to twelve more months. In case that, during that term, the employee has a permanent disability making him/her unable to perform the same work, the employer is obliged to give him/her work in accordance with his disability.

Other Required or Typically Provided Leave

Labor laws also provide leaves of absence on the grounds of marriage (10 days), mourning (3 days) or educational examinations (2 days per exam and up to 10 days per year). Applicable collective bargain agreements usually provide for other leaves or additional days to these leaves.

Pensions: Mandatory and Typically Provided

Employees are entitled to collect a mandatory pension when they reach retirement age (65 years for men and 60 years for women) and have made contributions to this system for 30 years. Employers can only demand employees to obtain retirement when they reach 70 years old and have made contributions to this system for 30 years.

Other Required or Typically Provided Benefits
Employees under the collective bargain agreement for commercial activities are entitled to a retirement insurance.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
Employers can terminate employment at any time without justified cause, subject to payment of severance compensation provided by labor laws. Employees on a trial period, i.e. during the first three months of employment, are not entitled to severance compensation, exception made to prior notice (15 days). Termination of employment with justified cause does not entail payment of severance compensation. An employee can also resign, in which case, no severance compensation is payable. Lastly, employment can terminate due to the fact that the employee retires at the time he/she is granted the governmental pension plan. No severance compensation is payable in that case.

Whistleblower Laws
Argentine criminal laws provide reduction of penalties for whistleblowers in respect to crimes against the public administration (corruption and fraud against public administration), customs criminal offenses, economic and financial crimes, drug trafficking, terrorism, human trafficking and money laundering, among others. These laws also provide a reduction of penalties to be imposed on companies for crimes committed by their employees or officers, provided that the company has set forth a compliance policy that includes, among others, the company´s protection to whistleblowers against retaliation.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave
Labor Laws have no specific provision regarding garden leave. Employers cannot force employees to take garden leave (paid leave), since the employer is obliged to give work to the employee. However, the employee can accept the garden leave, in which case the employee must be paid his salary and benefits in full, as if he was working.

TRANSFER OF UNDERTAKINGS

In case of a transfer of undertaking, employees are transferred as a matter of law, and consent of the employees is not required, and no notice is required. The new employer must maintain the employee's work category, benefits, rights, salaries and seniority acquired with the prior employer or the terms of employment may change only for the benefit of the employee. All liabilities of the in-scope employees transfer automatically to the new employer. The prior employer will be jointly liable with new employer for any labor and social security debts arising out of the employment before the date of transfer. The new employer becomes solely liable for those debts generated after the transfer. There is no legal obligation to inform, consult or require authorization of trade union/employee representatives or labor authorities.

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AUSTRALIA.

HIGHLIGHTS

Employee rights in Australia are protected and regulated in the following ways:

- The most basic source of employment terms and conditions derives from the employment contract. The contract will contain express terms, and in Australia the courts have recognized some standard terms which will be implied into the contract of employment;
- The Fair Work Act 2009 (Cth) outlines minimum employment standards, including leave, maximum weekly hours, notice of termination and redundancy pay;
- Modern Awards set out the minimum conditions of employment for specific industries or occupations, such as rates of pay and allowances;
- There is Federal and State anti-discrimination legislation that affords employees with rights against discrimination, harassment, vilification and victimisation;
- State based work health and safety legislation applies to reduce the occurrence of work-related death, injury and illness.
- State based workers' compensation legislation provides for compulsory basic insurance of employees who are injured at work.
- Superannuation Guarantee legislation which requires employers to pay contributions to an approved superannuation fund for their employees.

INTRODUCTION

The Australian Constitution ("the Constitution") has had a major impact on labour regulation in Australia. For much of the 20th Century, there was a significant division of responsibility for labour matters between the Federal Government and the six States and two Territories. However, following the 2005 WorkChoices reforms, the responsibility for labour matters has shifted predominantly to Federal regulation. The Fair Work Act 2009 (Cth) is the primary legislative source of employment regulation in Australia. The Act contains employment standards and conditions, union regulation, and anti-discrimination protection as discussed in paragraph 2 below. The Australian Government has recently also put in place model laws to harmonise work health and safety legislation across Australia. These laws aim to reduce the incidence of work-related death, injury and illness.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

In Australia, there is no express prohibition on an employer conducting pre-employment checks. There are, however, two broad qualifications to this general position: The first is that the employer will generally need the consent of the job candidate concerned to perform the relevant pre-employment checks. However, so long as the purpose of the check is to objectively evaluate the candidate's qualifications and ability to perform the role, the candidate should provide his or her consent. If the candidate fails to do so, then in most circumstances he or she could be fairly excluded from the recruitment process. As part of

pre-employment checks employers may seek to obtain criminal background checks. When relying on a criminal background check as a basis of not hiring someone or for termination, the employer or prospective employer will need to be able to draw a connection between their decision and the inherent requirements of the job. The second qualification is that the employer will need to be wary of how it uses the information acquired from the relevant pre-employment checks.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

In order to legally work in Australia, a foreign employee must have a permanent or valid long-stay visa to work. All foreign workers are guaranteed the conditions of the NES in their employment, and employers of foreign workers must abide by both workplace and immigration laws in their dealings. There are a variety of ways in which Australian businesses can employ workers from non-Australian jurisdictions, but all require the employee to be the holder of one or other of a series of visas (there are exceptions for Australian Citizens, New Zealand citizens and Australian permanent residents, who have unlimited permission to work in Australia). In very brief terms, an outside worker will require a valid visa.

EMPLOYMENT CONTRACTS

Minimum Requirements

The most basic source of employment terms and conditions is the contract of employment. It can be in writing, for example, by letter of offer; it can be oral; or it can be evidenced by a course of conduct. A contractual term may not be enforceable if the terms in the contract are less favourable to an employee than the terms prescribed by legislation, awards, or other industrial instruments. The question of whether a person who performs work for another is an employee as opposed to an independent contractor has significant implications for the nature of the obligations which exist between the parties. Australian courts have long struggled with the distinction between the two in difficult cases.

Fixed-term/Open-ended Contracts

Employees employed under a fixed term or fixed task contract are not afforded all of the protections provided by the Fair Work Act. Although they are generally entitled to the same wages, penalties and leave as permanent employees, as employees who are employed "for a specified period of time" they are not entitled to notice periods and are excluded from the unfair dismissal provisions of the Fair Work Act.

Trial Periods

The Fair Work Act 2009 (Cth) does not refer to probation periods. However, an employee must have worked for the employer for at least six months before he or she is entitled to make a claim for unfair dismissal, and 12 months if the employer is a small business. An employment contract can include a probation period exceeding this period, provided it is reasonable. However, an extended probation period does not affect the employee's statutory entitlements to protections from unfair dismissal and the contract should clearly specify the period of probation and how and when performance is to be reviewed.

Notice Periods

The Fair Work Act 2009 (Cth) regulates the required minimum period of notice of termination which varies with the employee's length of service. If an employee's continuing service has been less than one year, one week of notice is sufficient. If the employee has worked between one and three years, two weeks' notice is required. Three weeks' notice is required if the employer has worked between three and five years, and four weeks is required if the employer has worked more than five years. If an employee is over 45 years of age and has completed at least two years' continuous service with the employer, an additional week of notice must be given. Contractual notice periods in excess of the legislative requirements are very common in Australia, with four weeks being the most common notice period for ordinary workers.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

The current national minimum wage in Australia is $18.93 per hour or $719.20 per 38-hour week, effective from 1 July 2018. Modern Award wages also increased by 3.5% from July 2018. For example, level 3 employees in the aged care industry have increased to $21.78 per hour or $827.60 per 38-hour week; level 4 employees in the general retail industry have increased to $22.04 per hour or $837.40 per 38-hour week; and level 2 employees in the hospitality industry have increased to $20.22 per hour or $768.30 per 38-hour week. All Australian employers must also pay superannuation support under the Superannuation Guarantee (Administration) Act 1992 (Cth).

Health and Safety in the Workplace

The harmonised laws impose a primary duty of care on persons conducting a business or undertaking, in relation to the work being performed in that business or undertaking. This obligation reaches beyond employers, to a wider group of legal entities and individuals. The obligation also extends beyond employees to any person performing work. The primary duty is to ensure, so far as is reasonably practicable, the health and safety of workers while the workers are at work in the business or undertaking. The primary duty is also to ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking. The primary duty of care also contains some expressly listed key obligations, for example, the provision and maintenance of a work environment that is without risks to health and safety.

SOCIAL MEDIA AND DATA PRIVACY

Can the employer monitor, access, review the employee's electronic communications?

The general position is that an employer can monitor its employees' usage of work computers (in some states legislation requires specific notices and warnings to employees before allowing computer monitoring) and restrict the use of the Internet and social media during work hours. In certain circumstances, an employer may also be able to monitor its employees' conduct on social media outside of work hours and rely on that conduct when considering appropriate disciplinary action. However, it is important for employers to implement a thorough and clear Internet and Social Media Policy if it intends to monitor, restrict, access and review employee usage.

EMPLOYEE BENEFITS

Social Security

Social security refers to welfare payments provided by the Australian Federal Government. The responsibility for these payments falls to the Commonwealth Government rather than an employer. Payments under the Paid Parental Leave Scheme do not affect employer-funded paid parental leave, and in fact complement the entitlements under the Fair Work Act 2009 (Cth). Superannuation in Australia is mandated by the Superannuation Guarantee (Administration) Act 1992 (Cth). Minimum contributions are compulsory for employers, being a percentage of the ordinary time earnings of their employees (including part-time and casual employees) who are aged over 18, and who are paid $450 (before tax) a month. The current Superannuation Guarantee rate is at 9.5% for the 2019/2020 financial year. Under current legislation the rate will remain at 9.5% until 30 June 2021, and will then increase to 10% from 1 July 2021, and then increase by 0.5% increments each year until it reaches 12% by 1 July 2025.

Healthcare and Insurances

Employers are not obliged to provide health insurance for employees in Australia.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

The NES entitles employees to be absent on certain public holidays. The NES preserves the right of an employer to make a reasonable request that an employee work on a holiday, as well as the employee's right to refuse upon reasonable grounds. Under the NES, employees who would usually work on the day on which the public holiday

falls are entitled to their base rate of pay for the hours ordinarily worked on that day or part of that day while not at work.

Under the NES, full-time employees are entitled to four weeks of paid annual leave (calculated by reference to the employee's base rate of pay) and part-time employees to a pro-rata amount. The NES allows modern awards and enterprise agreements to vary the way in which employees take annual leave. Modern awards and enterprise agreements may also permit the cashing out of annual leave, but any cashing out arrangement (which must be contained in a separate, written agreement) must leave the employee with a minimum balance of four weeks accrued paid annual leave. In the four-yearly review of modern awards, the FWC made decisions with respect to award provisions regarding: (i) cashing out of annual leave (ii) electronic funds transfer and paid annual leave (iii) granting annual leave in advance and (iv) excessive annual leave.

- ***MATERNITY / PATERNITY LEAVE***

The Fair Work Act 2009 (Cth) provides for unpaid leave for parents who are giving birth to, or are adopting, a child. In essence, the Act provides for up to 12 months' unpaid leave (or 24 months with the employer's consent) for employees with a minimum of 12 months continuous service. While the legislative provisions under the Fair Work Act 2009 (Cth) are for unpaid leave, there are two circumstances in which leave can be paid. Firstly, some employers will have their own paid leave scheme, where longer serving employees will be granted paid leave for a period (usually, this is for a short period and not for the entire period of leave). Secondly, there are limited entitlements to government funded leave. The scheme provides financial support to eligible working parents of newborn or recently adopted children. Paid parental leave is paid to the child's primary carer for up to 18 weeks of pay based on the rate of the national minimum wage. Eligible working fathers and partners (including same-sex partners) also get 2 weeks leave paid at the national minimum wage.

- ***SICKNESS LEAVE***

The NES entitles permanent employees to accrue 10 days of paid personal/carer's leave per year, and to two days of compassionate leave per year. The term 'personal/carer's leave' effectively covers both sick leave and carer's leave. Employees are entitled to two days of compassionate leave to spend time with a member of their immediate family or household who has sustained a life-threatening illness or injury, or after a death of a member of the employee's immediate family or household. The NES also confers an entitlement on casual employees to two days unpaid carer's leave and two days unpaid compassionate leave, but not personal or sick leave. Disability leave is not applicable in Australia.

Other Required or Typically Provided Leave

- Community Service Leave
- Long Service Leave
- Domestic Violence Leave

Pensions: Mandatory and Typically Provided

- ***AGE PENSION***

Under the Social Security Act 1991 (Cth) a pension is paid to residents of Australia who have reached pension age and are assessed as not having adequate levels of income or assets that can be used to support themselves. From 1 July 2017 the qualifying age increased to 65 years and 6 months, to continue increasing by six months every two years for the following six years, reaching 67 years by 1 July 2023. The maximum rate paid for an individual $916.30 per fortnight and $690.70 for a couple. Unlike pension payments of many other countries, workers do not contribute to a pension or insurance within Australia, and the payment is available subject to means testing.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

The Fair Work Act 2009 (Cth) provides that the grounds for dismissal can include capacity, performance, misconduct (including serious misconduct) and redundancy. In addition to a valid reason for dismissal, the dismissal must be fair, in that it is not "harsh, unjust or unreasonable". The Fair Work Act 2009 (Cth) also provides that employees must not be dismissed on the basis of a

protected attribute or as retaliation for exercising a workplace right.

Severance pay may be required if the employee has been made redundant and has an entitlement under the Fair Work Act 2009 (Cth), an award, enterprise agreement or contract of employment.

Whistleblower Laws

Whistleblowers currently have protections under three legislative instruments at the Federal level; the Corporations Act 2001 (Cth); the Public Interest Disclosure Act 2013 (Cth) (disclosures in respect of the Australian Public Service, statutory agencies, Commonwealth authorities, the Defence Force, and contractors) and the Fair Work (Registered Organisations) Act 2009 (Cth) (disclosures about corruption or misconduct in unions and employer organisations). Whistleblowers can also rely on protection under the Fair Work Act 2009 (Cth) general protections provisions if their disclosure relates to a complaint or inquiry in relation to their employment, and the protections against 'discriminatory conduct' for a 'prohibited reason' under the Work Health and Safety Act 2011 (Cth). To address criticisms that the existing laws, in particular the private sector whistleblower protections, are insufficiently broad to fully enable whistleblowers to come forward, in December 2017 the government introduced the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 to the Senate. In addition to broader categories of wrongdoing, strengthened privacy protections for the whistleblowers and harsher penalties, the Bill also aims to harmonise the existing Federal legislation. The Bioll has not yet been enacted into law.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Where the employer gives notice to an employee but puts the employee on "garden leave" (which involves giving them no work to perform and effectively requiring them to stay at home or perform duties other than their normal duties), wages are paid in the usual manner throughout the notice period and the employment does not end until the expiry of that period. The advantage of garden leave to an employer is that it removes a potentially damaging employee from the workplace but, unlike regular pay in lieu, prevents the employee from immediately going to work for a competitor because the employment contract remains on foot. The ability to put an employee on garden leave will, however, need to be provided in the contract of employment.

TRANSFER OF UNDERTAKINGS

Where a transfer of employment occurs, the transferred employee's service with their original employer will be counted as continuous service with their new employer. As such, any benefits acquired under the NES (such as annual leave) will be retained through the transfer of business and the employee's service will remain continuous in the eyes of the law (even in circumstances where there has been a substantial period of inactivity). For the entitlements to successfully transfer with the employee, the employee must have their employment first terminated with the old employer. Then, within three months following the termination, the employee is reemployed by the incoming business owner. The usual practice is for the new employer to issue, at the time of purchasing the business, a list that sets out those persons whom the business intends to reemploy. It is also a requirement that the work performed by the transferring employee is the same or substantially the same as the work previously performed.

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BELGIUM.

HIGHLIGHTS

- Collective bargaining agreements are entered into on national or industry level between the trade unions and employers' organisations or on company level between the trade unions and an individual employer. They include provisions with regard to wages and working conditions.
- Belgian labour law is characterised by stringent language regulations. All labour documents and labour-related communications with the employees must be conducted in either Dutch, French or German, depending on the location of the employer's operating unit. The sanction is the nullity (with the exception of the Brussels and German regions where the sanction is the replacement of the document).
- As a rule, termination of an employment contract is not subject to any prior administrative or court approval in Belgium. As of 2014, the rules on the calculation of notice periods have changed drastically. Moreover, all employees now have the right to ask for the concrete reasons which have led to dismissal.
- Well-being and anti-discrimination have an increased importance in Belgian labour relations. For example, the way psychosocial risks are dealt with on the work floor was adapted to a great extent in 2014.
- The Belgian labour market is characterised by a high insider-outsider effect (especially for migrant workers, older workers and people with disabilities) and low professional mobility because of high minimum wages and high levels of protection offered by labour law provisions and the social security system.

INTRODUCTION

Belgium has fairly extensive protective labour laws, as enacted by Parliament. Moreover, collective bargaining between the so-called 'social partners', i.e. the employers' organisations and the trade unions, plays a very important role in the shaping of the rules of labour law. Case law, in particular that of the Supreme Court and the Constitutional Court, can have considerable influence on the application of labour and employment law in practice. In Belgium, labour courts deal with disputes in relation to employment relationships. Enforcement of labour law provisions may also be initiated by other authorities, including the labour inspectorate or tax and social security authorities. The Social Legislation Inspectorate also provides information to employers and workers, gives advice, arbitrates and verifies whether labour law and the various collective labour agreements are complied with.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

Extensive background checks on employees are not common in Belgium. They should be limited to the strict necessity of assessing the applicant's professional skills relevant to the job offered. The most common background checks relate to education, experience (past employment records), criminal records for certain occupations (e.g. in the security sector), confirmation that the applicant has the appropriate permission to work in Belgium, health and medical checks (which are required by law for roles involving safety, vigilance jobs that come in contact with food, or the driving of motorised vehicles, cranes or hoists); and more and more commonly, social media checks, despite the potential that such searches can come into conflict with the right to privacy of the applicant.

Nothing prevents an employer from checking publicly available information on social media. If the access to this information is restricted, the information becomes of a certain private nature. If background checks are in conflict with the privacy rules of the GDPR, heavy administrative fines and other sanctions could be imposed on the employer.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

- ***EEA NATIONALS***

European treaties provide for the free movement of persons within the European Economic Area (European Union and Iceland, Norway and Lichtenstein - EEA). This means that employees who are citizens of one EEA Member State are, in principle, free to work in another Member State without a work permit.

- ***NON-EEA NATIONALS***

In principle, every non-EEA national working in Belgium must be in the possession of a work permit (single permit), although some categories of employees are exempt from this requirement or benefit from relaxation.

To obtain a work permit, an official application form accompanied by a set of prescribed documents has to be sent to the regional work permit authorities.

The new Act of 9 May 2018 has implemented the EU 'Single Permit' Directive 2009/52, which obliges the Member States to use a single application procedure to establish the issuance of a single permit for residence and work to non-EU nationals. The single permit procedure is in force since 1 January 2019.

EMPLOYMENT CONTRACTS

Minimum Requirements

In principle, an employment contract may be written or verbal. Yet, the following employment contracts and/or clauses (without limitation) must be in writing: (1) training clause; (2) non-competition clause; (3) employment contracts entered into for a fixed term or for a specific project; (4) part-time contracts; (5) temporary work or interim work; (6) working from home; (7) arbitral clauses for high-paid employees with high management responsibilities, and (8) in certain cases, employment contracts entered into with a foreign worker.

Without prejudice to the above-mentioned stipulations, the law does not impose the inclusion of particular clauses in the employment contract. However, the mandatory legal and regulatory conditions, as well as the conditions within collective bargaining agreements are generally deemed to form an integral part of the employment contract, and no clause may validly depart from these conditions.

Uniquely characteristic to Belgium is that, when in written form, an employment contract must be drafted in French, Dutch or German, depending on the location of the employer's operating unit. For the Brussels region, the employment contract must be either in French or Dutch depending on the language used by the employee.

Fixed-term/Open-ended Contracts

The standard type of employment contract used in Belgium is the open-ended employment contract. With the exception of the clauses referred to above, a written contract is not required. Fixed term contracts are permitted, but a written contract must be produced by the commencement of the employment at the latest. Failing this, contracts for a fixed term are deemed to be open-ended contracts.

Trial Periods

Trial periods have been suppressed by the Unified Employment Status Act (except in relation to students, temporary workers and temporary agency workers).

Notice Periods

An important Belgian labour law reform entered into force since 1st of January 2014, aligning notice periods for blue- and white-collar employees.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

In principle, minimum wages are fixed per sector of industry in collective bargaining agreements. Yet, these minimum wages may not be lower than the guaranteed average minimum monthly pay, fixed by national CBA, which amounts to 1 654,81 EUR (as of the age of 20 with 1 year seniority; figure in 2018). In addition to their monthly gross salary, employees are entitled to double holiday pay. Moreover, in most sectors of industry, the payment of an end-of-year premium is mandatory.

Health and Safety in the Workplace

Every employer is obliged to establish an "Internal Service for Prevention and Protection at Work" (the 'Internal Service'). For this purpose, every employer has at least one 'prevention advisor', competent for safety at work (the 'Safety Prevention Advisor'), who is an employee of the undertaking and connected to an Internal Service. In companies employing less than twenty employees, it is the employer that may exercise the function of Safety Prevention Advisor. Other specialised prevention advisors intervene in matters related to psychosocial risks at work.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

It is common practice to regulate employee's use of Internet and social media through provisions of an Internet Policy. This policy must however, be established respecting the framework imposed by CBA No. 81 of 26 April 2002 on employees' privacy with regard to the control of electronic communications networks.

Can the employer monitor, access, review the employee's electronic communications?

Subject to compliance with legal, regulatory and contractual provisions, employers are free to determine the conditions in which the employment contract is to be performed. Nowadays, it is undisputed that this includes the conditions of use of equipment made available to employees by the employer. Employers can therefore freely regulate the use of communication instruments within their company, particularly by prohibiting private use of the communication equipment available for use by the employees, by banning the access to certain websites (including social media sites) or by blocking this access by the use of filters.

EMPLOYEE BENEFITS

Social Security

Unless stated otherwise by an international agreement, employees working in Belgium for an employer established in Belgium, or an operational office in Belgium, will in principle be subject to the Belgian social security scheme for salaried persons. It is impossible to deviate from the Belgian social security scheme by special agreement, which would be null and void by law. The Belgian social security system for employees covers:

- old-age and survivor's pensions;
- unemployment benefits;
- insurance for accidents at work;
- insurance for occupational diseases;
- family allowances;
- sickness and disability benefits; and
- annual vacation (only for blue-collar employees).

In the scheme for employees, both employees and employers have to pay contributions to the National Social Security Office (RSZ - ONSS). The employer's contributions amount to approximately 33% for white-collar employees and around 40% for blue-collar employees. The employee's contributions are fixed at 13,07% and are deducted from his/her gross salary. The Act of 26 December 2015 on Measures to Enhance Job Creation and Purchasing Power introduced the "tax shift", which, among other tax and social security measures, lowered the rate of employers' social security contributions to 27% from 1 January 2018 onwards.

Healthcare and Insurances

On top of the protective Belgian healthcare system, employees benefit on a regular basis from complementary insurances covering the costs of hospitalisation, medical treatments or ambulatory fees (those costs are sometimes even covered for the employee's family members).

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Employees are entitled to remuneration for 10 official public holidays. The number of days of annual leave to which an employee is entitled for a given year, is determined in proportion to the number of days worked (and deemed to have worked e.g. where the employee was on maternity leave or sick leave) during the preceding calendar year, referred to as the 'holiday reference year'. Generally, for a full holiday reference year, employees have the right to between 20 and 24 days of annual leave, depending on whether their working regime includes five or six working days per week.

- ***MATERNITY / PATERNITY LEAVE***

Women may take up to 15 weeks of maternity leave (with a possible extension of 2 weeks in case of multiple births). At least nine weeks must be taken after the birth and at least one week must be taken before the expected date of birth. Following the birth of a child, the father has a right to ten days of paternity leave, seven of which will be paid for by the social security system at 82 percent of the employee's salary ceiling. This leave must be taken up within four months after the birth.

- ***SICKNESS LEAVE***

In case of illness or private accident, the employee continues to receive his/her normal salary during a period of thirty calendar days. This is the so-called 'guaranteed salary'. During the first year of incapacity following the period covered by the guaranteed salary, the employee will receive sickness benefits from the Health Insurance Fund ('ziekenfonds - mutuelle'). In 2017 a new procedure came into force to reintegrate employees who have been absent from the workforce during a long period, because of illness (now included in the Code of the Well-being at Work). It is important to note that there is no difference between sickness leave and disability leave in Belgium.

Other Required or Typically Provided Leave

Employees have the right to be absent from work without salary loss on the occasion of:

- certain family events (marriage, funeral, childbirth, adoption, holy communion, non-confessional youth celebration, etc.)
- for meeting civil duties (jury service, participation in the electoral process, etc.)
- appearance before a court

Pensions: Mandatory and Typically Provided

The statutory retirement age in Belgium is officially 65. Yet, by the Act of 10 August 2015, the Federal government has decided at the beginning of June 2015, that this age will increase to 66 by 2025 and to 67 by 2030.

However, there are exceptions to this minimum retirement age (i) for labour-intensive professions and (ii) in case the employee can prove a minimum number of years worked (63 years of age and 42 years worked by 2019).

Apart from these social security benefits (the "first pillar"), many employees are entitled to an additional pension insurance (the "second pillar") paid by the employer as part of their salary package.

Other Required or Typically Provided Benefits

The following benefits are often granted to Belgian employees:

- Collective bonus (CBA n°90), warrants, stock options, profit sharing
- Company car
- Computer, tablet, smartphone, internet connection
- Travel and subsistence costs
- Family allowances and other kinds of allowances complementary to fringe benefits
- Meal vouchers
- Eco-vouchers

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

An employer can choose to either terminate an employment contract with the granting of a notice period or to terminate the employment contract immediately with the payment of an indemnity in lieu of notice. A combination of both, where the serving of a notice period is followed by the payment of an indemnity for the remainder of the

notice period is also possible. The indemnity in lieu of notice is calculated on the basis of the annual salary of the employee at the time of termination, including statutory and contractual fringe benefits. If the employment contract is terminated with the payment of an indemnity in lieu of notice, no formalities need to be complied with; this is contrary to a termination through serving a notice period.

Whistleblower Laws

There is no specific Belgian legislation governing whistle-blowing. However, the relevant case law is a good indicator of the admitted practices. Although the number of cases is very limited in Belgium, there is a clear willingness to insert whistle-blowing mechanisms in companies, in order to reach an appropriate balance between, on the one hand, the risk of late alerts and their influence on the working atmosphere and, on other hand, the need for transparency within companies. In addition, since it can involve the processing of personal data, whistle-blowing is subject to the provisions of the GDPR and of the Act of 30 July 2018 on the protection of privacy in relation to the processing of personal data. In this regard, the former Privacy Commission adopted a recommendation related to the compatibility of the whistle-blowing systems with the data protection legislation.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Garden leave is not allowed under Belgian employment law, because it entails that the employee would not be allowed to perform his/her job, as this condition is deemed an essential element of every Belgian employment contract. A garden leave where the employee is exempt from performing his/her duties during the notice period, is only possible with the employees' explicit consent. The unilateral decision of an employer to send an employee on garden leave, would grant the employee the right to claim damages or the contract could even be regarded as being terminated by the employer (constructive dismissal).

TRANSFER OF UNDERTAKINGS

Under Belgian law, the transferor and the transferee have an obligation to inform their respective employee representative bodies (i.e. the Works Council, or in the absence thereof, the Trade Union Delegation, or in the absence thereof the CPPW) about a proposed transfer (which includes a merger, concentration, take-over, closure or other important structural change negotiated by the company). The employees must be informed individually about the proposed transfer in case (i) there is only a Committee for Prevention and Protection at Work, or (ii) there are no employee representative bodies within the undertaking. The transferor and the transferee must also consult the employee representative bodies in particular with regard to the repercussions on the employment prospects for the personnel, the work organisation and the employment policy in general.

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BRAZIL.

HIGHLIGHTS

- The most common practice is hiring workers as employees.
- Employment agreements in Brazil are usually for indefinite term; fixed term employment agreements are only allowed in specific situations.
- All companies and employees are mandatorily represented by Unions.
- Employments are at will, meaning that any party may terminate the employment agreement without cause upon mandatory prior notice and payment of the severance.
- Work permits must be requested whenever a foreigner wants to work in Brazil.

INTRODUCTION

In Brazil, Labor Law is protective of employees. Some basic principles implicitly or expressly provided by Law will govern any employment relationship in Brazil. The most relevant principles are: (a) prevalence of facts: in the determination of labor consequences, the relevant facts surrounding an employment relationship will prevail over formal documents; (b) prohibition of detrimental changes: employers are prevented from making changes to employment terms and conditions that are detrimental to employees, whether or not the employee has previously consented with the change; and (c) joint liability (group of companies): companies belonging to a group of legal entities under the same control, direction or management are jointly liable for the obligations of any company belonging to such group with respect to employment relationships.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

There is no specific provision in Brazilian Labor Laws either prohibiting or authorizing the employer to perform background checks on its prospective employees. However, protection of personal information pertaining to any Brazilian citizen is granted in a broad scope by the Federal Constitution, which grants protection and inviolability of any citizen's intimacy and personal life. The Federal Constitution also prohibits any kind of discrimination. In addition, law n 9.029/95 prohibits any discriminatory and restrictive measure for the admission of an employee or maintenance of employment based on sex, origin, race, color, marital status, family situation or age. In view of the above, currently, as a general rule, Brazilian Labor Courts understand that some type of search that a company performs regarding its prospective employees' information characterizes discrimination, thus being illegal, and entitling the individuals to an indemnification for moral damages. Therefore, in order to evaluate the candidate's background, and in order to make a hiring decision, the company should only use public information about the individual.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Whenever a foreigner is transferred to Brazil and/or retained by a Brazilian company to render services in Brazil, an appropriate work visa/permit must be requested in advance. If the foreigner will bring his/her dependents, it is necessary to apply

for a residency permit based on family reunion. After the applicable visa is selected, the Brazilian entity will have to comply with the applicable rules concerning the relationship to be maintained with the foreigners.

EMPLOYMENT CONTRACTS

Minimum Requirements

In Brazil, workers may be hired in several ways, but the most common practice is to hire workers as employees. An employment relation is characterized by the simultaneous presence of four requisites: (a) services rendered on a personal basis; (b) on a permanent/habitual basis; (c) with subordination, i.e., the services are rendered under the employer's direction; and (d) on an onerous basis, i.e., the individual must receive remuneration in consideration for the services rendered. Whenever the requisites of employment relation are not present in a labor relation, the parties are free to structure it in a different way other than employment, such as: independent contractors/ consultants, service providers/outsourced workers, temporary workers, intern, non-employed officers, among others, provided that the specific rules and regulations regarding such other forms are complied with. The Labor Code is applicable solely for employees, while the other work structures are governed by different statutes.

Fixed-term/Open-ended Contracts

Employment agreements in Brazil are usually for an indefinite term. As per the Labor Code, fixed-term employment agreements are only allowed: (a) for up to 2 years when: (1) the temporary nature of the service justifies a pre-established term, or (2) the business activities have a temporary nature; (b) during an initial 90 day probation employment period, after which the employment agreement will become for an indefinite term. If the parties intend to execute a fixed term employment agreement it is necessary to have a written employment agreement expressly stating the term and the reason.

The fixed-term agreement will become an indefinite term employment agreement, if certain conditions apply. In addition, the Labor Reform introduced the intermittent work, which is a new type of hiring. In this type, the employee renders services with subordination, but not on a habitual basis, occurring the alternation between periods of provision of services and inactivity. The employee can work for any other employer during the inactivity periods.

Trial Periods

The trial period, also called "probation period", may be established for a period up to 90 days and may be renewed once if the limit of 90 days is observed, e.g., 45 days renewable for 45 days, 30 days extendable for 60 days.

Notice Periods

In the event of termination of employment agreements for indefinite term without cause by the employer´s initiative, the employer must provide the employee with a prior notice proportional to the length of service, minimum of 30 days if the employee has worked up to 1 year and 3 additional days for each year of service limited to 60 additional days (maximum of 90 days prior notice). In terminations without cause of employment agreements for indefinite term by the employee's initiative (resignation), the employee must provide a prior notice to the employer of 30 days or request to be released from working during the prior notice period. In the event of termination by mutual consent, the prior notice period will be reduced by half.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

The Labor Code establishes that the employee's salary must be paid in Brazilian currency. Compensation comprises not only the employee's fixed salary, but also any commissions, bonuses (Christmas or otherwise), fringe benefits, such as personal or family benefits and living expenses. Federal Constitution prohibits reduction of compensation, except by means of a collective bargaining agreement. National minimum wage established by Law is currently of BRL 954.00. Collective bargaining agreements may establish a so-called "professional salary", which is the minimum wage for a specific category and must be higher than the national minimum wage.

Health and Safety in the Workplace
Employers are obliged to provide a healthy and safe workplace to employees and to comply with all mandatory regulations regarding healthy and safety matters. There are several regulations providing for strict rules concerning mandatory periodical medical examinations, medical examinations upon admission and termination, medical records, environmental risks prevention, creation and maintenance of an Internal Commission for Accident Prevention (CIPA), health-hazard and dangerous activities and the corresponding allowances and ergonomics, among others.

SOCIAL MEDIA AND DATA PRIVACY

Can the employer monitor, access, review the employee's electronic communications?
There is no specific provision in Brazil regarding this matter. However, the Brazilian Labor Courts understand that the employer can restrict the personal use of the Internet and social media by the employees during the working hours due to the employer's power of command. However, it is advisable to include such provision in an internal policy of the employer. If the employer restricts the use of the Internet and social media for professional use, the employer is allowed to inspect its use and if the employee is using it improperly, the Brazilian Labor Courts understand that it can lead to the application of disciplinary measures.

EMPLOYEE BENEFITS

Social Security
Employers and workers must make compulsory contributions to the Brazilian Social Security Agency, which is in charge of managing a system designed to protect the employee in case of illness and retirement.

Healthcare and Insurances
The main insurances provided by the social security authority are: 1) Death allowance; 2) Accident allowance; 3) Disease allowance; and 4) Imprisonment allowance.

Required Leave
- ***HOLIDAYS AND ANNUAL LEAVE***

Vacation: In accordance with Brazilian Labor Law, after each period of 12 months worked, employees are entitled to a 30 calendar-day paid vacation, which must be taken within the subsequent period of 12 months, in the period that is most convenient to the employer. The Labor Reform allows the split of the vacation period, provided that the employee agrees.

Public holidays: Employees are entitled to be absent from work on public holidays as established by law to celebrate some special occasion, e.g. Christmas, Independence Day, etc.), being entitled to the regular remuneration for such days.

- ***MATERNITY / PATERNITY LEAVE***

All female employees are eligible for maternity benefits, including when adopting a child. The maternity benefit will be paid to the employee for a period of 120 days and is paid by INSS, the Brazilian social security agency. In practical terms, the employer pays the benefit to the employee and deducts the amount from the social security contributions due to the INSS. Male employees are entitled to 5 days of paid paternity leave.

- ***SICKNESS LEAVE***

In the event of sickness leave, the employer will be responsible for the employee's salary during the first fifteen days. After the fifteenth day of absence due to sickness, the INSS will pay a sick leave benefit to the employee. However, the benefit does not correspond to the actual salary, but rather to a specific INSS based calculation made over the last contributions and it is capped to approximately BRL 5,600.00.

- ***DISABILITY LEAVE***

In the event of an injury at work, the employer will be responsible for the employee's salary during the first fifteen days.

Other Required or Typically Provided Leave
Employees have the right to be absent from work without salary loss on the occasion of: i) certain family events (marriage, funeral, childbirth, adoption, holy communion, non-confessional youth celebration, etc.); ii) for meeting civil duties (jury service, participation in the electoral process, etc.); and iii) appearance before a court.

Pensions: Mandatory and Typically Provided
Males must be at least 65 years of age to retire, and females must be at least 60 years of age. A worker can also be eligible to receive a length of service pension. Female and male workers with 30 and 35

years of contributions, respectively, are eligible for a length of service pension.

There is also a special retirement for employees who have worked under unhealthy conditions. A company that has employees working under unhealthy conditions that entitle them to the special retirement must pay additional social security contributions. The additional contribution is 6%, 9% or 12% of the employees' salary, depending on the level of the risk.

There is also disability pension for workers who have become disabled due to work related illness or accident.

Apart from the aforementioned public retirement system, some companies provide their employees with a private pension plan, which can be defined by the companies on the amounts of contributions by both parties (employers and employees), which are subject to specific rules in Brazil issued by a Government Agency – Superintendência de Seguros Privados (SUSEP).

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

In Brazil, employments are at will, meaning that any party may terminate the employment agreement without cause upon the mandatory prior notice and payment of the severance. It is not necessary to mention any reason for termination, except if it is termination with cause. The employer may terminate the indefinite term employment agreement at any time for any reason and the employee may also resign at any time for any reason as long as the notice period is observed and the severances are paid. Termination with cause is the most severe sanction for an employee and results in the reduction of the employee's severance entitlements. In Brazil, severance pay is mandatory, but the amount differs based on the circumstances, i.e. in case of resignation, termination by mutual agreement, without cause, and with cause of an indefinite term agreement and a fixed-term agreement.

Whistleblower Laws

There is no law regulating whistleblowing systems. The Brazilian Clean Company Act provides credits for companies that have implemented a compliance program. In this context, a whistleblowing channel is an important element of a compliance program. Internal policy should regulate it, establishing provisions about confidentiality, privacy, non-retaliation, among others. The Federal Constitution's principles such as the right of privacy and intimacy, the protection of image and reputation, and non-discrimination rights should be complied with when implementing a whistleblowing program.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Garden leave in Brazil is not legally regulated and it is not a common practice. The enforceability of a garden leave provision may be easily challenged in courts.

TRANSFER OF UNDERTAKINGS

Employee labor conditions must not be reduced or negatively impacted from a transfer of undertaking. Employers are prevented from making changes to employment terms and conditions that are detrimental to employees, whether or not the employee has previously consented to the change. Due to the concept of labor succession, the new owner of a company or business will be considered liable for all labor rights and liabilities. From a labor standpoint, there is no need to request any authorization for an authority or Union to proceed with a takeover.

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CANADA.

HIGHLIGHTS

- "Employment law" concerns the relationship between an individual and an employer, while "labour law" regulates the collective representation of employees by trade unions.
- There is no "at will" employment in Canada. Dismissed employees are entitled to notice of termination or pay in lieu of notice, unless employment was terminated "for cause".
- Provincial employment standards legislation establishes minimum standards for wages, vacation, leaves, notice of termination and severance. However, the common law provides greater entitlements upon termination and can otherwise regulate the employment relationship.
- Employment contracts can be used to set out the terms of employment for non-union employees. Provided that the contract's terms do not violate applicable statutory minimum requirements, the terms of the contract will displace the common law. As such, employers are encouraged to utilise written employment agreements, particularly with respect to entitlements upon termination.
- All jurisdictions have legislation prohibiting discriminatory practices and harassment in the workplace. Employers have significant positive obligations to ensure equality in the workplace.

INTRODUCTION

In Canada, the power to make laws is divided between the federal and provincial governments. Generally, for historic, constitutional reasons, provinces have jurisdiction over most employment matters, while the federal government has jurisdiction over employment only in respect of specific industries, such as airways, shipping and banks. Employment law in Canada is quite similar from province to province and is governed by both federal and provincial legislation as well as by the common law (judge-made law). Québec is the notable exception to this rule, as Québec operates under a civil law system based on a written "civil code" founded on France's Napoleonic Code.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

Even when an individual has consented to a background check, the collection, use and disclosure of personal information must be reasonable under the circumstances, given the purpose for which it is being collected, used or disclosed. Employers must therefore have some justification for requesting that employees consent to a background check, criminal or otherwise, as they may be required to demonstrate that the check was reasonable and necessary in the circumstances. British Columbia and Quebec require that any criminal background check, and any decision relating thereto, must be directly relevant to the particular staff position at issue. At the other end of the spectrum, Alberta currently has no restriction on criminal background checks in its legislation at all. Other provinces are somewhere between these two extremes. For the foregoing reasons, employers generally should not conduct record checks until a conditional offer of employment has been made, and then mostly only with employee consent (and, often, participation). Upon receiving the results of a record check, it may be possible to rescind an offer of employment depending on the details of the results and the applicable legislation.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

To be lawfully employed in Canada, one must be a citizen, a landed immigrant or have a work permit. There is some increased movement of professionals, executives and skilled trades through free trade agreements with other countries, particularly the United States. No work permit is required for business visitors who come to Canada to meet with Canadian clients or assess business opportunities; however, a work permit will be required for foreign nationals who will be providing their services in Canada.

The Canadian government recently introduced new legislation to govern Canada's Temporary Foreign Worker Program, designed to better protect foreign workers and to address short-term labour and skills shortages. The new regulatory a8mendments seek to rigorously assess the authenticity of employment offers in order to minimize fraudulent offers and better protect foreign workers from exploitation and abuse. A second element of the new rules seeks to bar employers from hiring temporary foreign workers when Citizenship and Immigration Canada has determined that the employer has failed to meet its commitments regarding terms and conditions of employment. Finally, according to the regulatory amendments, temporary foreign workers can hold a temporary work permit for only four years at a time. However, some workers are exempted from this limit, including most who occupy managerial, highly skilled, or other exempt positions.

EMPLOYMENT CONTRACTS

Minimum Requirements

In order to be enforceable, an employment contract must fulfill the essential elements of a binding contract at common law, and must not contravene any applicable legislation. `A binding contract must be formed by offer, acceptance and consideration. In the case of most employment contracts, the consideration is the exchange of remuneration for work. Courts have found that continued employment is generally not sufficient consideration, unless there is evidence that the employer intended to dismiss the employee if the post-hire agreement was not executed. Employment contracts are subject to close scrutiny in Canada and will not be enforceable if they do not comply with minimum employment standards, occupational health and safety legislation and human rights legislation. Any ambiguity in an employment contract will generally be interpreted in the employee's favour.

Fixed-term/Open-ended Contracts

Most employment agreements are for an indefinite term. In the absence of an express agreement to the contrary, an employment contract for an indefinite term can only be terminated by the employer by the provision of reasonable notice at common law. In general, the statutory notice period is much shorter than the notice period at common law. Where an employment agreement stipulates that employment will be for a fixed term, the employee may not be entitled to notice of termination if his or her employment is terminated when the contractual term expires.

Trial Periods

If an employer wishes to hire an employee on a probationary basis to determine their suitability for the position, this should be clearly set out in a written employment contract.

Notice Periods

All employees must be provided with notice of termination or pay in lieu thereof in accordance with the applicable employment standards legislation. Unless the parties have expressly agreed otherwise, there is a legal presumption that an employee will also be entitled to reasonable notice period under common law, which is intended to approximate the length of time it would likely take an employee to obtain similar employment.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

Employees must be paid an amount equal to or greater than the applicable minimum wage. Minimum wages in Canadian jurisdictions range from $11.00 per hour to $14.00 per hour. Where employees are paid a salary rather than an hourly

wage, the employer must nevertheless ensure that employees' compensation is at least equal to the minimum wage in light of hours worked.

Health and Safety in the Workplace
Occupational health and safety legislation exists in all jurisdictions and places an obligation on both employers and employees to minimize the risk of workplace accidents, through the exercise of "due diligence". In many Canadian jurisdictions, there are laws that require that employers assess the risk of, and develop programs to deal with, violence and harassment in the workplace.

SOCIAL MEDIA AND DATA PRIVACY

Can the employer monitor, access, review the employee's electronic communications?
Employers are entitled to restrict an employee's use of Internet and social media during working hours. Employers may also place limits on the use of employer-provided technology outside of working hours. Like any workplace rule, an employer's Internet and social media policy must be clear and well-publicized in order to be relied upon by the employer in issuing discipline.

EMPLOYEE BENEFITS

Social Security
There are a number of "social safety nets" in Canada. The most significant is the federal Employment Insurance system, which provides benefits in the event of a loss or interruption of employment.

Healthcare and Insurances
Citizens and landed immigrants have significant health care coverage, unemployment insurance coverage and pensions for retirement, generally covered by public funds and payroll taxes. Employment Insurance ("EI") is available for Canadians who have lost their jobs. EI provides income replacement benefits for employees who have lost their jobs through no fault of their own. Therefore, EI is generally not available to employees who have been terminated for just cause. The current weekly benefit amount for a claimant is 55% of the average weekly earnings from the previous calendar year to a maximum weekly benefit of $537.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

In all provinces, employees are entitled to at least two weeks of vacation per year. In many provinces, this entitlement will increase with an employee's length of service. Employees are also entitled to between 6 to 10 paid statutory holidays per year.

- ***MATERNITY / PATERNITY LEAVE***

Maternity leave and parental leave are addressed under employment standards legislation in each province. EI is available for employees who are pregnant, have recently given birth, are adopting a child, or are caring for a newborn. Because EI benefits provide only a portion of an employee's regular wages, many employers offer "top up" benefits to employees for some portion of their leave.

- ***SICKNESS LEAVE***

Many jurisdictions also provide a variety leaves based on illness, disability, or the illness or disability of a family member. Employers are generally not required to pay employees for these leaves of absence. Specialized EI coverage is also available for employees who are unable to attend work because of illness because they have taken a compassionate care leave to care for a family member who is gravely ill with a significant risk of death, or a leave to care for a critically ill child, though employers are not required to pay employees during these types of leave.

- ***DISABILITY LEAVE***

Each province provides some form of support for persons with disabilities who are in financial need, but this will only be available to persons who have significant long-term impairments that restrict their ability to work, care for themselves, or take part in community life.

Other Required or Typically Provided Leave
Each province in Canada operates a provincial workers' compensation system which is, in effect, an insurance system. There is no federal workers' compensation system and therefore, if eligible for coverage, employees in the federal jurisdiction are covered by the provincial workers' compensation system that exists in the province in which they are employed, and participation is compulsory for employers. The system creates a trade-off, whereby

employees injured on the job receive coverage, and in return, lose the right to sue their employers with respect to the injury.

Pensions: Mandatory and Typically Provided
Almost all individuals who work in Canada contribute to the Canada Pension Plan (CPP), which is a defined benefit plan. Employers are required by law to deduct and remit CPP contribution from employees' income. Employers are also required to make contributions to CPP on behalf of their employees. Employees may apply for and receive a full CPP retirement pension at age 65. Alternatively, employees may receive a reduced pension at 60, or as late as 70 with an increase. Many employers and employees participate in workplace pension plans or group RRSP arrangements in order to supplement employees' CPP entitlements.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
Employment can be terminated at any time if the employee is provided with appropriate notice of termination as well as any applicable legislative entitlements. However, if an employee engages in conduct that is incompatible with the fundamental terms of the employment contract, he or she may be dismissed without notice. It is very difficult to establish just cause for dismissal. Examples include theft; workplace harassment; criminal activity; and significant dishonesty or fraud.

Ontario is the only Canadian jurisdiction that provides employees with severance pay. Mid-size to large employers operating in Ontario will be required to pay severance pay to persons who were employed for at least five years. The legislation requires a lump sum payment which is calculated as one week per year of service to a cap of six months.

Whistleblower Laws
Canada makes it a criminal offence for an employer to retaliate (or threaten to retaliate) against an employee in order to convince them "to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed". There are also specific protections offered to employees under almost every employment-related statute, should they come forward with a valid complaint about their employer, or if they assert their statutory rights. It should also be noted that employees generally have a duty of loyalty to their employer. Depending on the facts of a situation, an employee may be in breach of that duty (which can be grounds for termination) if their "whistleblowing" is for political or other purposes unrelated to asserting statutory rights.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave
Garden leave is fairly uncommon in Canada, although some employers have begun to view garden leave as a viable alternative to restrictive covenants which are notoriously difficult to enforce. In the absence of any contractual provision contemplating that an employer may remove some or all of an employee's job duties, there is some risk that an employee placed on garden leave may claim that he or she has been constructively dismissed, and therefore entitled to treat the employment relationship as severed, and immediately begin seeking other employment.

TRANSFER OF UNDERTAKINGS

Employees of the vendor who are not employed by the purchaser are entitled to, at minimum, notice of termination under the applicable employment standards legislation. However, if the employee is offered employment by the purchaser, employment will be deemed to be continuous for the purposes of employment standards legislation.

In a share purchase, the legal identity of the employer does not change, so there will be no change in the obligations and liabilities attached to the business.

The purchaser will therefore acquire all obligations owed to employees, unless the parties have agreed otherwise under the agreement of purchase and sale. In an asset purchase, the legal identity of the employer changes, such that the employment relationship will be severed. The vendor employer will be liable for any notice of termination payable to severed employees. However, if an employee of the vendor is employed by the purchaser, his or her employment will be deemed to be continuous for the purposes of employment standards legislation in most provinces.

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CHILE.

ISSUES ARISING UPON HIRING INDIVIDUALS

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work
As a general rule, foreigners neither domiciled nor residing in Chile and working in Chile are subject to a flat 35% Additional Income tax to be deducted by the company that employs them in Chile upon payment of the salary or fee, and the tax is payable to the Treasury within the first 12 days of the month following that in which the tax was deducted. However, the rate for said additional tax shall be 20% in case the foreign employee with no residence or domicile in Chile receives remunerations from a Chilean source, originating in the provision of scientific, cultural or sports services. Likewise, the tax rate shall be 15% if such employee is remunerated by a Chilean source, originating from the provision of services deemed to be professional or technical.

EMPLOYMENT CONTRACTS

Minimum Requirements
Chilean legislation provides three categories of labor contracts: individual labor contracts, collective labor contracts, and special contracts.

Fixed-term/Open-ended Contracts
They are agreements executed between employers and employees with the purpose of establish common labor conditions, remunerations or other benefits in kind or money, for a fixed period of time". The Collective Contract must be agreed in writing and must be registered before the Department of Labor within 5 days since its execution. Legally, such contracts must be executed for a fixed term, which cannot surpass 3 years and may not be less than 2. Also, the law provides the minimum clauses to be included in these instruments.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary
The law considers as remuneration the cash payments and cash-equivalent benefits in kind that the employee receives from the employer on account of the employment agreement. The amount of remuneration can be freely agreed between the employer and the employee. However, the law sets a minimum level, which in the case of the monthly base salary for employees working 45-hour weekly cannot be lower than one legal monthly minimum wage (CL$276,000; US$425 approximately), as from January 1st, 2018.

Health and Safety in the Workplace
The Employees' Compensation Insurance Law established under Law Nr. 16,744 states the obligation for companies or establishments with more than 25 employees to create a Permanent Safety, Hygiene and Risk Prevention Committee (Comité Paritario), comprising representatives of both employers and employees. This committee is responsible for the adoption of all the measures needed to avoid work-related accidents and for recommending the proper use of the safety gear existing in the company. None of the employees' representatives in this committee can be dismissed while sitting on the committee, without prior authorization of the labor courts.

EMPLOYEE BENEFITS

Social Security
In 1980 the Government introduced a major change in the Chilean Social Security system, making a transition from Government-administrated pension and managed healthcare systems, to contributions made to funds administrated by private entities subject to overall Government

control. Old-age pensions are financed exclusively by the employees through contributions that are accumulated in individual accounts at entities known as Administradoras de Fondos de Pensiones (AFP). For these purposes, employees must contribute 10% of their monthly remuneration up to a maximum of 79.3,7 Unidades de Fomento (currently approximately US$3,500). In addition, employees must contribute a 7% of their monthly remuneration for medical care, also up to a 79.3 UF cap. Finally, the employers must contribute between a 1% and 1.5% of the employee's remuneration for disability and survival insurance (SIS).

Healthcare and Insurances

The Social Security system covers all employees, including independent employees. The latter are legally obliged to contribute to a mandatory insurance that covers old age, disability and survivorship insurance. In the case of foreign employees, as a general rule, they must also pay social security contributions as indicated above. However, Law Nº 18,156 grants exemption from social security contributions to foreign technician employees and the company that contracts them, provided that certain conditions are met. Insurance for accidents or professional illnesses provides for medical and dental attention, hospitalization and medicine as well as indemnities (depending on the type of disabilities suffered) and related expenses.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

The workday must be divided into two periods, leaving between them at least a half-hour break for lunch, which must not be considered for the purposes of determining the workday. The law also indicates some cases in which the rest period is longer, i.e. restaurants, hotels and club employees. Sundays and days legally established as holidays shall be nonworking days, except for activities authorized by law to be performed on those days, companies exempted from the above prohibition must compensate their employees with a paid day off in exchange for worked Sundays or holidays. Employees who have worked for more than one year have the right to an annual paid vacation of 15 working days. After working ten years, continuously or not, for the same or different employers, vacations are extended by one working day for every three years of service. In case of employees who work in the 11th and 12th Regions of the country and the province of Palena, the basic vacation period is 20 days.

- ***MATERNITY / PATERNITY LEAVE***

Female employees are entitled to six weeks leave before (prenatal leave) and twelve weeks after (postnatal leave) the birth of a child, on full pay. This payment is made by the Social Security system and not by the employer. In addition, women cannot be dismissed during pregnancy and for a period of one year as from the end of the postnatal leave, other than with prior authorization of a labor court. Additionally, to the referred postnatal leave, exists a supplementary permit that as a general rule, provides a 12 weeks' permit after the end of the postnatal dispensation of the mother, on full pay. Establishments with more than 20 female employees, regardless of their age or marital status, must provide a nursery service for children under 2 years old. Employers may contribute to an external nursery school to provide such service. While the women are feeding their babies, they must be granted one hour a day for this purpose.

Other Required or Typically Provided Leave

In the event of death of a child, spouse or civil partner, every employee shall be entitled to 7 calendar days of paid permit, in addition to the legal vacations to which the employee is entitled to. In this case, the employee shall also be entitled to labor protection or immunity for one month, as from the date of death, thus entailing that said employee cannot be fired unless a labor court has previously authorized such dismissal. This permit shall amount to three business days in the event of death of a child during pregnancy, as well as in the event of death of the worker's father or mother, albeit without granting the benefit of labor privilege or immunity.

Pensions: Mandatory and Typically Provided

Indemnities are granted in the form of a pension to the injured employee or to his/her spouse and dependent children in case of death of the employee. The Employees' Compensation Fund is funded through a base contribution (made by the employer) of 0.95% of the employee's salary (with a cap of 75,7 U.F. per base salary), plus an additional payment, which must be borne by the employer exclusively depending on the activity and level of risk of the company (additional rate from 0% to 3.4%).

Other Required or Typically Provided Benefits
Employers have no legal obligation to provide fringe benefits, other than benefits which may be voluntarily agreed in individual or collective contracts or agreements. Pension and sickness benefits are covered by the Social Security system. There is no legal obligation to provide catering facilities and meals.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
If the employer dismisses the employee based on the general grounds known as "company's needs," such as changes in economic conditions, downsizing of the company, or in case of termination at will (when law permits it), certain severance compensations will be awarded to the employee. If the dismissal notice is not given 30 days in advance, the employee will be entitled to receive a severance compensation equivalent to one month's remuneration.

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CHINA.

HIGHLIGHTS

- In China, labor relationships may be reinstated even after termination – employers may be forced to re-hire terminated employees.
- Chinese labor law is based on contract, and offer letters or oral commitments are often legally insufficient to establish labor relationships.
- Chinese severance pay practices are unique, which can result in a senior manager's severance being lower than a junior employee's.
- Chinese employers cannot require employees to pay liquidated damages except in limited situations involving non-competition and service-period duties.
- Labor strikes are not permitted under the law, but employees still engage in strikes through self-organization; these strikes are typically unsupported by trade unions, which may even actively resist such efforts by employees.

INTRODUCTION

Labor law generally refers to the rules and regulations governing employment relationships and other social relationships that are closely connected with employment relationships. Chinese labor law applies to all businesses, individual economic organizations, private non-profit entities, etc. in the People's Republic of China (the "PRC") and the individuals who have employment relationships with such entities. Employment relationships between government offices, institutions and social groups and their employees are also governed by Chinese labor law. Employers and employees (except part-time employees) are required to establish employment relationships by entering into written employment contracts. However, even if the parties fail to execute valid written employment contracts, an employment relationship can still be deemed to exist if the parties act as if they are bound by such a contract.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

According to PRC Labor Contract Law, the employer is entitled to know an employee's basic information, which directly relates to the employment contract and the employee is obligated to inform the employer of the said information truthfully. However, the background checks or application/interview questions shall not infringe employees' privacy rights or equal employment rights; otherwise the employer could be litigated pursuant to PRC Tort Law and other applicable laws. In addition, according to the Decision of the Standing Committee of the National People's Congress on Strengthening Network Information Protection (the "Decision"), when collecting or using employees' personal electronic information obtained via background checks or application/interview questions, the employer shall follow the principle of lawfulness, properness and necessity, and explicitly disclose the purposes, methods and scopes for collection and use of the information.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Under PRC law, expatriates working in China must be in possession of a work permit and a residence permit (for employment purposes) otherwise their

employment may be considered illegal. In cases of illegal employment, the employer and the foreign employee may be penalized by the authorities, and their relationship will not be protected by labor law. Work permits usually have a term of one year and never exceed five years even if certain conditions are satisfied. Residence permits usually have the same term as work permits. If the employer intends to continue to employ the foreigner after the expiration of the work permit and the residence permit, the employer must apply for a renewal of the permits 30 days before their expiration. The employment relationship is automatically terminated if the work permit becomes invalid or is cancelled. In addition, foreigners who come to China to perform special tasks in the areas of technology, scientific research, management or guidance with Chinese business partners or other reasons and stay in China less than 90 days (the "Short-term Work") must apply to the relevant authorities for their employment licenses, approval letters, certificates of employment, invitation letters or confirmations of invitation and work visas.

EMPLOYMENT CONTRACTS

Minimum Requirements

Under the Labor Contract Law, a written employment contract is necessary to establish an employment relationship. However, a part-time employee, who works no more than 24 cumulative hours per week and four average hours per day, is subject to different requirements and may be employed under an oral contract. Usually, the contents of an employment contract can only be modified in writing after both parties have reached a consensus through mutual negotiation. However, a verbal modification of an employment contract may also be valid if the modification has actually been performed for longer than one month and does not violate any law, administrative regulation, state policy, public order or good morals.

Fixed-term/Open-ended Contracts

Employment contracts in China can have three different types of terms: fixed, open-ended or terms that expire upon completion of an assignment. Under the Labor Contract Law, if an employer opts to enter into a fixed-term contract with an employee, after the completion of two fixed terms, that employer must offer the employee an open-ended contract. Since open-ended contracts are inherently difficult to terminate, employers may want to use fixed-term contracts for new hires. This would give the employer a chance to evaluate its new employees. If the employee's performance is poor, a fixed-term contract provides the employer with the option of discontinuing the employment relationship at the end of the term.

Trial Periods

In China, the employee trial period is also known as the probationary period. A probationary period is commonly included in employment contracts. However, Chinese labor law contains restrictions on the length of the probationary period.

Notice Periods

In China, an employee may unilaterally terminate his or her employment contract by giving a written notice 30 days in advance or 3 days in advance during the probationary period. On the other hand, an employer may unilaterally terminate an employment contract by giving a written notice 30 days in advance or providing one month's salary in lieu of notice in certain circumstances.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

Full-time employees should be paid their salary at least once a month. Employees' monthly salaries should not be less than the minimum wage published by local governments. An employer should pay salaries to its employees in accordance with the law for official public holidays, marriage or bereavement leave and for any periods when they participate in social activities such as exercising the statutory election rights. Furthermore, employers may arrange compensation and bonus policies according to the law and their own needs. These policies may include performance bonuses, annual bonuses, stock options, etc. Individual income taxes and other taxes payable by employees are the responsibility of employees. However, employers should withhold such amounts from any payments and pay such amounts to the tax authority on behalf of their employees.

Health and Safety in the Workplace

According to PRC Labor Law, an employer must establish a sound labor safety and hygiene system and strictly implement State rules and standards of labor safety and hygiene, conduct labor safety and hygiene education among its employees, prevent accidents and reduce occupational hazards.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

Under PRC Labor Contract Law, the employer could formulate its internal policies in accordance with law. If such policies involve the matters such as working hours, work discipline, etc., which have a direct impact on employees' immediate rights and interests, the said policies shall be discussed by the employee representative congress or all employees, and then determined by the employer after consultation with the labor union or employee representatives. Therefore, if the employer's restriction on employees' use of internet and social media during working hours is a part of its internal policies which have undergone the said democratic process and been announced to all employees or informed to the specific employee, or is incorporated in the employee's employment contract, it could be valid and enforceable.

EMPLOYEE BENEFITS

Social Security

The Chinese government has set up social security systems such as basic pension insurance, basic medical insurance, work-related injury insurance, unemployment insurance, maternity insurance, etc. to protect the basic rights of citizens. Generally, employers in China contribute social security premiums and housing provident funds for their employees pursuant to the law. Employees themselves also contribute their own social security premiums and housing provident funds pursuant to the law. Employers typically withhold a portion of their employees' monthly salaries to help them complete their social insurance and housing fund contributions. Expatriate employees hired by Chinese employers are also required to participate in the social security system when they complete the employment formalities required by law. However, expatriate employees may be exempt from social security contributions under a treaty or convention. Expatriate employees are not required to participate in the housing fund system. However, those with permanent resident status may choose to contribute to the housing funds at their own discretion. Employers and employees are required by law to contribute to their respective social security premiums and housing provident funds and cannot be exempt by special agreement or arrangement.

Healthcare and Insurances

Employers and employees must both contribute basic pension insurance premiums pursuant to national and local law. Employers and employees both must contribute basic medical insurance premiums pursuant to national and local law. Employers are required to contribute work-related injury insurance premiums according to the combined wages of all of their employees and a fee rate determined by the social security agency. Employees do not need to contribute to work-related injury insurance. Employers and employees must both contribute unemployment insurance premiums pursuant to national and local law. Employers are required to contribute maternity insurance premiums pursuant to national and local law. Employees are not required to make such contributions. Maternity insurance benefits cover the medical costs for childbirth and provide a maternity allowance. Employers and employees both must contribute to the housing provident fund pursuant to national and local law. The housing provident fund is used for employees to purchase, construct, renovate or rebuild personal dwellings. Apart from the abovementioned mandatory insurances, employers are free to purchase supplementary commercial insurance for their employees at their own discretion.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

In the beginning of each year, the State Council will announce a holiday schedule which indicates 11 national holidays, including 1 day of New Year Holiday, 3 days of Chinese New Year, 1 day of Tomb Sweeping Day, 1 day of Labor Day, 1 day of Dragon Boat Day, 1 day of Mid-Autumn Day, and 3 days of National Day. Employees who have worked between one and ten cumulative years are entitled to five days of annual leave. Employees who have worked between ten and 20 cumulative years are entitled to ten days of annual leave. Employees who have worked for more than 20 cumulative years are entitled to 15 days of annual leave. If

the employer fails to arrange annual leave for employees due to business reasons, the employer must pay an encashment to employees for such accrued but untaken annual leave. This encashment should total 300% (100% has been included in the monthly salary and therefore only 200% needs to be additionally paid) of an employee's daily normal salary for each accrued but untaken day of annual leave.

- ***MATERNITY / PATERNITY LEAVE***

On December 27, 2015, the PRC Standing Committee of the National People's Congress issued the new Population and Family Planning Law of the People's Republic of China (the "Law") which formally abandons China's decades-long one-child policy and allows all couples to have two children. According to the Law, late marriage and late birth are no longer encouraged, and maternity leave may be extended by local rules.

- ***SICKNESS LEAVE***

During an employee's sick leave period, his or her salary will be determined and paid based on the standard of sick pay and sick benefits during the medical treatment period according to state laws and local regulations. If an employee suffers from a non-work-related illness or injury and needs to stop working as a result of medical treatment, a medical leave between 3 and 24 months will be granted according to local regulations in the place where the employee works and based on the employee's years of service.

- ***DISABILITY LEAVE***

Disability could be caused by non-work-related injury or work-related injury. If the employee's disability is caused by a non-work-related injury, the employee could enjoy the same benefits (sick pay, medical leave and medical treatment subsidies) as in the event of illness. Where the work-related injury is severe or the circumstance is exceptional, after being assessed by the local work capability assessment committee, the said suspension period could be extended by no longer than 12 months.

Pensions: Mandatory and Typically Provided

Currently in China, mandatory and typically provided pensions only include the basic pension insurance. Recently, the government decides to reduce the employer's pension insurance contribution rate to lower the cost of private businesses. The Circular of the Ministry of Human Resource and Social Security on Periodically Lowering Social Insurance Premium Rate requests that from May 1, 2016, if employers' pension insurance contribution rate in any province (city, district) is greater than 20%, it shall be reduced to 20%, and if the said rate is 20% and the cumulative balance of the pension insurance fund could afford at least nine months' payment in any province (city, district), it may periodically be reduced to 19% in two years' term.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

PRC labor law generally favors employees and therefore contains many statutory provisions on termination of employment contracts that protect employees' rights and interests. The statutory grounds for termination are:

- Termination by mutual agreement
- Termination by the employee
- Termination by the employer
- Automatic termination

Under the Labor Contract Law, for mutual terminations proposed by the employer, unilateral terminations by the employer, redundancy terminations for economic reasons, unilateral terminations by the employee for the employer's fault or constructive terminations due to the employer's reasons, the employer is required to pay severance based on the employee's years of service. Severance is calculated at a rate of one month's salary (the "Average Monthly Salary") for each full year of service. Service periods greater than or equal to six months are rounded up to a full year, and periods fewer than six months are considered half-years (the employer would owe a half month's salary).

Whistleblower Laws

From the perspective of corporate governance and company's operation compliance, Chinese legislation has not yet formulated an independent

sector of laws to govern the rights and obligations of the whistleblower. The similar concept on protections of the whistleblower can be found in the PRC criminal laws and regulations, where criminal liability is to be pursued by the public prosecutor, and the identity of the whistleblower remains undisclosed for avoidance of potential retaliation against the whistleblower and of impeding any ongoing investigation.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Although garden leave is not mentioned in the labor law, it is very similar to the period of breaking away from secrets under PRC laws. According to the Circular of the Labor Department on Certain Issues about Enterprise Employee Movement, the employer and employee could agree that for a certain period (no longer than 6 months) before the employment contract expires or the employee terminates the employment, the employer could adjust the employee's position and modify the employment contract accordingly. This is the period of breaking away from secrets and is aimed at protecting employers' confidential information, trade secrets, etc. This period of breaking away from secrets is acknowledged and applicable in many provinces including Shanghai, Jiangsu, etc.

TRANSFER OF UNDERTAKINGS

When an employer decides major company matters that directly implicate the interests of employees, the employer should discuss such matters with the employee representative congress or its entire staff. It should only make a decision after consulting with the trade union or employee representatives. The consultation procedure is designed to give the trade union and employees a chance to express their opinions, but the employer has the authority to make the final decision. A change of shareholders and a merger would not affect the performance of employment contracts and therefore neither the transferor nor the acquiring party is obliged to pay severance to employees. However, in practice, employees often demand severance and even collectively oppose such transfer, because they misconstrue a change of shareholders as a termination of employment or they worry that their rights and interests will be impaired after the transfer. Therefore, to appease these employees, some acquiring parties may promise that they will not reduce employees' compensation or benefits after the transfer and may even undertake to refrain from collective layoffs for a certain period (such as two years) following the consummation of the transfer of undertaking.

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COLOMBIA.

HIGHLIGHTS

- Employee-legislation in Colombia is divided (due to its importance) in specific rules compilations for each specialty: Labor rules, social security, procedural rules and employment law.
- Even when employment contracts, as a general rule, are considered an indefinite term, Colombian labor law is flexible in comparison to other countries, as it provides the possibility to use flexible forms of employment without major restrictions.
- Colombian labor law provides high flexibility regarding dismissal. However, in recent years the case law has developed greater protection to prevent possible discriminatory situations.
- Foreigners are only allowed to work in Colombia through a work permit or with a residence permit if they are planning (or are currently) to stay permanently in the country.
- Constitutional actions ("Tutela") demanding immediate protection of fundamental rights provides an important source for labor norms, as a result of the interpretation of the written labor rules.

INTRODUCTION

Though collective labor law rules have not experienced any significant changes since 2008, there currently exists a segment of ´legal unity´ in Colombia, which is an important dynamic in the employment relations regarding trade unions. Colombian labor rules and principles are not only considered a public policy rule, but most of these principles also have a constitutional hierarchy, together with the International treaties or conventions that recognize human rights ratified by Colombia. The consequence of this situation is that employers cannot (even with the employee's approval) provide conditions worse than those recognized by the law, the constitution or an international treaty or convention, which recognizes human rights ratified by Colombia. Efforts have been made to add flexibility to the Colombian labor market to match globalized standards, through reforms to the labor rules.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

Express prohibitions over background checks in the legislation include the following:

- HIV tests or conditions.
- Pregnancy test.
- Mandatory military service approval.
- Unionized condition.
- Diseases or disabilities.
- Blacklists.
- In general, it must be said that any background check that might be considered discriminatory is prohibited, unless and objective justification is proven.

Also, data protection legislation (The 1581 Act of 2012) provides certain restrictions over the information potential employers, and former ones, can publish about its candidates and former employees.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Every foreign person needs a special permit or ´VISA´ to perform his services in Colombia. The requirements for a foreign employee to perform his services in Colombia was recently changed by the 6045 Resolution of 2017. To determine which category or special permit must be requested for the potential foreign employee, it is important to establish whether the service to be performed by the foreigner is temporary (short duration) or permanent (long duration). However, there are special considerations for foreign employees who have a proper resident VISA. A work permit for a foreign employee which was recognized for this sole purpose, only allows the employee to perform the services for the position, company and/or profession wherewith the VISA was authorized.

EMPLOYMENT CONTRACTS

Minimum Requirements

Employment contracts are deemed as such if they unite three conditions: (i) services are provided by the person directly; (ii) subordination from the employee towards the alleged employer; and (iii) a payment as a retribution for the service provided. If these three conditions are met the relationship will be considered as an employment contract, disregarding the name or agreement the parties signed. Employment contracts can be both verbal and in writing. However, in verbal contracts the parties must agree, at least, on the following points: (i) the nature of the service to provide; (ii) the amount and form of the compensation; (iii) the contract's length.

Fixed-term/Open-ended Contracts

In addition to having to comply with the general as well as any specific requirements that may apply, fixed-term contracts are obliged to be in writing to be considered as such. Fixed-term contracts can be signed with any employee, whether the service provided can be considered permanent or temporary within the organization. The labor code establishes that the fixed-term contract length is free for the parties to determine, but it cannot exceed three (3) years. There is also no limitation for the possibility of successive fixed-term contracts or renewals.

Trial Periods

The trial period must be agreed in writing. Its length varies depending on the type of contract agreed by the parties, but cannot exceed in any case two (2) months. For fixed-term contracts or definite period ones (i.e. employment contracts for completing a specific task or the occurrence of a specific event) the trial period cannot exceed a one-fifth part (1/5) of the term initially agreed. When considering the existence of successive employment contracts, the parties cannot agree to

Notice Periods

Colombian legislation only provides, in general, the need of a period of notice by the employer in the event to terminate a fixed-term contract by its expiration date, at least 30 days before the occurrence of the term agreed. In case the employer fails to comply with the period, the fixed-term contract will be renewed for the same term than the initially agreed. While the employee, according to the law, is also obliged to comply with a period of notice in the same terms than the employer, this rule is nowadays not enforceable. For employees considered to be the subject of a special protection (i.e. disabled persons, pregnant employees, certain unionized employees) the employer needs to observe an 'a priori´ control procedure to terminate the contract. Although this is not deemed to be a period of notice, it often requires the observation of a notification to the employee of the procedure that will be followed.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

The statutory minimum wage for employees who work the maximum working time for 2018 is $781.242 COP with a mandatory transport allowance of $88.211 COP (mandatory for employees who earns up to 2 times the minimum wage). This does not prevent the possibility for the employer to provide a superior minimum wage within its organization whether by its unilateral decision or by collective agreement. The salary can also be agreed on any legal currency. The employee

is entitled to ask the payment in Colombian Peso (COP), in which case it must be done at the official exchange rate on the day the payment must be issued by the employer. For employees who are paid 'per day' the salary in cash wage payment cannot exceed one week. For employees whose salary is based on a monthly fee, their payment has to be done at least once every month.

The Labor Code also provides the possibility for the employer to recognize non-salary payments as part of the compensation of the employee (cannot exceed 40% of the total compensation for social security purposes). The importance to delimitate these two concepts is so that only the payments regarded as salary serve as a base for the calculation of legal benefits and social security contributions/ benefits.

Integrated salary: For employees who earn a salary equivalent to at least ten (10) times the minimum wage or more, an "integrated" salary can be agreed. An "Integrated" salary agreement must be in writing.

The employee will receive a monthly payment which includes two factors: i) the personal service economic retribution, and ii) a fixed amount of at least the 30% of the salary, which compensates in advance statutory benefits, overtime work, work on Sundays and any other payment expressly included in the "integrated" salary agreement, except vacations. Therefore, the total monthly minimum integrated salary amount is 13 times the minimum wage.

Health and Safety in the Workplace
Since 2014, every employer or contracting party must implement the "Safety and Health at Work Management System" to ensure the enforcement of all health and safety at work legislation, the improvement of the work environment and conditions, and the control of any hazard or danger in the workplace. This system includes not only the employees of a Company but also its contractors and subcontractors. Colombian Labor law does not provide any special protection specifically for employees who present a formal complaint against their employer for failing to comply with the Health and Safety legislation.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace
Restrictions on the use of electronic devices and the internet for personal purposes in the workplace are allowed, with the understanding that such faculty is under the scope of the subordination power of the employer. The Constitutional Court considers that the legislation and the case law allow the employer to not only limit the use of social media and electronic devices in the workplace, but also to exercise control to verify this situation, in accordance with the principle of reasonability and proportionality. In addition to this, the 1581 Act of 2012 establishes general restrictions for the use and administration of data bases including information regarding employees.

Can the employer monitor, access, review the employee's electronic communications?
The employer can monitor and access the employee's electronic communications or any other application as long as they are related to the employee's position or the electronic mail and/or application is provided by the employer as a working tool. Any control on the employee's electronic communications must attend to the principle of reasonability and proportionality, in order to avoid a possible breach of the employee's intimacy.

EMPLOYEE BENEFITS

Social Security
Employers and employees must make compulsory contributions to the Colombian Social Security System, which protects employees from certain social risks. The Colombian system is compound by the subsystems of healthcare, pension, labor risks and family allowance. Employer's contributions for the social security system average thirty percent (30%) of the employee's contributory base income.

Employers who declare income tax in Colombia are entitled to an exoneration of their obligation to contribute to the social security subsystem in healthcare, family allowance and some other specific contributions, for their employees who earn up to 10 times the minimum wage. Such savings may lead to an employer's final contribution

to the social security system as seventeen (17%) of the employee's contributory base income.

As the social security system is managed by different companies, both private and public legal natures respectively, the employee has the right to choose the Agency he wants to affiliate with for his healthcare and pension. The employer chooses the Agencies in the subsystems of labor risks and family allowance, as the contribution is assumed entirely by the employer.

The employer is responsible for withholding and delivering his and the employee's contributions. Any kind of special information that needs to be provided to the system involving the employee's situation, such as sickness, paid or unpaid leave, maternity, retirement from the Company, etc. must be provided by the employer, and it is the duty of the employee to provide information which may be of relevance to the system.

Healthcare and Insurances

Healthcare is in general, guaranteed by the social security system contributions. The affiliates and contributors to this subsystem may access a bundle of services in money and in kind. The services in kind are defined in the Obligatory Plan of Healthcare. Despite the fact of the coverage of the healthcare subsystem, it is possible for employers to provide their employees (as a benefit) with private healthcare or to cover a proportion of its costs. This benefit does not exclude the obligation for the parties to contribute to the social security system.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Vacation: Every employee in Colombia, disregarding his type of employment contract or its length, is entitled to fifteen (15) working days of paid holidays for every period of 12 months of services. The employees in private companies who provide services to fight tuberculosis and the application of X-rays are entitled to fifteen (15) working days of paid holidays for every six months of services. The employee may opt to enjoy his holidays in time or in money, without a paid leave, subject to limitations. As a common practice, holidays are arranged by agreement between the employee and the employer. However, according to the legislation, the employer can unilaterally determine the period of holidays for his employees, with a notice of fifteen (15) days before the start of the paid leave. Holidays can be accumulated for up to two (2) periods or four (4) periods in the case of trust employees, or foreigners whose family resides in a different place.

Public holidays: Employees are entitled to be absent from work on the public holidays defined by the law (Article 177 of the Colombian Labor Code establishes 18 public holidays) and are entitled to their regular remuneration. While it is common for the municipalities to create other public holidays related to local festivities, private employers are not bound to such holidays.

- ***MATERNITY / PATERNITY LEAVE***

Female employees are entitled to at least eighteen (18) weeks of maternity leave, fully paid, including an adopted child (the paid leave can be higher in case of multiple or preterm birth); at least one week of the maternity leave (and a maximum of 2 weeks) must be taken before the child's birth. This payment is entirely under the charge of the Healthcare subsystem, as a benefit in money for the mother. On the other hand, the father is entitled to eight (8) working days of paternity leave, fully paid, also entirely under the charge of the Healthcare subsystem. The father might subrogate the mother's maternity leave in case of her demise, abandonment of the mother (single parent) or sickness that makes her unable to take care of the child.

- ***SICKNESS LEAVE AND DISABILITY LEAVE***

Professional sickness and/or work accident remuneration is assumed by the social security subsystem in labor risks on a base of 100% of the employee's salary during the entirety of his incapacity to work, while Regular sickness and/or regular accident remuneration is assumed by the employer and the social security subsystem in healthcare, though at varying percentages and shared responsibilities based on the length in days of the work incapacity. These rules apply to disability leave as well.

Other Required or Typically Provided Leave

- ***TRADE UNION LEAVE***

As defined in the relevant CBA, trade unions are normally entitled to special paid leaves for some of their members, to perform activities related to the organization, and accomplishment of the trade union interests.

- ***VOTING LEAVE***

Employees are entitled to paid leave for purposes of voting in public elections and for mandatory jury duty obligations.

- ***MOURNING LEAVE***

A period of 5 days of paid leave must be granted to employees in case of the death of certain relatives, as defined by law.

- ***BURIAL LEAVE***

Employers are obliged to grant the necessary leave for his employees to assist with the burial of their co-workers.

- ***COMPASSIONATE LEAVE***

While Colombian Labor law mandates the obligation for employers to grant his employees with a paid compassionate leave, it does not define its scope or length. Employers are recommended to analyze on a case-by-case basis, the conditions to grant, and the length of, a compassionate leave.

- ***EMPLOYMENT CONTRACT SUSPENSION***

The employment contract can be suspended for specific causes, as defined by law. One such cause offers a general possibility for the parties to suspend the employment contract on mutual consent. This specific situation is commonly used by employers to grant his employees non-paid leave for personal reasons.

Pensions: Mandatory and Typically Provided

Pensions are recognized under three different circumstances: Old age, invalidity and survivorship. Its amount is normally recognized by the social security system prior to the achievement of some specific requirements by the affiliate. The labor risks subsystem only recognizes pensions in circumstance wherein the origin of said benefit is related to a work-related accident or disease.

- ***OLD AGE PENSION***

As Colombia shares a private/public scheme for pensions, the requirements for old age pensions differ from the elected scheme by the employee. In the public scheme, the requirements for an old age pension are related to age (62 for men and 57 for women) and a defined minimum amount of contributions (1300 weeks). For the private scheme, the requirement for the pension depends exclusively on the affiliate's savings in his mandatory account. No special pension plans for the private sector are allowed, as they were eliminated and prohibited under the Legislative Act 001 of 2005.

- ***INVALIDITY PENSION***

This is reserved for employees that suffer a permanent disability of more than 50% percent of his work capacity, evaluated by the competent authority. The total amount of the pension is assumed by the social security system.

Any Other Required or Typically Provided Benefits

In addition to the monthly salary, the employer is mandated to recognize the following benefits in money for his employees:

- a 30 days' allowance paid annually (or pro rata) divided into two payments as follows: 15 days in June and 15 days before 20th of December.
- a 30 days' allowance (or pro rata) as a saving for the employee in case he is unemployed. This payment is not recognized directly to the employee, but to a specialized Company which saves this amount and will only disburse it to the employee under circumstances defined in the law.
- a 12% interest rate (or pro rata) over the allowance mentioned in the last paragraph. This interest is recognized directly to the employee.
- a transport allowance paid monthly for employees who earn up to two (2) times the minimum wage. The amount of the allowance is defined, annually, by law.
- a pair of shoes and a working dress must be provided every 4 months for employees who earn up to two (2) times the minimum wage. The right to this benefit is only available to employees, under contract, after 3 months.
- in addition, the law establishes special benefits for certain economic sectors (i.e. the oil and mining sector).

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

In Colombia, employment contracts may be terminated by any of the parties at any moment with immediate effects (as a period of notice is only needed for fixed-term contracts when ended by the expiration date) and without it being necessary to mention the reasons that led to the termination, unless a fair cause is alleged for the dismissal. Grounds for termination in Colombian legislation can be divided into three categories: (i) Legal grounds. (ii) Termination with a fair cause. (iii) Termination without a fair cause.

Employees are also entitled to terminate the employment contract at any moment, for any reason, or alleging a fair cause. In case the employee opts to terminate his employment contract, alleging a breach by the employer (fair cause), the Labor Code mandates the obligation to pay a severance payment as if the contract were terminated without a fair cause. Severance pay is only required for a dismissal without a cause.

In case of an employee with an indefinite period contract, there are currently three systems applicable, depending on his seniority in the Company:

For employees hired before January 1, 1981 the system applicable is the 2351 Presidential Decree of 1965

These employees have a special stability regime which excludes the possibility of termination without cause. Nevertheless, in exceptional cases whenever this termination is applicable, the severance payment corresponds to 45 days of salary for the first year of service and 30 days of salary for each subsequent year of service or pro rata.

For employees hired before December 28, 1992 the system applicable is the 50 Act of 1990

In this regime, severance payments correspond to 45 days of salary for the first year of service and 40 days for each subsequent year of service or pro rata.

For employees hired after December 28, 1992 the system applicable is the 789 Act of 2002

In this regime, the severance payment formula depends on the employee's salary amount. For employees that earn less than ten (10) times the minimum wage, the severance payment corresponds to 30 days of salary for the first year of service and 20 days for each subsequent year of service or pro rata. For employees that earn ten (10) times the minimum wage or more, severance payments correspond to 20 days of salary for the first year of service and 15 days for each subsequent year of service or pro rata.

The reference to calculate the severance payment must take into account the last fixed salary. In case of variable salary, the reference would be the average of the salaries earned in the last twelve months.

Colombian legislation provides a fixed system of calculation for the severance payment. Nonetheless, employees can claim moral damages in addition to the severance payment provided by law.

Whistleblower Laws

Colombian labor law does not include any special provisions or protections for whistleblowers. However, employees who served as witnesses in a claim of harassment cannot be dismissed without a fair cause in the following six months after the formal complaint, as long as the claimant is effectively considered a victim of harassment.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Garden leave practice is allowed in Colombian Labor law. The employer can restrict his employees from attending to work, but the obligation to pay

their salary, as if it was a unilateral paid leave, remains. However, this possibility finds a limitation whenever the request from the employer for the employee to receive the unilateral paid leave may lead to a discriminatory measure or possible conduct of harassment against the employee.

TRANSFER OF UNDERTAKINGS

In case of a transfer of undertaking, the employment contract is not terminated, suspended or modified as long as there are no substantial changes in the activities of the new employer. Therefore, the employees have the right for their contract to remain with the same conditions, salary, working time, benefits and the seniority they were entitled to before the transfer took place. As the transferred is liable for all labor rights of the predecessor, the employee can claim the labor rights that he was entitled to before the transfer took place, from either his previous employer or the new one. Colombian labor law does not provide any special requirement from a labor point of view, for a transfer of undertaking to take place. The parties of the transfer can agree to any modifications of their own relations, as long as these agreements do not affect the labor rights of the employees.

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FRANCE.

HIGHLIGHTS

- All non-EU citizens need a work permit to work.
- Employers and employees are free to negotiate the terms and conditions of their employment relationship. However, employees have various minimum rights under the law, regardless of any provision to the contrary in their employment contract.
- Usually, employees work 35 hours per week. Only hours worked at the request of the employee's superior will be regarded as overtime.
- Indefinite-term contracts: There must be real and serious grounds for dismissal (two types of valid grounds: personal grounds and economic grounds).
- Severance payments are only awarded if the employee has the minimum length of service and the relevant CBA provisions.

INTRODUCTION

In France, employment law affords employees a good level of protection. Nevertheless, this legal environment is constantly changing as a result of government reforms and case law evolution. Recent trends relate in particular to: (1) union representation and collective bargaining agreements; (2) working time; (3) mutual termination agreements; (4) senior management compensation; and (5) termination packages in listed companies. In France, choosing the wrong option may result in costly individual or collective litigation.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

Background checks in France are limited to the strictly necessary verifications of a candidate's qualifications, experiences, and references. Criminal background checks are limited to certain professions that entail security responsibilities or that involve working with children or sensitive information or materials. Credit background checks do not exist in France. All information collected on the professional background of a candidate from former colleagues, employees, clients, suppliers, etc. is legal as long as it is not unbeknownst to the candidate.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

The employer must ensure that the employee to be hired is authorised to work in France:

- where the employee is already in France, the employer will have to check that the employee has a valid residence permit allowing him to work in France, and keep a copy thereof;
- where the employee is not yet established in France, the employer should undergo a three-step process "of introducing a foreign worker in France":

o obtain from the French unemployment agency ("Pôle Emploi") a document certifying that there are no workers available to fill jobs in the country,

o file to the labour authorities (i.e. the Territorial Unit of Direccte) an application package,

o inform the French Immigration Office (the Ofii) of the entry in France of an immigrant and pay the Ofii a fee.

An employer must ensure the validity of the work permit of the foreign employee he wants to hire is valid, by submitting a declaration of employment (by email or post mail) to the Prefecture of the place of employment, at least 2 working days before the hire. Nationals of most countries of the European Union have the right to work freely in France without a specific work permit. The only document required for their job is an identity card or passport to prove their nationality.

EMPLOYMENT CONTRACTS

Minimum Requirements

Employment contracts are generally not required to be written, but certain forms of employment contracts should be in writing (notably fixed-term contracts, part-time contracts and temporary employment contracts). The employer should provide the employee with a written statement of the essential terms governing the employment relationship. Oral fixed-term contracts are unequivocally deemed to be indefinite-term contracts and oral part-time contracts are deemed full-time contracts.

Fixed-term/Open-ended Contracts

The indefinite-term contract is the typical form of employment relationship. As a rule, the validity of an indefinite-term contract is not subject to conditions regarding the content and form of the agreement. In that respect, French case law has held that a pay slip may be sufficient to formalise an indefinite-term contract. A fixed-term employment contract is an employment contract entered into for a defined duration, set in advance by the parties. This kind of employment contract is very specific, notably as neither party may terminate it prior to its end, except in the event of an amicable separation, serious misconduct ("faute grave"), force majeure or if the employee finds alternative employment under an indefinite-term contract.

Trial Periods

Rather than entering into the contract immediately, parties to the employment contract may agree to provide for a probationary period, which can only be renewed once and under condition, during which either party may terminate the employment contract without any formality. If both parties are satisfied at the end of the probationary period, the employment contract becomes definitive. The probationary period is governed by statute.

Notice Periods

Except for specific exceptions (e.g. dismissals for serious or gross misconduct), the parties should observe and cannot waive the required notice periods before an indefinite-term contract is terminated. The length of the notice period is generally determined by the national CBA. Employees who are dismissed or made redundant are entitled to payment in lieu of notice if they are not required to perform their notice period.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

As of 1 January 2016, the minimum gross monthly wage is EUR 1,498.47 (about USD 1, 753) for a 35-hour workweek. All employees who are employed under an ordinary employment contract (either indefinite or fixed-term) are entitled to the minimum wage. CBAs also frequently provide greater minimum wages (which vary in function of job categories).

Health and Safety in the Workplace

The employer's safety obligation is not limited to the prevention of occupational accidents and diseases. It is much broader and covers all risks to which the employee may be exposed at work, including psychosocial risks. This is an obligation of result. Professional risk prevention measures should be sought, employees should receive information and training about these risks, and the employer should be compliant with certain specific rules in the arrangement and use of premises to ensure the health and safety of the employee.

The employer should assess potential risks in a document called a single document occupational risk assessment (DUERP), including: 1) the choice of manufacturing processes, work equipment, the chemical substances or preparations; 2) the development or redevelopment of workplaces

or facilities; 3) defining workstations; and 4) the impact of inequalities between women and men. Mandatory for any business, this document includes: i) an inventory of the risks identified in each of the business units of work; ii) the classification of these risks; and iii) proposals for actions to be implemented. The DUERP should be updated once a year minimum.

SOCIAL MEDIA AND DATA PRIVACY

Can the employer monitor, access, review the employee's electronic communications?

No specific French employment law provisions currently address issues raised by employees' social media use. Employers can set out the general conditions of use and restrict access to the Internet in the workplace, but they have to be cautious, as all employees have a right to privacy, even at the workplace during working time. For example, the employer may access the employees' professional emails under very restrictive conditions. Besides, employees benefit from the freedom of speech principle, within the company and outside of it, which can only be restricted for legitimate grounds. The French Labour Code provides that the company's Works Council, if any, must be informed and consulted prior to the implementation of any means aimed at monitoring or controlling the employees' activities.

EMPLOYEE BENEFITS

Social Security

French social protection is organised in four levels:

- Social Security which provides the basic risk cover "illness / maternity / disability / death", "occupational accidents / occupational diseases", "elderly" and "family." It is composed of various schemes involving the insured according to their professional activities.
- Complementary plans which provide additional coverage to the risks covered by Social Security. Some are mandatory (supplementary pension for private sector employees) and other optional (mutual health organisations, insurance companies, pension funds).
- UNEDIC (National Employment Union Industry and Commerce), which administers the unemployment insurance program.
- State welfare, which provides support to the poorest.

Healthcare and Insurances

French law provides for a basic minimum indemnity and protection of employees. Quite often, collective bargaining agreements provide for additional protection or allowances.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Employees are entitled to a minimum of five weeks' paid holiday a year. In addition, there are approximately ten public holidays every year. Every employee is entitled to paid vacations by his employer, regardless of his age, seniority or type of contract (indefinite-term or fixed-term). The duration of paid vacations varies according to the acquired rights (legally 2.5 days of paid vacation per month, unless more favourable collective bargaining agreement provisions apply). The vacation dates are subject to the agreement of the employer.

- ***MATERNITY / PATERNITY LEAVE***

The pregnant employee benefits from a maternity leave during the period, which is around the expected date of childbirth (there is a prenatal leave and postnatal leave). Its duration is variable, depending on the number of unborn children or already at charge (from 16 to 46 weeks). The Social Security Daily Allowance varies in function of the salary (from EUR 9.39 to EUR 86).

- ***SICKNESS LEAVE***

Where the employee is out of work for sickness, subject to compliance with certain formalities (notably for the employee to submit, within 48 hours, the sick slip to the Social Security office and the employer) and satisfies the requirements, the employee is entitled to receive a daily allowance during his leave, after a three-day waiting period. This allowance will be directly paid to the employer in case of subrogation. The daily allowance paid for sick leave is 50% of the basic daily wage (on average, the Social Security Daily Indemnity is of EUR 43.40). After 30 days of sick leave, the daily allowance is increased to 66.66% of the basic daily wage, if the employee has at least three children. After 3 months, the daily allowance will be re-evaluated.

- ***DISABILITY LEAVE***

If the accident or illness is work-related, the employee may receive, under certain conditions, a permanent disability pension.

Pensions: Mandatory and Typically Provided

The French retirement pension system of employees is structured into three components; the first two, the Basic retirement pension and the Complementary retirement pension are mandatory, hence, contributions are imposed on employees and employers, while the third, Additional pension (when implemented by the employee, it is primarily of savings products such as life insurance, the popular retirement savings plan (PERP) or "Madelin contracts" for non-salaried workers) is optional.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

In the case of an indefinite-term employment contract, there should be real and serious grounds for dismissal. There are two types of valid grounds: personal grounds and economic grounds. The employee made redundant will receive a dismissal indemnity calculated based on the employee's years of service, as well as any accrued and untaken paid vacation.

Whistleblower Laws

The new "Sapin II Law" fully named the "Law on Transparency, the Fight against Corruption, and for the Modernisation of Economic Life" puts in place new rules for whistleblowing in France. The Sapin II expands extra-territorial reach for French prosecutors. The law applies fully to corruption by French companies overseas and foreign companies who have a presence in France. It creates new obligations for companies to take an active role in preventing corruption. Companies with over 500 employees and/or an annual turnover in excess of EUR 100m must put in place a framework to allow for accountability.

The law puts in place eight mandatory measures for a corruption prevention program. So far, these include a code of conduct to be integrated into the internal regulations of the company; an internal whistleblowing mechanism; ongoing risk assessments; due diligence regarding clients, suppliers and intermediaries; internal and external controls; training; a roster of disciplinary sanctions; and an internal audit of the program.

The law creates a new national anti-corruption agency called Agence Française Anticorruption (AFA). The law requires all companies with more than 50 employees to establish a whistleblower mechanism and provide protection against retaliation guaranteeing confidentiality. The system is different from its UK and US counterparts and only applies to disinterested parties. Whistleblowers receive immunity from criminal prosecution. Whistleblowers must first use the internal whistleblowing channels before blowing the whistle to the public authorities and the press.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

The notion of "Garden leave" as such does not exist under French law. Upon termination of employment, the employer may release the employee from working during all or part of the notice period and pay him an indemnity in lieu of notice, or alternatively require the employee to work until the end of the notice period. If the employee expressly requests to be released from his obligation to work during the notice period, and if the employer agrees to it, then the employer is not required to pay the employee and the employment contract may be terminated upon the employee effectively leaving the company. The French Supreme Court ruled that the employee, who is not subject to a non-compete clause and who is on Garden leave, may work with a competing company during his notice period.

TRANSFER OF UNDERTAKINGS

In France, an employee cannot object to a transfer of undertaking as the transfer is operated automatically. A refusal could constitute grounds for dismissal for disciplinary reasons. The automatic transfer concerns any kind of employment contract (fixed-term contracts, trial period contracts,

suspended contracts for illness, etc.). Employees who enjoy a protected status (e.g. employee representatives) will also see their contract automatically transferred, with their representative role intact; however, when the transfer concerns only part of a business (a partial activity transfer), their transfer should be authorised by the Labour Inspector.

To date, there is no legal requirement in France to inform each employee before the transfer, but there is a legal requirement to inform and consult the Works Council. However, in practice, employees commonly receive a brief letter advising of the change of employer, in an attempt to achieve a seamless transition and to build unity with the new entity. It is noteworthy that certain bargaining agreements may require informing transferred employees. Hence, except where this is a requirement under a collective bargaining agreement, there is no legal sanction if the transferred employees are not informed.

The Hamon Law dated 31 July 2014 provided that, where a small company is to be sold, the employer selling his business should inform the workforce so as to allow employees to make a purchase offer.

A decree dated 28 December 2015, taken in application of the Macron Law dated 6 August 2015, eased these provisions in particular regarding the sanction in case of failure to respect the law. Now the employer who fails to respect this information obligation risks a fine of up to 2% of the amount of the sale. The successor has the obligation to maintain the transferred employees' work contracts and working relationships (i.e. company agreements, company benefits, etc.). Any modification will entail the agreement of the employee or a negotiation with the employees' representatives, as the case may be.

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GERMANY.

HIGHLIGHTS

- Employees who are not from the EU/EEA require a residence title for the purpose of taking up employment.
- A statutory minimum wage of 8.84 Euros per hour currently applies to all employees in all sectors of business. Aside from the statutory minimum wage, there are special regulations and collective bargaining agreements within certain sectors.
- Overtime pay is not expressly regulated by law, but is subject to the employment agreement, collective bargaining agreements and works council agreements.
- Trade union representatives support employees and works councils, but do not have participation rights within a company.
- Due to the high level of protection against dismissal, it is reasonably common for employment to be terminated by a separation agreement.
- Severance payments are paid if a number of conditions are fulfilled.

INTRODUCTION

German employment law is divided into two areas: individual employment law and collective employment law. Individual employment law concerns relations between the individual employee and the employer, while collective employment law regulates the collective representation and organisation of employees as well as the rights and obligations of employees' representatives. German employment law is not consolidated into a single labour code: the main sources are Federal legislation, case law, collective bargaining agreements, works council agreements and individual employment contracts.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

There are no specific statutory regulations on the legitimacy of background checks carried out by a private employer. However, there is complex case law on the question of which information an employer may legitimately request from a job applicant during the course of a job interview, which can be considered as a benchmark for the legitimacy of background checks, using other sources than the applicant. In essence, employers may only request such information that has a direct relation to the applicant's future tasks and responsibilities in the particular job in question. Therefore, the employer's right to carry out background checks without the employee's consent is very limited.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

In principle, every employee who would like to work in Germany requires a residence title and a work permit before entering Germany. This does not apply to persons who are: 1) of German nationality; 2) a European Union national; 3) a national of a European Economic Area (EEA) member state (Iceland, Liechtenstein, Norway); or 4) a national of Switzerland. Such title is generally only granted if the employment agency agrees or such consent is not required due to statutory regulations. The employment agency examines whether the job offer may not be filled by the German employment market including EU and EEA nationals or foreign

nationals with an unrestricted residence permit ("job market test") and that a concrete job offer with usual working conditions exists.

With the implementation of the European ICT Directive through German legislation, intra-group transfers have been facilitated. As of 1 August 2017, non-EU citizens can, under certain circumstances, be entitled to a new residence title "ICT-Card", which allows them to work for a German group entity for up to three years. This is possible if they have been posted by another group entity from outside the EU. Moreover, third-country nationals already residing and working in another EU member state, based on the ICT Directive, can apply for a "Mobile ICT-Card" if they need to be posted to Germany for a period longer than 90 days. In case of a short-term assignment (i.e. no more than 90 days within a 180-day period) no residence title will be necessary at all; the competent authority (i.e. the Federal Office for Migration and Refugees – Bundesamt für Migration und Flüchtlinge) just needs to be notified. Hence, third-country nationals can work in different EU member states under a single permit.

EMPLOYMENT CONTRACTS

Minimum Requirements

The employer has a statutory obligation to provide the main contractual terms in writing to the employee no later than one month after the commencement of employment. The terms and conditions of employment are regulated mainly by statutes, collective bargaining agreements and works council agreements. As a rule, the employment contract may not deviate from these provisions to the detriment of the employee. To avoid future disputes, a version of the employment contract should be drafted in German. However, this is not required by law.

Fixed-term/Open-ended Contracts

As a general rule, the employment contract is entered into for an unlimited period. A fixed-term contract is possible, provided the term is agreed upon in writing before the employment commences. A fixed-term contract ends automatically without written notice at the end of its term. A fixed-term employment relationship must be justified by objective grounds, some of which are set forth in statutory law (e.g. temporary increase in work volume, substitution of an employee during parental leave). If no objective grounds exist, fixed-term employment is limited to a maximum duration of two years, provided that no previous employment contract with the same employer existed. If the parties continue the employment after the expiration of the fixed-term contract, the agreement is deemed to be concluded for an indefinite period.

Trial Periods

The employer and employee may agree upon a trial period, which is limited by law to a maximum duration of six months. The notice period within the trial period is two weeks. The Dismissal Protection Act does not apply during the first six months of employment, regardless of whether the parties agreed upon a trial period.

Notice Periods

The length of the notice period for the employer depends on the employee's length of service, ranging from 4 weeks for employees with less than 2 years' seniority, to 7 months for employees with more than 20 years' seniority. Unless otherwise stated in the employment contract, the extended statutory notice periods are only applicable to terminations by the employer, whereas the employee may terminate the employment with a notice period of four weeks to the 15th or the end of a calendar month. Collective agreements may specify longer or shorter notice periods, whereas individual contracts of employment may only specify longer notice periods.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

A statutory minimum wage of 9.19 Euros per hour applies to all employees in all sectors of business. Employees under 18, trainees and interns are exempted from the regulation. Aside from the statutory minimum wage, there are special regulations and collective bargaining agreements within certain sectors, e.g. the construction sector. Most of these regulations contain a minimum wage above 9.19 Euros per hour. The contractual freedom

of the parties to determine the remuneration by mutual agreement, is limited by public policy. A salary of less than two thirds of the relevant usual wage is contrary to public policy and such an agreement is generally considered to be void. The minimum wage of currently 9.19 Euros per hour will be subject to further increase within the next year. It will increase to 9.35 Euros per hour from 1 January 2020.

Health and Safety in the Workplace

The employer is obliged to provide a healthy and safe workplace. If the employer does not fulfill the rules of occupational safety, the employees are entitled to refuse to work at the workplace without losing their claim to remuneration. Furthermore, the employee is also entitled to demand that health and safety regulations are observed and may claim compensation for any damages. Also, the works council and the German administrative authorities may insist on the fulfillment of applicable health and safety regulations.

SOCIAL MEDIA AND DATA PRIVACY

Data Privacy

The new Federal Data Protection Act (Bundesdatenschutzgesetz - BDSG) has come into force together with the General Data Protection Regulation (GDPR) on 25 May 2018, incorporating the prerequisites of the GDPR. The key principle already applying under previous data protection regulations remains unchanged under the new GDPR/BDSG: processing of personal data is prohibited unless expressly permitted by law, a works agreement or a collective bargaining agreement. Furthermore, it is still possible for an employee to give his/her consent to the specific data processing.

A consent given under the former BDSG will only remain valid insofar as such consent already meets the requirements of the GDPR and the new BDSG. In particular, the consent has to be separate from other terms, and the employer has to inform the employee about the purpose of the data processing, as well as the right to revoke the consent with future effect, and must be done in text (written) form. In general, employers have to make sure that no 24/7 monitoring will occur. Monitoring of the employees requires an overall balance of interest between the privacy rights of the employee and the business needs of the employer.

Restrictions in the Workplace

Without permission, the employee is generally not entitled to use the Internet for private matters. The Federal Labour Court ruled that even without an explicit prohibition, employees may not assume that the employer will tolerate private use. If the employee violates this prohibition, the employer is entitled to issue a warning and even to terminate the employment contract, depending on the circumstances. In practice, many employers permit the private use of Internet to a reasonable extent. However, even in case of permission, the use of the Internet for private matters should be restricted regarding the content and the time of use.

We strongly recommend prohibiting the private use of the employee´s company e-mail address, as otherwise monitoring or accessing the employee´s company e-mail account may be very difficult, or may be a criminal offence, even where the employer has a legitimate interest in such access (e.g. when the employee is off sick, on holidays, has left the company etc.).

Can the employer monitor, access, review the employee's electronic communications?

To be able to control the usage, the private use of internet and e-mail should be made subject to the consent of the employee. The employer's rights in this respect depend greatly on whether private use is allowed or not. If the employer has prohibited the private use, the content of an employee's electronic communications can be subject to monitoring activities by the employer, unless such communications are obviously private. If the private use is allowed or tolerated, the employer may be qualified as a provider of telecommunication systems, such being subject to stricter laws, including criminal prosecution for accessing or ordering third parties to access employees' communications beyond what is necessary for security reasons. As long as this question has not been answered by a German court, we recommend not to monitor the use of employee's electronic communications.

EMPLOYEE BENEFITS

Social Security

In Germany, employees belong to the national social security system by law. All salary payments are subject to tax and social security contributions (pension, unemployment, health and nursing care insurance). These must be withheld from an employee's salary by the employer and paid to the respective institutions. In general, the employer and the employee each pay half of the social security contributions, and employers must pay their share in addition to the salary based on the employee's gross salary with certain maximum amounts applying.

Healthcare and Insurances

The employee can choose between different statutory health insurances. Only employees with an income exceeding the annual remuneration thresholds (53,100 Euros in 2018) are exempt. They can become members of private health insurances. In both cases, the contributions are shared equally by the employer and the employee.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

The number of public holidays differs between the federal states in Germany, the minimum is nine (e.g. Berlin, Lower Saxony) and may rise to twelve public holidays (Bavaria, Saarland). Any employee is entitled to annual leave of 20 days, based on a 5-day-week pursuant to the Federal Vacation Act (Bundesurlaubsgesetz – BUrlG). This means that an employee can claim an annual leave of four weeks in a calendar year. However, most employers grant a longer annual leave, depending on the industrial sector between 25 days and 30 days.

- ***MATERNITY / PATERNITY LEAVE***

Female employees are entitled to paid maternity leave, which is the time period 6 weeks before and 8 weeks after giving birth. After the birth of a child, both - male and female - employees are entitled to a maximum of three years' parental leave per child. During this period, the employer is not obliged to make any payments to the employee. Employees, however, have a statutory right to work part-time (between 15 and 30 hours per week) during parental leave unless urgent business reasons prevent such part-time work. After expiry of the parental leave, the employee returns to their previous position.

- ***SICKNESS LEAVE***

After four weeks of employment, the employee is entitled to continued payment by the employer in case of sickness for a duration of six weeks. The regular payment, which the employee would have earned without sick leave, needs to be paid by the employer. Generally, the statutory sickness allowances are paid in the amount of 70 % of the regular remuneration for a period of 78 weeks.

- ***DISABILITY LEAVE***

After six months of employment, a severely disabled employee may claim additional holiday in the amount of five working days, based on a 5-day-week.

Pensions: Mandatory and Typically Provided

The public retirement insurance system (gesetzliche Rentenversicherung – GRV), company pension plans (betriebliche Altersvorsorge – bAV) and private individual retirement investments are the three pillars of the German pension system. The public retirement insurance has always been "pay-as-you-go", with the current pensions of the retired paid from the current premiums of the not yet retired. In view of demographic changes, pension payment levels are becoming difficult to maintain. Company pension plans have traditionally been designed to supplement statutory retirement insurance. Though company pension plans are not compulsory, they cover about three-fifths of the working population. The third pillar, individual retirement investments, is becoming more important and is subsidised by the government. Retirement used to begin at age 65, but is now gradually being increased to age 67.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

Under German law, the employment relationship can be terminated by mutual consent, by expiry of a fixed-term contract or by notice given by one of the two parties. As to the general protection, the

freedom of the employer to dismiss an employee is substantially restricted. A termination is justified only if it is based on reasons related to: 1) the person; 2) the conduct of the employee; or 3) urgent operational requirements which preclude the continued employment of the employee in the establishment.

Severance payments are paid at the end of employment in the following cases: 1) the employment agreement provides for a contractual severance payment (which is very unusual); 2) the parties agree upon a severance payment (in or out of court) to settle a termination dispute; 3) the court dissolves the employment against payment of severance if it finds that despite the invalidity of the termination, continued employment would be intolerable either for the employer or the employee; or 4) a social plan concluded with the works council in connection with a collective redundancy provides for severance payments.

Whistleblower Laws

There is no general legislation covering whistleblowing in Germany. In general, employees are obliged to report any kind of misconduct within the company as part of their ancillary employment duties (so called duties of good faith - Treue- und Rücksichtnahmepflichten). In certain business sectors, special legal provisions exist, such as e.g. in the financial services sector. Currently, the law implementing the European Directive on the Protection of Trade Secrets provides for legal protection for whistleblowers if they aim at protecting the general public interest. The law is expected to come into force early in 2019. Whistleblowers do not enjoy special protection against dismissals but are subject to the general rules, which are rather strict, and are decided on the basis of the question of whether the whistleblowing was "proportionate", i.e. that the employee should first report a misconduct internally before going public or to authorities.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

The employee has a right to work for the employer and therefore cannot be released unilaterally by the employer without a justified reason (criminal acts of the employee, concerns of the employer regarding the protection of its business and trade secrets or any competing acts of the employee). In practice, employees are nevertheless often released from their duty to work after a termination notice until the end of the applicable notice period. During such release, the contractual remuneration of the employee needs to be paid. The employer is, however, entitled to offset any outstanding holiday against the release. Generally, during the time of release the employee may not perform any competing activities as the employment relationship is still ongoing, and the statutory non-compete still applies. However, in case of an irrevocable release, the employer should explicitly state that the non-compete shall continue to exist.

TRANSFER OF UNDERTAKINGS

All of the transferor's employees automatically transfer to the transferee with the terms and conditions of their employment contracts and their seniority remaining intact. Prior to the transfer, each affected employee must be informed in writing about the transfer, its reasons, the background, the social and legal consequences and any further measures planned by the transferee. The employee is entitled to object to the transfer of employment within one month from receiving a correct and complete information letter, without giving reasons for their objection, and, in such cases, the employment will continue with the transferor. If the transferor is no longer in the position to offer a job to the employee, a dismissal for operational reasons may be socially justified.

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INDIA.

HIGHLIGHTS

- Labour and employment laws are listed under the Concurrent List in the Constitution, which means that the Union Parliament (federal legislature) and State Legislatures have co-equal powers to enact laws relating to all labour and employment matters in India. Typically, the Union Parliament enacts a Central law, while the States formulate rules thereunder. Additionally, States enact standalone legislations as well.
- One of the main principles of Indian labour and employment laws is that they distinguish between employees who are defined as 'workmen' and those who are in management/supervisory/administrative roles ('non-workmen'). Most legislations regulate the service conditions of and protect the rights of only those employees who qualify as workmen under Indian laws. The service conditions of non-workmen is typically governed by the terms of the relevant employment contracts and the internal policies of the organization. Determining whether a particular employee is a workman or not, has to be undertaken on a case by case basis.
- India does not generally recognize employment-at-will. Further, in terms of the Indian Contract Act, 1872 ("Contract Act") (which is the principal legislation governing contracts in India), agreements which restrain trade, business or profession are void – this could have an impact on employment bonds, and on non-compete and non-solicit covenants in employment contracts.
- Trade unions are typically restricted to the more traditional forms of business, such as the manufacturing sector; however, in recent times there has been some unionization in the Information Technology ("IT") sector as well. The Trade Unions Act, 1926 ("Trade Unions Act"), provides for registration of a trade union and the rights and liabilities of a registered trade union. It is also proposed to recognize certain trade unions both at a Central and State Government level who would then participate in policy making.
- The Industrial Disputes Act, 1947 ("ID Act") is the key legislation that governs industrial relations in India and aims at securing industrial peace and harmony by providing the process for settlement of disputes between employers and employees.
- There is a specific legislation, the Equal Remuneration Act, 1976 ("ERA"), which mandates the payment of equal remuneration to male and female workers who undertake similar tasks. The Contract Labour (Regulation and Abolition) Act, 1970 ("CLRA") is another major legislation that pertains to regulating contract labour.

INTRODUCTION

The Constitution of India (the "Constitution") is the cornerstone of individual rights and liberties, and also provides the basic framework within which all laws in India, including laws relating to labour and employment, must operate. In addition to fundamental rights, the Constitution also envisages certain 'directive principles' which serve as a guide to the legislature towards fulfilling social and economic goals. Given India's colonial and socialist history, social justice has always been at the forefront of several Indian legislations, specifically labour and employment laws. It is important to note that several labour laws in India have been designed from a worker emancipation perspective – including those relating to factories, mines, plantations, shops, commercial establishments as well as those relating to payment of wages, regulation of trade unions, provision of social security, industrial safety and hygiene. However, given changing economic requirements in recent times, the Indian Government has been increasingly conscious of the needs of business as well. Accordingly, it has been slowly and steadily working towards labour reform in order to improve the ease of doing business in

India. There are several big-ticket reforms in the pipeline, which we hope will see the light of day in the next few years.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

Employers are increasingly conducting background checks to guard against inaccurate resumés, overstated work experience and any employee behavioral issues. Typically, employers issue an offer letter, conduct background checks and expressly state that the person's employment with the organization is contingent upon his/her clearing the background checks, and vetting of educational and job qualifications. However, the permission of the concerned employee would be required to conduct a background verification. In terms of the Information Technology Act, 2000 and Information Technology (Reasonable Security practices and procedures and sensitive personal data and information) Rules, 2011 ("IT Rules"), which is the governing legislation on data protection in India, any company collecting, using or disclosing any personal information of an employee/prospective employee, will require such person's consent.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Once foreign companies set up an entity in India, they very often prefer to appoint employees from their home country or headquarters for the management and control of the Indian business. This is done mainly for the convenience of co-ordination with the parent company in terms of decision-making, financial management and other business matters. This movement of employees could be undertaken by way of secondment or transfer. There are three broad considerations that must be kept in mind, in either of the approaches: (i) income tax issues; (ii) social security contributions; (iii) visa considerations. Business visas to India are given strictly only for 'business purposes', such as sales or establishing contact on behalf of the foreign company in India. Like most other jurisdictions, business visas in India cannot be used for any direct revenue generating work or employment. There is a separate employment visa category for employees coming to work at an Indian establishment, which is usually granted for 1 year, or the term of the contract. There are certain additional conditions prescribed in this regard, including that the foreign national must draw a salary in excess of USD 25,000 per annum.

EMPLOYMENT CONTRACTS

Minimum Requirements

While labour legislations in India do not strictly require that an employment contract be in writing, it is predominant market practice (with very rare exceptions) to have all terms and conditions of employment agreed and signed by both parties. Employment contracts in India are generally considered to be 'unlimited term' contracts, (i.e. contracts that are valid until termination or superannuation, unless specifically identified as a 'fixed term' contract).

Fixed-term/Open-ended Contracts

Fixed-term employment contracts are permitted in India, as long as the employer is employing the person for a short-term requirement. The Government has recently stated that fixed term contracts will be permitted across sectors – earlier, they were expressly permitted only in the apparel manufacturing sector. However, it is unlikely that employers will be able to convert existing permanent positions into fixed term employment positions.

Trial Periods

Indian law permits new employees to be placed on a trial or 'probation' period. The IESO Act envisages a probation period of 3 (three) months – this is largely followed by companies that are not subject to the IESO as well. The general market trend in India is to have a probation period between 3 and 6 months, especially in the technology and services sectors.

Notice Periods

In terms of Indian labour law legislation, 'workmen' who have undertaken at least 1 year of continuous service are entitled to a notice period of 1 month, or equivalent wages in lieu thereof. In addition, the

employer would be required to pay 'retrenchment compensation' to the workman, which is calculated at the rate of 15 days' wages for every completed year of service. However, no notice period (or payment in lieu thereof) or payment of retrenchment compensation is required in the case of workmen dismissed for misconduct, provided the employer conducts an internal inquiry prior to such dismissal.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

Although the words 'wages' and 'salary' are commonly used interchangeably, there is a discernible difference between the two. The term 'wages' is used under labour/employment laws to refer to any and all remuneration and emoluments earned by an employee (excluding certain allowances and bonuses) whereas the term 'salary' is used under income tax law to denote the total taxable income received by an employee. It is important to note that different labour law legislations have a different definition of wages. For instance, the EPF Act refers to 'basic wages' which is used as the base for computing employee and employer social security contributions. Basic wages is defined as all payments which are earned by an employee in accordance with the terms of the employment contract. The Wages Act on the other hand, has a much wider definition of wages – here wages is defined as all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed, which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment.

Health and Safety in the Workplace

The various State-specific S&E Acts have special provisions with respect to ensuring safety of women who work during night shifts. Employers in such cases are required to ensure that adequate security and transport facilities are provided (at their own cost) to female employees.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

In terms of the IT Rules, employers can access, review and monitor an employee's official electronic data (i.e. work-related data) subject to obtaining his/her consent, as clearly stipulated in the concerned employment contract / appointment letter. In addition, employers would also have to formulate a privacy policy and upload the same on its website and the intranet. This privacy policy would detail all its obligations regarding collecting, storing, processing of personal information of employees. Additional obligations are prescribed under the IT Rules, in case the employer collects / has access to 'sensitive personal information' of employees such as credit card information, biometric information, passwords and medical records. Additionally, it is important to note that there has been a couple of landmark judgments in India on the fundamental right to privacy. Further, India is also in the process of framing a comprehensive legislation on data protection, which would certainly have an impact on the employer's right to monitor and review employees' electronic communications.

EMPLOYEE BENEFITS

Social Security

While India does not have a robust social security regime, there are certain key legislations that govern employee benefits in India:

ESI Act / Employees' State Insurance Act, 1948: Benefits of this Act extend to establishments where 10 or more employees are engaged (subject to any State rules), and to all employees earning less than INR 21,000 (~USD 300) per month.

EPF Act / Employees' Provident Fund and Miscellaneous Provisions Act, 1952: Benefits under this Act typically extend to establishments where there are 20 or more employees. Employees earning less than INR 15,000 per month (~ USD 211) have to compulsorily contribute to schemes under the EPF Act, whereas those earning above this limit may opt out subject to certain conditions. PGA Act / Payment of Gratuity Act, 1972: the PGA Act contemplates payment of gratuity to all employees (whether workmen or not) engaged in establishments (including factories, shops and other commercial establishments) in which 10

or more persons are employed. An employee is entitled to gratuity if he/she has rendered continuous service for not less than 5 years (except in the case of death or disability), under any of the following circumstances, namely: Superannuation, Retirement or resignation, or Death or disablement due to accident or disease.

Healthcare and Insurances

The main legislation applicable to the private sector contemplates medical benefits for employees in contingencies such as sickness, maternity, disablement and death due to employment injury and provides medical care to insured persons and their families. Other than the above, most large employers in the private sector do provide medical insurance benefits to their employees and their immediate dependents, and bear the costs in this regard.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Every establishment shall remain closed on at least 1 day of every week (this is typically Sunday). However, the S&E Acts of certain States (for instance, Maharashtra) also contemplate that establishments may be open for all days in a year, subject to the employees being given a weekly off and certain other conditions being satisfied. Across India, there are certain national holidays namely: (i) Republic Day (26th January); (ii) Independence Day (15th August); and (iii) birth anniversary of Mahatma Gandhi (2nd October). The S&E Acts also allow unutilized privilege/earned leave to be carried forward at the end of the year (subject to a limit), and also contemplate that any unutilized leave may be encashed at the time of separation from employment.

- ***MATERNITY / PATERNITY LEAVE***

There is no separate category of paternity leave recognized under Indian law, though a bill has been introduced in this regard seeking paternity leave of 15 days across all sectors. Currently however, some corporates and public sector departments do provide paternity leave to their employees, as prescribed in the concerned leave policy/rules. With respect to maternity leave, India has recently amended its MB Act (as described in the earlier sections), in terms of which women employees who have been in service for 80 days are entitled to paid maternity leave of 26 weeks.

- ***SICKNESS LEAVE***

Sick leave typically cannot be carried forward or encashed and are not subject to any minimum service requirements. No specific category of disability leave is recognized in India.

Other Required or Typically Provided Leave

- ***CASUAL LEAVE***

Some of the S&E Acts also recognize casual leave, which can be availed by employees in unforeseen situations, subject to the approval of an organization. This category of leave is also not typically carried forward or encashed.

Pensions: Mandatory and Typically Provided

Employees who fall within the purview of the EPF Act will be entitled to monthly pension, as per the rules of the Pension Scheme. Other than this, employees in the public sector will be entitled to pension as prescribed in their service rules.

Other Required or Typically Provided Benefits

In addition to the above, various employers provide other benefits to employees (which also have certain tax benefits) such as food coupons, conveyance allowance, reimbursement of mobile phone and internet expenses. There are also specific benefit programs / labour welfare funds prescribed for certain sectors.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

There are various modes of termination of employment that are recognized in India, including: (i) expiry of a fixed term contract / mutual separation; (ii) resignation by an employee; (iii) retirement or superannuation; (vi) layoffs, termination due to transfer of business/closure of an undertaking/organizational restructuring; (v) termination by an employer for 'cause'. A severance payment would have to be made by the employer. However, the quantum of the amount and the

processes followed would be different, depending on specific circumstances.

Whistleblower Laws

Currently, legislation in India concerning whistleblowers mainly pertains to listed companies and the public sector. In terms of regulations prescribed by the Securities and Exchange Board of India (SEBI), companies listed on a recognized stock exchange in India have to devise an effective whistleblowing mechanism that enables stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices in such companies. Under the (Indian) Companies Act, 2013, certain categories of companies are also required to constitute a 'vigil mechanism' for their directors and employees to report their genuine concerns or grievances. The Whistle Blowers Protection Act, 2014 (which has not yet seen light of day, with further controversial amendments being proposed) governs mainly alleged corruption and misuse of power by public servants and seeks to protect persons who expose alleged wrongdoings in government bodies, projects and offices. It is also important to note that India has recently amended its Prevention of Corruption Act, 1988, wherein the giving of bribe by any person (including the private sector) to a public servant for improper performance of public duty or to improperly perform a public duty, has specifically been made an offence (penalties extend to fine and imprisonment). Previously, only the receipt of a bribe by a public servant was covered.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Indian courts have held while it is not possible to stop an employee from leaving, he can be restricted from joining a competitor during the term of employment (i.e. during the 'garden leave' period as described above). The aim of garden leave is to keep the employee out of the market long enough for any confidential information that they have to go out of date, or to enable that employee's successor to establish themselves particularly with customers, so as to protect the company's goodwill. However, the garden leave provision should not be unreasonable and should typically not extend to a period after the employment comes to an end – i.e., if the effect of the 'garden leave clause' is to prohibit the employee from taking up any employment during a certain period after the cessation of the employment, then it is unlikely that such clauses will be upheld by Indian courts.

TRANSFER OF UNDERTAKINGS

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, every workman who has been in continuous service for not less than 1 year in that undertaking would be entitled to 1 month notice or payment in lieu thereof and to compensation calculated at the rate of 15 days' wages for every completed year of service.

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ITALY.

HIGHLIGHTS

- For each industry sector there is a National Collective Bargaining Agreement (hereinafter, also, "NCBA") that regulates the employment relationship.
- Companies with more than 15 employees come under the umbrella of the Workers' Statute.
- Italian labour laws and National Collective Bargaining Agreement provisions may only be amended by employers in a more favorable way for the employees.
- The collective dismissal procedure shall be followed when at least 5 dismissals for economic reasons will be served within 120 days by a company with more than 15 employees.
- Executives are included in the calculation that triggers a collective dismissal.
- There is no longer a need to give a reason for entering into a fixed-term contract.
- Reinstatement is no longer the sole remedy for unfair dismissal.

INTRODUCTION

Italian employment laws have always been employee-friendly, reflecting the principles of the Italian Constitution. However, the global economic downturn has forced Italian lawmakers to look at ways to enhance flexibility within the Italian job market. The most recent Italian reform on labour law, the so called Jobs Act, has granted more flexibility to the employers through i) a "gradual" protections against unfair dismissals, directly linked to the length of service (for those hired on open-ended employment contracts after 7th March 2015), ii) the possibility under certain conditions, to downgrade employees, iii) the possibility, under certain conditions, to utilise for disciplinary purposes, the content of company mobile devices granted to the employees, to stimulate new hires and attract new foreign investment into Italy. Italy is going through important political, social and legal changes at the moment and employment lawyers are witnessing first-hand how this impacts businesses and the Italian workforce. Italian employment law is still a work in progress and the end product will hopefully be worthy of the prestigious label: "Made in Italy".

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

According to Article 8 of Law 300/1970 (the Law), prior to hiring and during the employment relationship, the employer may not carry out any checks or investigations, even through third parties, regarding the employee's political opinions, religious beliefs, union membership, or on any matters which do not strictly relate to the employee's professional skills. Therefore, any such investigation is always prohibited, as is any investigation of facts that cannot be objectively used to demonstrate the employee's skills, competence, experience and compatibility with the specific duties to be assigned to him/her. This rule also applies to checks carried out through social networks, which are becoming common among HR departments and head-hunters.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

There are no specific rules related to the employment of European Union ("EU") citizens as they can move and work in every EU Country, free of restrictions. On the other hand, limitations are provided by the law with respect to non-EU citizens. Visas and different work permits are necessary in the following situations:

- Hiring of non-EU citizens: their employment can start only after a specific immigration procedure is completed, which includes complying with the limitation of the annual quotas. After the annual quotas are established, a non-EU citizen must request a work visa, assuming that they have been offered employment in Italy.
- Secondment in Italy of non-EU citizens: this is not subject to annual quota limitations, but should be activated on the basis of a special and more simplified procedure, strictly related to the purposes of the secondment in Italy.

EMPLOYMENT CONTRACTS

Minimum Requirements

European Union Directive No. 533/91 has been implemented in Italy and requires that information on the main terms and conditions of employment relationships be evidenced in writing in the employment contract and provided to the employee within 30 days of hiring.

Fixed-term/Open-ended Contracts

An employment contract normally has an unlimited duration.

Trial Periods

Employment contracts can provide for a trial period ("periodo di prova"). During this period each party is free to terminate the contract without notice and without the payment of any indemnity in lieu of such notice. Article 2096 of the Civil Code requires that the trial period be written in the employment contract and must be entered into on the first day of the employment at the latest. Failing to meet this requirement renders the trial period null and void and the employment is considered fully effective as of the beginning.

Notice Periods

Upon termination of an open-ended employment contract, unless the contract is terminated for "just cause" (a reason that does not allow the continuation of the employment relationship) both the employer and the employee are entitled to a notice period. In case of termination due to a decision of the employer, it can exempt the employee from working during the notice period while paying a corresponding payment in lieu of notice. In case of termination due to a decision of the employee, if he/she resigns without giving the notice period provided by the applicable collective agreement (with the exception of resignation for "just cause", where the notice is not due by the employee) the employer has the right to withhold the amount of the payment in lieu of notice from the payments that the employee is entitled to receive as a consequence of the termination of the employment relationship.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

Italian Law explicitly provides that the salary paid to employees must be stated in a pay slip (produced by the employer or by a third party on the employer's behalf) specifying the period of service which the salary refers to, the amount and the value of any overtime, together with all the elements that constitute the amount paid as well as all withholdings made in accordance with Italian law. Moreover, Italian law provides for an annual 13th payment, paid once a year on the occasion of the Christmas holidays that usually corresponds to one month's remuneration. In addition, NCBA or even individual contracts may provide for the payment on the 14th payment, usually paid in July.

Health and Safety in the Workplace

The main provisions relating to health and safety in the workplace are based on the following general principles of prevention, including:

- elimination or reduction of risks at the source;
- updating safety measures in relation to the technological evolution;
- safety of psychological and physical health of workers;
- attention to the health conditions and skills of workers for the purpose of job assignment; and
- surveillance of workers to monitor their adherence to safety measures and use of personal and communal protective gear provided by the employer.

In addition to these general principles, there are some specific duties that the employer must fulfill: i) evaluation of risks; ii) identification of protective and preventative measures; and iii) preparation of the plan for the improvement of safety at the workplace.

SOCIAL MEDIA AND DATA PRIVACY

Can the employer monitor, access, review the employee's electronic communications?
With reference to the company devices granted to the employees for work purposes, the employer is entitled to block internet access, or access to certain websites only and/or social networks, for the entire working day or during certain times. The employer has no control over employees' personal devices. However, should the employee use his/her personal device during working time and/or in violation of the relevant company policy, this may trigger disciplinary action.

EMPLOYEE BENEFITS

Social Security
In Italy, pensions are operated by INPS and fed by salary-based contributions paid by both the employer and the employee. For employees who started working after January 1, 1996, the amount of salary to be taken into account for the purposes of calculating the pension contributions is capped at an annually determined amount depending on cost of living increases. Receipt of pension benefits is contingent upon payment of the social security contributions provided for by the law. For employees, the pension is linked to the amount of contributions paid as a percentage of the employee's global salary during an entire working life. In certain specific cases provided for by law (e.g. periods of leave), in order to allow the employee to reach the minimum pension requirements, the contribution is directly paid by the government. In other cases, such as the interruption or the termination of work (from lack of work during one's working life or retirement before retirement age) the contribution due by law can be directly paid by the employees.

Healthcare and Insurances
Protection of workers who suffer accidents or occupational illness is primarily controlled by the INAIL (National Institution for Insurance Against Work Related Accidents).

Required Leave
- ***HOLIDAYS AND ANNUAL LEAVE***

Under Italian law, the minimum length of annual holidays is four weeks per year, but the applicable NCBA may provide a longer term. The four-week period must be used for at least two consecutive weeks during the same year, if requested by the employee, and the remainder of the weeks must be used within 18 months of the end of the accrual year. Except in the case of the termination of employment, an employer cannot replace the right of the employees to benefit from the minimum annual holiday entitlement with payment in lieu thereof. On the other hand, it is possible for the employer to pay the indemnity in lieu only with regard to the annual holidays exceeding the above-mentioned minimum period of four weeks. There are approximately 11 public holidays in Italy and an additional four days that used to be public holidays, but are now working days on which workers are paid double time.

- ***MATERNITY / PATERNITY LEAVE***

Female employees cannot work during the 2 months prior to the planned birth of the child (3 months in case of dangerous jobs, listed by the Minister), and during the 3 months following the birth. During the maternity leave, the employee is entitled to 80% of her regular salary, which is paid by the employer who then claws back such amounts from INPS. At the end of the maternity leave, the mother has the right to come back to the same job position she left and at the same/better conditions, and until the child is one year old, entitled to work in the same office or at least, in the same city. The father is entitled to paternity leave, on the same terms and conditions as in the case where the mother is seriously mentally injured, and for the residual duration if the mother dies or abandons the child.

During the first 12 years of the child, each parent is entitled to a period of absent from work of 6 months. If both parents take the parental leave, then they are entitled to a maximum period of 10 months combined. If there is only one parent, he/she is entitled to a parental leave of 10 months. If the parental leave is taken during the first 6 years of age of the child, INPS provides an indemnity equal to 30% of the regular salary for a maximum period of 6 months of parental leave, combined between both parents.

- ***SICKNESS LEAVE AND DISABILITY LEAVE***

In case of sickness and disability, the employee is entitled to a period of sick leave and during this time, the employee cannot be dismissed, unless for just cause or closure of the company, so-called: "periodo di comporto". At the end of the leave, the employee is entitled to come back to the same job position he/she left and on the same/better conditions.

Pensions: Mandatory and Typically Provided

In 2010, the Italian pension system introduced the "floating window" which means that, effective as from January 1, 2011, the government will start paying the pension to a retired employee only 12 months after the date on which such individual achieved the requirement for retirement eligibility and actually elects to retire. In 2011, another reform to the pension system was enacted, providing for the following:

- **For individuals working prior to January 1, 1996**

"PENSIONE DI VECCHIAIA" – termination of employment (possibility to work as self-employed); attainment of age 65 and 7 months for women or 66 and 7 months for men (from January 1, 2016); and a minimum period of contributions paid over 20 years.

"PENSIONE ANTICIPATA" – Law No. 214/2011 changed the requirement for length of contributions with the pensions system to achieve the pensione di anzianità, providing a minimum contribution of 41 years and 10 months for women and 42 years and 10 months for men.

- **For individuals who started work on or after January 1, 1996**

"PENSIONE DI VECCHIAIA" – termination of employment; attainment of age 66 and 7 months for men or 65 and 7 months for women, along with a minimum contribution term of 20 years; or attainment of age 70 and 7 months for both women and men, along with a minimum effective contribution term of 5 years.

"PENSIONE ANTICIPATA" – a minimum contribution of 41 years and 10 months for woman and 42 years and 10 months for man; or attainment of age 63 and 7 months for both women and men, along with a minimum effective contribution term of 20 years.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

Under Italian law, any termination of employment must be justified. The reasons to terminate an employment contract can be divided in three main categories:

- Objective justified reasons - which are related to the abolition of a job position due to a company's economic situation regarding production, work organisation, or proper functioning;
- Subjective justified reasons - which occur when the employee commits a breach of his/her contractual obligations or is guilty of negligence in the performance of his/her duties, but the behavior is not so serious as to constitute a dismissal for just cause; or
- Just cause ("giusta causa") – that indicates any serious misconduct or breach 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.

Italian law provides for the payment of a deferred form of remuneration, otherwise known as the severance payment ("Trattamento di Fine Rapporto" or TFR). Along with other minor statutory termination amounts, the TFR must be paid to employees whenever an employment contract is terminated, irrespective of the cause of termination. The amount of the TFR varies depending on the employee's salary and length of service (it is approximately equal to 8% of the yearly gross salary per each year of employment).

Whistleblower Laws

In Italy, the law requires that companies ensure the confidentiality of a whistleblower's identity to the extent permitted by Italian law. However, anonymous whistleblower complaints are not entertained. According to mandatory law, formal whistleblower channels must be available to i) directors, managers or other subjects acting on behalf of the company or one of its organisational units; and ii) persons subject to the direction or supervision of those in part i) above. As such, whistleblower programs need not be available to self-employed contractors, external consultants, or others, though from a practical point of view there may be good reasons to include such persons within the scope of a whistleblower program.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Garden leave as such, does not exist under Italian law. Indeed, an employee has a right to work, even during the notice period. Therefore, to continue paying the salary to the employee during the notice period without him/her working is only permitted with the consent of the employee. In the absence of such consent, in order to prevent (for a limited period of time) the employee from working for other employers, the employer has two options, namely i) agree to a non-compete covenant or ii) let the employee work his/her notice period.

TRANSFER OF UNDERTAKINGS

As per buyer and seller companies' obligations, please note that article 2112 of the Italian Civil Code provides that seller and buyer companies are jointly and severally liable for all the credits accrued by the transferred employees with the selling company at the moment of the transfer, and that the buying company shall apply terms and conditions provided by the National Collective Bargaining Agreement applied by the selling company, unless replaced by more favorable terms and conditions. Also, in case of transfer of undertaking within companies with more than 15 employees, article 47 of the Law no. 428/1990 obliges both seller and buyer companies to implement a Union procedure before the transfer.

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JAPAN.

HIGHLIGHTS

- Japanese employment laws mainly cover employer-employee relationships. Board members and independent contractors are, in principle, not categorised as employees.
- There is no "at will" employment in Japan. Japanese law requires that termination of regular employment shall be considered objectively, deemed reasonable, and appropriate upon social convention, which is read rigidly in light of Japanese judicial precedent.
- Regulation concerning overtime work has been strengthened with the recent legislative amendments. In principle, work on statutory public holidays and late-night work requires extra allowance in addition to the normal wage.
- Japanese law provides various protections against discriminative treatments not only by reason of nationality, creed, social status or gender, but also due to the association with union activities, or taking childcare or nursing care leave. There is also a prohibition against unreasonable differences between full-time permanent employees and non-regular employees. Furthermore, an employer's obligation to prevent harassment has been strengthened in light of the recent legislative amendments.
- Dominant majority unions in Japan are deemed as enterprise unions. The unionisation rate in Japan has been considerably and continuously declining.

INTRODUCTION

Japanese employment laws mainly cover employer-employee relationships. These laws apply to all employees working in Japan regardless of their nationality. However, board members as defined under the *Company Act* (2005) as well as independent contractors are not categorised as employees subject to Japanese employment laws, in principle, and therefore are not protected under Japanese employment laws.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

There is no statutory limitation on background checks in Japan. However, due to the sensitive nature of data gathered, certain information requires careful handling. The *Act on the Protection of Personal Information* (2003) provides that sensitive personal information such as race, creed, social status, medical history, criminal record, and the fact of having suffered damage by a crime must not be collected, in principle, unless an applicant's consent is obtained. Furthermore, the guidelines based on the *Employment Security Act* (1947) provide that an employer is prohibited from acquiring information which may become a cause for social discrimination. This includes, but is not limited to, information pertaining to race, ethnic group, social status, family origin, domicile or birthplace, creed, personal beliefs, or history of union membership. In practice, for the purpose of lawfully searching an individual's background, informed consent from each individual employee or prospective employee, and specifying the purpose of and the items subject to said background check, is commonly utilised. It is also common practice to ask for a declaration of criminal records and to require a medical examination. This sensitive information shall be collected in a socially acceptable method and securely retained.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Foreign employees who wish to apply for a long-term visa should first obtain a Certificate of Eligibility ('COE'). A COE is a document issued by the Ministry of Justice in Japan. In order to obtain the COE, a sponsor in Japan is required. Sponsors can be employers, schools or relatives. The sponsor in Japan must contact the appropriate local immigration office in order to apply for the COE. Once the COE has been issued, the foreign employee is then able to apply for a visa before the Japanese embassy or consulate in the country where the foreign employee resides. The COE should be submitted to an immigration inspector with a valid visa for landing permission at the port of entry, within three months from the date of issue. Once living in Japan, the foreign employee must notify the local city ward office of his/her place of residence.

Long-term visas can be provided for any type of work visa designated by Japanese law, for which the permitted standard period of stay in Japan is five years, three years, one year, or three months. A foreign employee who is currently working for an organisation outside Japan and will subsequently be transferred to that organisation's Japanese office for a limited period, may be eligible for a work visa as an intra-company transferee. Requirements for obtaining an intra-company transferee visa are as follows: (i) the two entities have a certain capital relationship; (ii) the employee has been engaged in activities which is covered by "engineer" or "humanity, international service" in that foreign company for at least one year immediately before transfer to Japan; and, (iii) the employee will receive a salary after transfer to Japan at the same level or more than that of which a Japanese national would receive by engaging in the same type of work. A foreign employee who does not fall under these categories may be eligible for other types of work visas if the foreign employee has a direct contract with the relevant entity in Japan. A foreign employee is prohibited from engaging in activity outside the scope permitted in their work visa. However, performing activities outside the scope of their work visa is permissible subject to approval granted by the Minister of Justice.

EMPLOYMENT CONTRACTS

Minimum Requirements

While an employment contract may be in written or verbal form, when concluding an employment contract, the following conditions must be clearly provided in written form:

- term of employment;
- place of employment and job description;
- start and finish time, overtime work, rest period, days off, leave and change in shifts;
- determination, calculation and payment of wages (except retirement allowances and special wages); and
- resignation (including grounds for dismissal).

Fixed-term/Open-ended Contracts

Generally, the maximum term of a fixed-term employment contract is three years. However, there is an exception for employees who possess expert knowledge, skills or experience, or who are 60 years of age or older, in which case the maximum term of the employment contract is five years. In the situation where a fixed-term employment contract with the same employer has been repeatedly renewed, and its total contract term exceeds five years, the employee is entitled to apply for conversion of his/her fixed-term employment into an indefinite term, from the day following the date of expiration of the fixed-term employment contract, and the employer is deemed to accept the application. In addition, the total contract term may be reset by setting certain cooling-off periods (e.g. six months for one year, or additional fixed-terms). Similar to above, an exception exists for employees who possess expert knowledge, skills or experience, or who are continuously employed after the mandatory retirement age, which is subject to an approval by a Director General of the relevant Labour Bureau.

Trial Periods

In Japan, it is common practice to set a probationary period of three to six months for new hires, effective from the hiring date. While there are no legal requirements regarding the length of the probationary period, the probationary period would be regarded as void if it is unreasonably long due to it being against public order and morals. The probationary period may also be further unilaterally extended in accordance with the work rules and/

or the employment contracts. In practice, however, probationary periods are deemed as temporary periods for employers to review an employee's qualities and abilities before the employee is able to transition into a regular employment. Consequently, an employer is expected to decide whether to accept or reject the employee as a regular employee after the probationary period has concluded. An extension of the probationary period is only permitted if there is a strong necessity, and reasonable reasons exist, for which the employer must continue the review of an employee's qualities and abilities. Accordingly, an employer will face a significantly higher hurdle when the company tries to terminate an employee's employment during the extended probationary period, as compared to the termination after the expiration of the initial probationary period.

Notice Periods

Advance notice of termination must be provided at least 30 days prior to dismissal. An employer may also provide a payment in lieu of such notice, which amounts to the 30 days or more of the salary amount. Notice periods can also be shortened by the number of days for which the payment in lieu of notice has been made. The advance notice period is not applicable when the employer dismisses an employee under the probationary period, within fourteen days after the date of the commencement of the probationary period.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

'Wage', as defined under the Labour Standards Act (1947), means any kind of payment made from an employer to its employees as remuneration for their work including wage, salary, allowance and bonus. Wages must be paid in the appropriately designated currency and paid in full directly to employees. Wages, other than extraordinary wages and bonuses, must also be paid to employees periodically at least once a month on a specifically designated date. The amount of minimum wage in each prefecture is regulated in accordance with the *Minimum Wages Act* (1959).

Work on statutory holidays and late-night work (between 10 p.m. and 5 a.m.) requires extra allowance in addition to the normal wage. Over-time work of up to 60 hours per month must be at least 25% of the normal hourly wage, and over-time work that exceeds 60 hours per month must be at least 50% of the normal hourly wage. Statutory holiday allowance must be at least 35% of the normal hourly wage. Late-night work allowance must be at least 25% of the normal hourly wage. Employees in managerial and supervisory positions as defined under the Labour Standards Act are exempt from the overtime regulations as discussed above. However, the late-night work allowance is still applicable thereto.

Health and Safety in the Workplace

The *Labour Contract Act* (2007) has acknowledged in its written policy an employer's obligation to take necessary care to ensure the physical and mental health and safety of its employees. The *Industrial Safety and Health Act* (1972), in conjunction with the Labour Standards Act, provides employers with a compulsory obligation to secure the safety and health of employees in the workplace, as well as to facilitate the establishment of a comfortable working environment, by promoting comprehensive and systematic countermeasures concerning the prevention of industrial accidents, taking measures for the establishment of standards for hazard prevention, clarifying the safety and health management responsibility, and the promotion of voluntary activities with a view to preventing industrial accidents.

One of the predominant obligations of employers under the Industrial Safety and Health Act concerns the establishment of an organisation for safety and health management. This includes appointment of a General Safety and Health Manager and designating such person with ultimate responsibility regarding such matters. In addition, employers are to appoint relevant officers to support the General Safety and Health Manager. These include the appointment of an industrial doctor, the establishment of a safety and health committee (if the employer employs 50 regular employees or more), and the appointment of an operation chief (if the employees engage in work which requires prevention-control of

industrial accidents). The *Industrial Safety and Health Act* further requires employers to establish measures for preventing dangers, risks and other impairments to the health of its employees, as well as promoting safety and health education and facilitating medical examinations for employees.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

An employer can restrict the employee's use of Internet and/or social media in the workplace during working hours. This is because employees are obliged to devote themselves fully to their duties at the workplace during working hours. Work email accounts and computer systems in the workplace belong to the employer and may therefore be monitored, accessed and reviewed by the employer under Japanese law. However, such access, if permitted, is possible only so far as the following conditions are met before such access is sought: (i) the employer expressly discloses the purpose of monitoring to the employees in question in advance, (ii) the employer provides the employees in question with the relevant and applicable company rules; (ii) the employer identifies the person responsible for implementing the monitoring; and (iv) draws the company rules stipulating the implementation of monitoring and announces them to the employees. The monitoring shall be subject to an audit in order to confirm that it is properly implemented as monitoring, accessing and reviewing the employees' electronic communications would be regarded as an acquisition of the employees' personal information.

EMPLOYEE BENEFITS

Social Security

There are two separate systems concerning social security in Japan. Both of these systems are run by the Japanese government. The systems are: (i) the social insurance schemes (i.e. the employee pension insurance and the employee health insurance), and (ii) the labour insurance schemes (i.e. the workers' accident compensation insurance and the unemployment insurance).

Healthcare and Insurances

Social insurance schemes are designed to secure the life of workers by paying income-based contributions in the case of old age, disability or death. An employer that is a corporation, or one that is a sole proprietor hiring five or more employees, has a legal obligation to provide its employees with the employee pension insurance and the employee health insurance. Labour insurance schemes have been established in an effort to secure the employment of workers with jobs, and to pay unemployed workers unemployment and other benefits. These benefits paid to unemployed workers are for the purpose of stabilising their life and promoting reemployment. Furthermore, all employers are obliged to provide employees with the workers' accident compensation insurance and the unemployment insurance. The benefits of the social insurance and labour insurance schemes are covered by the mandatory contributions paid by workers and employers. A worker employed in Japan will be insured, regardless of whether or not the worker is a Japanese national.

Required Leave

• HOLIDAYS AND ANNUAL LEAVE

While the statutory holidays must be granted once every week or four times every four weeks, it is common practice to provide holidays in addition thereto (e.g. Saturdays, Sundays, national public holidays).

Under the Labour Standards Act, employers must grant paid annual leave to employees who have been employed continuously for 6 months or more. The employee must have attended work for at least 80% of the scheduled working days in the previous fiscal year to receive the paid annual leave. The statutory minimum number of days of paid annual leave depends on the employee's length of continuous service:

- 6 months of service = 10 days of paid annual leave
- 1 year and 6 months = 11 days
- 2 years and 6 months = 12 days
- 3 years and 6 months = 14 days
- 4 years and 6 months = 16 days
- 5 years and 6 months = 18 days
- 6 years and 6 months or more = 20 days

The unused paid annual leave can be carried forward to the next year. Generally, paid annual leave may be taken in full day units. However, employers may allow the employees to take leave in half day units. It is also allowed to grant paid annual leave on an hourly basis by executing the labour management agreement with such a provision. However, the

total amount of days of such paid annual leave is limited to no more than 5 days. Furthermore, employers are obliged to ensure the use by their employees of at least 5 days of paid annual leave per year.

• MATERNITY / PATERNITY LEAVE

A pregnant employee can take up to six weeks (or 14 weeks in the case of multiple fetuses) of maternity leave before childbirth, and eight weeks after childbirth, under the *Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave* (1991) (the "*the Child Care and Nursing Care Act*"). Furthermore, employers shall not have a woman work within 8 weeks after childbirth. However, in the case where such a woman has so requested to work; provided, that 6 weeks have passed since childbirth, and the work activities to be performed are such that a doctor has approved as having no adverse effect on her, then this Act shall not prevent an employer from having the woman return to work.

In addition, an employee (regardless of gender) who has been employed for at least one year or more, is entitled to take childcare leave for a child aged less than one year (or until the child becomes one year and two months old, one and half years old, or two years old). This is subject to certain conditions respectively, and does not include certain employees, such as those with fixed-term employment that would not continue after the child turns one. Moreover, the employer is not obliged to pay the employee during maternity leave and childcare leave.

• SICKNESS / DISABILITY LEAVE

While there is no legislation concerning sick or disability leave arising from employment, many employers implement their own rules regarding sick leave and/or payment during periods of sickness. The employer may settle the term of sick leave where an employee is suspended. Furthermore, this may become a cause for dismissal if the employee does not recover before the term of sick leave expires. As to employee's injury, sickness and disability due to employment, the *Industrial Accident Compensation Insurance Act* (1947) covers a large part of the compensation.

Other Typically Provided Leave

• NURSING CARE LEAVE

Under the *Child Care and Nursing Care Act*, an employee who has been employed for at least one year or more and is nursing a family member who requires nursing, is entitled to take nursing care leave for 93 days in total per family member. This does not include certain employees such as those with fixed-term employment that would end within 93 days. Furthermore, the employer is not obliged to pay the employee during nursing care leave.

Pensions: Mandatory and Typically Provided

There are no mandatory pensions provided to employees in Japan. However, in practice, a number of companies have voluntarily structured a variety of pension schemes including, but not limited to (i) defined payment plans, (ii) defined contribution plans, and (iii) decrease/eliminate existing pension plans.

Also, there are no statutory benefits available to employees in Japan. However, in practice, a number of companies have started adopting a variety of incentive plans including, but not limited to, performance bonuses, share options, profit sharing schemes and employee stock ownership plans.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

Japanese law requires that termination of regular employment shall be considered objectively, deemed reasonable, and appropriate upon social convention, which is read rigidly in light of Japanese judicial precedent. Under Japanese law all dismissals are deemed individual dismissals. Typical grounds for termination include the following: (i) an employee's inability to provide labour due to injury, disability, illness or permanent damage, significantly poor performance, or loss of the trust relationship due to material fraud in an application for employment; (ii) breach of work responsibilities

and duties, orders, or workplace disciplines, policies and internal rules; and (iii) loss of job responsibility, redundancy due to business downsising, economic reasons, or corporate dissolution. All grounds for dismissal shall be provided in the work rules or in the employment contract.

Termination due to economic reasons such as redundancies is strictly restricted in Japan. Japanese judicial precedent has established the practice that the following four factors should be met: (a) necessity of decreasing the number of employees; (b) necessity of adopting the "unilateral termination of employment contract" method as a means of employment adjustment; (c) adequate selection of the employees whose employment contracts are to be terminated; and (d) adequacy of the termination procedure. Importantly, with regards to (b), it requires that the employer fulfills its best effort obligation to avoid the termination. With respect to an employment contract with an indefinite term, the termination due to redundancy is considered to be as a last resort under Japanese labour law, and is only permitted where employers have no choice but to terminate the employment of their employees. The management of the employer must have made a best effort to avoid the termination. This means that the employers should use any available means within the company prior to the termination to satisfy their best effort obligation to avoid termination. This includes, but is not limited to, reduction of compensation for directors, curbing new hires, soliciting voluntary retirement, encouraging early retirement, personnel relocation and employee transfers.

As to a fixed-term employment contracts, an employer may not dismiss employees until the expiration of the employment term thereof without "unavoidable reasons". The "unavoidable reasons" are read narrowly and considered to be more rigid than the requirement of being objectively reasonable in the case of an indefinite term employment contract.

Furthermore, an employer shall not dismiss an employee during a period of absence from work for medical treatment with respect to work-related injuries or illnesses. Also, an employer shall not dismiss an employee within 30 days thereafter. In addition, an employer shall not dismiss any woman during a period of absence from work before and after childbirth, nor within 30 days thereafter.

Under Japanese law, there is no statutory obligation to pay severance allowance upon termination, except in circumstances when payment is in lieu of notice.

Whistleblower Laws

The *Whistleblower Protection Act* (2004) protects whistleblowers who come forward with information regarding criminal activity in the workplace relevant to life, body, property, and other interests of citizens, that has occurred or is about to occur. Consequently, employers are required to appoint an appropriate point of contact within the company, who is to be located either within the premises of a particular workplace, or at an outside location where the relevant administrative organ of the company operates, to receive and respond to any of the abovementioned concerns as may be raised by an employee whose intentions are lawful and trustworthy. An employer is prohibited from any disadvantageous treatment of the whistleblower, such as demotion or salary cuts on the basis of such whistleblowing. Furthermore, under the Whistleblower Protection Act, a dismissal of a whistleblower on the basis of whistleblowing is to be null and void.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Garden leave is a tool by which an employer can prevent departing employees from performing their regular duties. Typically, the employee will be prevented from attending the workplace, but will still receive full pay. This has the effect of restricting the employee's access to customers, clients, staff and information, and hampers their ability to work for a competitor. If an employer wishes to put an employee on garden leave there must, in most circumstances, be an express term in the employment contract permitting it to do so. Otherwise, they could be breaching the employee's implied right to work and therefore be in breach of contract.

TRANSFER OF UNDERTAKINGS

In a share transfer, there will be no change in the employment conditions and status; therefore, no transfer of employees' rights and obligations will take place.

In a merger, regardless of whether it occurs through absorption or consolidation, any rights and obligations under the employment contracts subject to the merger, will be automatically and comprehensively transferred to the post-merger entity.

In a corporate split, regardless of whether it occurs through absorption or incorporation, the employees mainly subject to the transferred business and defined as such in the corporate split plan or agreement, will be automatically transferred. Therefore, any rights and obligations thereunder will be automatically and comprehensively transferred.

An employee who is mainly subject to the transferred business, but is not defined in the corporate split plan or agreement, has the right to raise an objection, with the result that the employee will be subsequently transferred.

Adversely, an employee who is not mainly subject to the transferred business, however defined in the corporate split plan or agreement, has a right to raise an objection, with the result that the employee will not be subsequently transferred. The employment contracts which are not transferred to the successor remain with the predecessor, and the general rules on collective dismissals apply.

In a business transfer, through an asset transfer, employees will not be automatically transferred. Although the buyer and the seller may agree to include employment contracts in the business to be sold, if however, an employee refuses to consent to the transfer of his/her employment contract, the employment contract will not be transferred. Those employment contracts which are not transferred to the successor, remain with the predecessor and the general rules on collective dismissals apply.

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LUXEMBOURG.

HIGHLIGHTS

- The Labour Code came into effect on 1st September 2006 and regroups all existing employment rules.
- The termination of contracts is strictly regulated by the Labour Code with specified notice periods depending of the length of service with the same employer.
- The right of workers to strike is implicitly guaranteed by the Constitution under the freedom of association but is only possible under specific circumstances. A peace obligation exists in the frame of a collective labour agreement. Moreover, in order to be legal, every strike or lockout movement must first be referred to the National Office of Conciliation (ONC).
- The main institutions are the Labour Ministry, the National Employment Administration (Administration pour le développement de l'emploi) which is notably in charge of assisting unemployed people and the Labour and Mines Inspectorate (Inspection du Travail et des Mines), in charge of controlling standards of health and safety at work, compliance with employment legislation and supervising working conditions.

INTRODUCTION

In Luxembourg, the labour market is characterised by the number of commuters from France, Belgium and Germany, which represents almost 50% of the labour force. In Luxembourg, the social peace is of utmost importance and usually secured by regular dialogue between social partners. Due to the recent codification of employment laws and with recent employment laws voted during the past few years, the Luxembourg labour code is increasing in volume. For example, we can highlight:

- the simplification act dated 23rd July 2016 reforming the staff representatives in Luxembourg.
- the new law of 8th April 2018 which made numerous amendments to the Labour Code, in particular to better protect employees' rights and improve the effectiveness of employment measures.
- the law of 10th August 2018 relating to the benefits employees are entitled to in case of incapacity to work.
- the entry into force of the GDPR and the impact on employee monitoring.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

According to article 8-5 (2) of the modified law of 29th March 2013 on the organisation of the criminal record, the employer is allowed to ask the candidate to submit a criminal record no 3. This request has to be submitted in writing and has to be expressly motivated by the specific needs of the proposed position. Furthermore, this request must already be indicated in the job offer. The employer can only retain the criminal record no 3 for one month after the conclusion of the employment agreement. If the candidate is not hired, the criminal record no3 has to be destroyed immediately. During the employment relationship, the employer can only ask employees to hand over a recent copy of their criminal record (certificate no 3) if specific legal provisions provide for this possibility. However, the employer can request a recent copy of a criminal record (certificate no 3) if the employee receives a new assignment, justifying a new evaluation of the employee's good repute, in relation to the specific

needs of the position, and the criminal record cannot be retained, after its issuance, beyond a period of two months.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

• EEA NATIONALS

EU citizens are entitled to reside in Luxembourg for more than 3 months if they meet one of the following conditions: i) they work as an employee or are self-employed; ii) they have the resources required to ensure that they or their family members are not dependent on the social welfare system and also have medical insurance; iii) they are registered with an approved public or private education institution in Luxembourg, and are attending a full-time educational course or, in this context, a professional training course. In this case, they must be able to demonstrate that they have the resources required to ensure that they or their family members are not dependent on the social welfare system and also have medical insurance.

Within 8 days of their arrival in Luxembourg, EU citizens must make a declaration of arrival at the administration of the municipality where they intend to establish residence. EU citizens must also complete a registration form in the same municipality within three months of their arrival in Luxembourg. A secondary activity of less than 10 hours per week is not sufficient to receive an authorisation to stay for a salaried worker. After five years of residence, EEA nationals can ask for a permanent residence permit from the Immigration Directorate of the Ministry of Foreign and European Affairs.

• NON-EEA NATIONALS

A third-country national who wishes to work in Luxemburg must have a stay permit (serving as work permit). Applicants must send their application to the Immigration Directorate of the Ministry of Foreign and European Affairs. They must state their identity and the exact address in their country of residence, and add several documents depending on the type of permit they are applying for. The types of stay permits for which a third-country national can apply are the following: i) work permit for an occupation of less than three months. ii) work permit for an ancillary occupation for people who have obtained a residence permit for private reasons. Iii) work permit for an ancillary occupation for a third-country national family member of a third-country national. iv) work permit for a highly qualified employee for an occupation of more than three months. After five years of residence, non-EEA nationals may apply for long-term resident status from the Immigration Directorate of the Ministry of Foreign and European Affairs.

EMPLOYMENT CONTRACTS

Minimum Requirements

The employment contract is individual and must exist in writing from the beginning of the employment period. There must be two copies of the signed contract: one for the employer and one for the employee. Only the employee has the right to establish, by any means, the existence of the contract in the event no written employment contract exists. Employment contracts concluded orally are automatically deemed permanent employment contracts.

Fixed-term/Open-ended Contracts

The standard contract in Luxembourg is the open-ended contract. A fixed-term contract is prohibited for permanent work. It is permitted only in order to carry out a specific type of work over a defined period of time, such as: temporary replacement; seasonal work; performance of work in several specified sectors of activity or occasional and time-defined work; contracts concluded between an employer and a student or a pupil; or urgent and necessary works to prevent a negative impact on the business.

The Labour Code provides for a list of cases in which recourse to fixed-term contracts is authorised. If a fixed-term contract is signed outside the cases provided for by law, i.e. in order to carry out a type of work, which is not a precise and unsustainable type of work, the contract will automatically be reclassified as a permanent contract. By principle, fixed-term contracts cannot exceed a duration of 24 months including the possibility of two renewals, and the contract must include additional criteria: the activity; a reference to the term of the employment contract; and, where appropriate, a renewal clause. If a compulsory element is not included, the fixed-term contract will be deemed an indefinite employment contract.

Trial Periods
The general principle is that the trial period cannot be less than two weeks and not more than six months, depending on the qualifications of the employee. A contract can contain a trial period of 12 months, if the salary reaches a certain amount (fixed by a grand-ducal regulation). Neither party to the employment contract may extend or renew the trial period. If employment is suspended for sick leave, the trial period is automatically extended accordingly, although by no more than one month.

Notice Periods
Employment cannot be terminated by any party during the first two weeks of the trial period. In the event of dismissal during the trial period, the employer is not subject to the same notice periods as after the end of the trial period, and reasons for dismissals are not required.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary
Parties are free to negotiate the employee's basic salary, but they must respect the minimum social wage, which applies to all employees in Luxembourg. The applicable minimum wage varies according to the professional qualification of the employee and according to an index. Luxembourg's minimum wage increased by 1.1% at the start of 2019. The minimum wage of €2,071.07, however, rises by 20% for those classed as 'skilled workers' and decreases by 20–25% for those classed as adolescent workers. This means a skilled worker aged 18 or older must be paid 20% more than the standard minimum wage, totaling €2,485.29. Workers aged 17 or 18 face a 20% deduction from the standard rate and must be paid at least €1,656.86, while those aged 15 to 17 face a 25% deduction and a minimum wage of €1,553.30. Even workers who earn above the minimum wage are affected by the national indexation of salaries, a barometer on which employers must adjust the wages they pay in line with the cost of living in Luxembourg. If the consumer price index rises or falls by 2.5% during a period, salaries in Luxembourg must be adjusted by this percentage.

Health and Safety in the Workplace
The Labour Code places an obligation on the employer to evaluate and identify the risks that exist in his/her company and then an obligation to avoid the risks, otherwise, if this is not possible, he/she must tackle them by taking into account advancements and choosing the least dangerous options.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace
Employers must inform the employees within which limits they tolerate the use of computer tools as well as the devices put in place for personal purposes and the monitoring procedures of these tools. In the interest of transparency and loyalty in employment relations, the National Commission recommends that the employer adopts a charter, internal regulations or any other document relating to the use of computer tools and control procedures. The employer can restrict the employee's use of Internet and social media during working hours (ideally by including such a provision in the employment contract or an internal regulation). The employer may take disciplinary action should an employee not comply with the internal regulation. Consequently, for security reasons, the employer is authorised to impose browser configurations and to prohibit or restrict access to certain sites, the downloading of certain files or the connection to discussion forums ("chat"). This is strongly recommended by the National Commission for Data Protection (CNPD).

Can the employer monitor, access, review the employee's electronic communications?
Usually, each employee is assigned an e-mail address for his/her professional activity by the employer. This e-mail address and the corresponding mailbox are, as the emails are supposed to be sent and received in the name of the employer, the property of the latter. However, this is a simple presumption and the email can have the character of a private correspondence by inserting "Private/Personal" in the subject field. Anything not identified as "Private/Personal" is deemed professional and thus the employer is allowed to access it.

EMPLOYEE BENEFITS

Social Security

The Luxembourg social security system has been codified by the law of 13th May 2008 into a single unified system. The CNS (Caisse Nationale de Santé) and the CNAP (Caisse Nationale d'Assurance Pension) are the two national health-care and pension insurance administrative units. A central administrative unit called CCSS (Centre Commun de la Sécurité Sociale) is in charge of the data processing, membership records and contributions of all affiliates to the various schemes. The rates of contributions apply to compensation and earnings up to a maximum of five times the minimum reference social wage. The employee's and employer's contributions are the same (about 3,05 % for sickness and maternity leave and 8 % for retirement).

Healthcare and Insurances

The health-care insurance organises the reimbursement of medical costs and compensation for sick leave, maternity leave, adoption leave, leave for family reasons and also dependence. The pension insurance has the main task to allocate statutory pensions to its affiliates and to grant loans for construction or renovation. Invalidity pensions are also envisaged in Luxembourg law. Accident insurance is financed by employer's contributions.

Required Leave

• HOLIDAYS AND ANNUAL LEAVE

Each employee benefits from a minimum of 25 days paid leave per year, with some CBA's providing for more holidays for example, in the banking and insurance sectors. Employees are entitled to take paid leave for the first time only after having worked with the same employer for an uninterrupted period of three months. Paid leave must be taken during the calendar year to which it applies but can exceptionally be postponed to the following year, in which case it must be taken before 31 March.

There are 10 statutory public holidays established by the Labour Code. They are the 1st January, Easter Monday, 1st May (Labour Day), Ascension, Whit Monday, 23rd June (national holiday, the celebration of the Grand Duke's birthday), Assumption, 1st November (All Saints), 25th December (Christmas) and 26th December (Boxing Day). In Luxembourg, a public holiday falling on a non-working day is replaced by a compensatory day off to be taken within a period of three months. In addition, the Labour Code provides for several extraordinary leave types for family reasons or other specified events.

• MATERNITY / PATERNITY LEAVE

Maternity leave, provided by the Labour Code, starts eight weeks before the expected date of delivery and continues 12 weeks after the actual date of delivery. In order to be granted maternity benefits during maternity leave, the employee or self-employed worker must have been affiliated with the mandatory sickness and maternity insurance fund for at least 6 months during the 12 months prior to the maternity leave.

Parental leave is taken by parents of a child who is less than 6 years old. The objective is to take a break in their professional career or to reduce their work hours to fully devote themselves to the education of their child. The parental leave was reformed by a law of 3rd November 2016. The new parental leave allows both parents to stop working during: 4 or 6 months on a full time basis; or 8 or 12 months on a part-time basis (with the employer consent). The law also provides the possibility of split parental leave: with reduction of the working hours by 20% per week for a period of 20 months; or over 4 one-month periods for a maximum period of 20 months. The reform introduces a real replacement income. The employee receives a real salary compensation, calculated in view of the loss of salary during the parental leave, with a maximum limit of EUR 3,200.

• SICKNESS LEAVE

In the event of absence from work due to illness, all employees under the age of 68 are entitled to statutory sickness pay (indemnité pécuniaire de maladie) for a period of up to 78 weeks within a reference period of 104 weeks as from 1st January 2019. From the month following the month during which the employee reaches an absence of 77 days, the employee is paid directly by the Social Security authorities. The payment of Social Security premiums is compulsory and allows to finance the statutory sickness pay. Employees on sickness leave are protected against dismissal for the first 26 consecutive weeks of their absence. As from 1st January 2019, the contract lapses with immediate effect after a period of 78 weeks of absence for illness, compared to 52 weeks previously.

Pensions: Mandatory and Typically Provided
The normal old age pension is generally granted at the age of 65, provided a 120 months contributory period of compulsory, voluntary or elective insurance or purchase periods has been completed. However, there are exceptions to this minimum retirement age where the worker can retire at the age of 57 or 60 under certain conditions.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
Grounds for termination of employment contracts include: Mutual agreement; Resignation with notice by the employee; Resignation by the employee for gross misconduct of the employer; Dismissal during the trial period; Dismissal with notice for real and serious cause based on the employee's attitude; Dismissal for gross misconduct (faute grave); Redundancy; Closure of business; Retirement; Employee's work incapacity; Death of one party.

Employers must pay a legal severance indemnity to any employee dismissed with notice with at least 5 years of service in the company. Entitlement to severance pay depends on the employee's length of continuous service with the same employer. The severance pay for employees who have received a notice of dismissal can amount to a maximum of one year's salary. This payment becomes due when the notice period expires. The severance pay is not applicable in case of termination for gross misconduct. Businesses employing less than 20 employees may pay a severance indemnity or extend the notice period of the dismissed employee.

Whistleblower Laws
Luxembourg provides protection for employees who report acts of corruption, of which they are victims and/or of which they are aware. In case of corruption, protection is only due in case of an alert to the "superior" or "competent authorities". To encourage employees to report the facts of which they are aware, the legislator has provided for a lighter burden of proof: the employee simply advances the facts and it is up to the employer to prove that the facts have not been proven. If the employee is dismissed following his denunciation, he can appeal to the labour court to be reinstated.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave
An employer can exempt an employee from work during the notice. There is no statutory right to pay in lieu of notice but during the exemption, the employee must be remunerated with the same salary and benefits as if he/she were working.

TRANSFER OF UNDERTAKINGS

In case of a business transfer, all employees, rights and duties arising from an employment relationship with the seller that already existed on the date of the transfer are automatically transferred to the buyer. After a transfer of undertaking, employees are, as the case may be, protected against the termination or the unilateral modification of their employment contracts for economic reasons during a period of two years (such protection could be provided for in a collective bargaining agreement). The buyer assumes all rights and obligations arising under the employment relationship with the seller. In addition, if a collective agreement remains applicable, the terms of employment can only be modified after the collective agreement expires. If no collective agreement applies, it is possible to harmonise the transferred employees' terms of employment with those of the buyer's other employees, provided that this harmonisation is mutually agreed on between the buyer and each individual employee.

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MEXICO.

HIGHLIGHTS

- Employers dealing with operations in Mexico should be aware that labour relations are highly regulated in our country and that Mexican employees generally have greater rights than their American counterparts.
- Job stability principle. Any individual employment relationship is subject to the principle of 'job stability', that is, subject to the employee's right to keep his job as long as the employment relationship so requires. If the employment relationship is for an indefinite term, the employee cannot be laid off without cause. In other words, there is no employment-at-will in Mexico.
- Duration of the employment contract. The Mexican Federal Labour Law (hereinafter the "FLL"), assumes, as a general principle, that an employment agreement has been executed for an indefinite term, unless the nature or the particular type of service to be provided calls for an employment agreement for a specific job or term, or if the parties agree to execute an employment agreement for initial training or subject to a probationary period.
- Restrictive Covenants or Non-Competes. In the strictest sense, non-compete agreements are void under Mexican law; specifically, under Article 5 of the Mexican Constitution. Notwithstanding the foregoing, pursuant to an opinion issued by a Circuit Court, Covenants not to compete are fully enforceable provided they are limited in time, geographical scope, clients and activity, products and services, and consideration is paid in exchange.
- Outsourcing. Although strictly ruled, the FLL allows for the subcontracting of specialised services or 'outsourcing'. This type of work must comply with the following conditions: (a) It cannot cover the totality of the activities, whether equal or similar in whole, undertaken at the work centre; (b) It is justified due to its specialised character; (c) It cannot include tasks equal or similar to the ones carried out by the customer's workers. If any or all of these conditions are not met, the customer will be deemed to be the employer for purposes and effects under the Law, including as it applies to obligations related to social security.

INTRODUCTION

In April 2016, President Enrique Peña Nieto sent to the Senate a bill to substantially amend the Constitution on labour justice. The bill proposed discontinuing the Conciliation and Arbitration Labour Boards, which have been the agencies in charge of labour justice, and their replacement by federal labour courts belonging to the federal judicial branch and by local labour courts belonging to the local judicial branch.

On February 24, 2017, the bill amending several provisions of Sections 107 and 123 of the Mexican Constitution was published in the Official Gazette and became effective on February 24, 2018. As a result of this constitutional reform, Labour Justice will be provided by labour courts belonging to the Federal or Local Judicial Branch, which will give them more Independence in relation to the Executive Branches. This reform created a decentralised organism, independent of the Federal Administration and similar bodies in the States, which will be in charge, in the federal jurisdiction, of substantiating a mandatory pre-trial instance for the parties, which aims to fasten labour proceedings. Also, this organism will be in charge of the registration of union and collective bargaining agreements. This Constitutional Reform necessarily involves adjustments to the Regulatory Law, especially on procedural labour matters.

Then on July 1, 2018, Andrés Manuel López Obrador (AMLO), candidate of the National Regeneration Movement (MORENA, by its acronym in Spanish) won the Presidential election with 53% of the

votes. For the first time in Modern History, Mexico will be governed by a leftist President. MORENA, with its ideology based on social equality and egalitarianism, also won the majority of both Chambers of the Congress. As a result, MORENA unveiled a highly ambitious, multi-facted labour and employment reform agenda.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

There is no express impediment or restriction for employers to request a criminal record certificate or carry out background checks (i. e. credit) under Mexican legislation. On the other hand, the Mexican Federal Law on the Protection of Personal Data Held by Private Parties (the "Data Privacy Law") governs the legitimate, controlled and informed treatment of personal data to guarantee the individual's privacy and their entitlement to decide who, why and for which purposes their personal data may be processed (informational self-determination). There is a reasonable expectation of privacy in every data processing, being understood as the confidence that any person deposits in another regarding the personal data provided. According to the Data Privacy Law, criminal and financial/economic data is considered confidential information; any violation to this duty can entail civil and/or criminal liability. Moreover, financial/economic data is deemed as 'sensitive data' under the law and requires express consent from the 'data owner' (in the case at hand, the employee). One main obligation that employers must observe when gathering employees' or incumbents' personal data is delivering a Privacy Notice to each of them upon acknowledgement of receipt, containing the purposes of data processing and express authorisation for the processing of sensitive data by the 'data owner' (the employee).

AUTHORISATIONS FOR FOREIGN EMPLOYEES

The FLL allows for the employment of foreign nationals in Mexico, declaring "in every enterprise or establishment, the employer shall employ at least 90 per cent of Mexican workers." This same provision states that with regard to categories of technicians and professionals, "the workers shall be Mexicans unless there are none in that particular specialty, in which case the employer may employ foreign workers temporarily, in a ratio not to exceed 10 per cent of those employed in that specialty." There are two additional conditions in Article 7: (1) employers and foreign workers have a joint obligation to train Mexican workers in the specialty of the foreign workers; and (2) physicians working in enterprises must be Mexicans. The provisions of Article 7 of the FLL do not apply to directors, administrators, or general managers of enterprises.

EMPLOYMENT CONTRACTS

Minimum Requirements

Written employment agreements in Mexico are mandatory. Every employee must enter into an individual employment agreement with the employer and set out the terms and conditions of the employment. There is no 'employment-at-will' in Mexico. Every employment agreement contains an implied relationship of mutual trust and confidence. Furthermore, employment agreements cannot contain an employee's acceptance to waive the necessary legal grounds for justified dismissal on the part of the employer and the minimum mandatory benefits provided by the FLL.

Fixed-term/Open-ended Contracts

Any individual employment relationship is subject to the principle of 'job stability', that is, subject to the employee's right to keep his job as long as the employment relationship so requires. The FLL assumes, as a general principle, that an employment agreement has been executed for an indefinite term, unless the nature or the particular type of service to be provided calls for an employment agreement for a specific job or term, or if the parties agree to execute an employment agreement for initial training or subject to a probationary period. The FLL provides that employment agreements for an indefinite term are for continuous work, but the parties may agree that the services be provided for a fixed term and for periodic work with a discontinuous character in cases where the services are required to be provided during a season, or are not required for an entire week, month or year.

Trial Periods
The initial training employment relationship is the relationship whereby the employee agrees to provide his subordinated personal services, under the control and supervision of the employer, in order to acquire the necessary knowledge and skills to perform the services for which he is hired. This agreement must establish a training period of 3 months, as a general rule, and 6 months, for executive positions. Employment agreements executed for an indefinite term or for a specific job or term of more than 180 days, may be subject to a probationary period of 30 days, or up to 180 days for executive positions, in order to verify that the employee has the necessary knowledge and skills to perform the services for which he has been hired.

Notice Periods
There is no notice period under FLL. However, the employer must notify the worker in writing of the cause or causes for dismissal. Failure to execute a dismissal within one month after the employer knew about the event that gave rise to the cause for dismissal will invalidate the action.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary
In August 2018, Luisa Maria Alcalde, who will be the Minister of Labour during AMLO's administration, announced that she will propose a minimum daily wage of MXP $102.00 (USD $5.30 approx.) for 2019. In this way, the increase will be MXP $13.60 (around USD $0.70). This proposal has already been commented on by the private sector. She explained that there is a clear intention of recovery and in order to reach a yearly increase, other factors such as productivity and inflation will be considered.

Health and Safety in the Workplace
Employers have the obligation to set up enterprises in accordance with the principles of worker safety and health, and to take necessary actions to ensure that contaminants do not exceed the maximum levels allowable under the regulations and instructions issued by competent authorities. Employers are also obligated, when required by the authorities, to make physical modifications in facilities to accommodate the safety and health of workers.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace
In Mexico, there is no comprehensive legislation on social media; however, the Data Privacy Law and its secondary regulations, among other laws, apply to the processing of personal data that is carried out within social media platforms (including job advertisements), as well as to the processing of personal data that is obtained from social media. Processing is understood as the collection, use, disclosure or storage of personal data by any means.

Despite major reform in 2012, the FLL does not specifically address access to or use of the Internet and social media. According to the FLL, the employer has the obligation to provide employees with the work tools necessary for the performance of their duties. The FLL further states that the employee may not use work tools for anything other than their intended use. Electronic equipment and devices such as computers, mobile phones, and laptops are similarly provided to the employee during employment to assist the employee in the performance of his duties and responsibilities in the workplace. Considering the obligations established in the FLL and in the Data Privacy Law and its regulations, the employer has the right to ensure that the employee is using the work tools in accordance with the intended work purpose and, therefore, to forbid the employee's access to social media, using these devices and equipment for non-work-related purposes.

Can the employer monitor, access, review the employee's electronic communications?
According to the FLL, employees should be committed to perform their jobs with the utmost diligence and efficiency, as well as to safeguard those working tools provided by the employer to ease the accomplishment of their duties, which are not intended for personal use. Thus, employees may have access to social media if the employer so allows, either during their work shift or out of it. Breach of the foregoing may lead to justified

termination of employment. Depending on the nature of the job, access to social media may be necessary. The employer may have access to the employees' communications by these means with supervision purposes and only if agreed in writing with the employees. According to the most recent opinions issued by the Supreme Court of Justice, the right to privacy of private communications includes social media.

EMPLOYEE BENEFITS

Social Security

The social security system in Mexico is governed by the Social Security Law (LSS) of 1995, which went into effect on July 1st, 1997. The Mexican Social Security Institute (IMSS) is responsible for administering social security programs. The IMSS is a quasi-official entity, under tripartite (government-worker-employer) management, whose executive director is appointed by the President of the Republic.

Healthcare and Insurances

The social security system protects workers in the following matters: 1) Occupational accidents and illnesses (old-age, retirement, and survivor pensions; disability; sickness; medical benefits; maternity; and day care for children of insured workers). and 2) Social services.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

The FLL provides for 9 mandatory holidays. Workers are entitled to 6 vacation days after being employed for one year, and to 2 additional days for each subsequent year, up to a maximum of 12 days. As of the fifth year, the worker is entitled to 14 workdays' vacation; for each additional group of five years, two more vacation days are added. Employers must pay workers a vacation premium equivalent to 25 per cent of the salary earned during the vacation days. Vacations must be taken on the date indicated by the employer, within 6 months following the worker's anniversary with the employer.

- ***MATERNITY / PATERNITY LEAVE***

Working mothers are entitled to forty-two days after childbirth as maternity leave, with the IMSS paying them 100% of their registered salary. Male employees are entitled to enjoy a paid paternity leave of five days when the child is born or in case of adoption, as of the placement of the child.

- ***SICKNESS LEAVE***

An employee is entitled to sick leave depending on the type of illness and degree of disability. The IMSS, not the employer, pays the employee's income during the leave. There is no mandatory unpaid medical leave of absence in Mexico. If the employee needs an unpaid medical leave of absence due to a condition not recognised by the IMSS, then the employer has the discretion to grant the leave.

- ***DISABILITY LEAVE***

The FLL provides leave due to:

- **Occupational Injuries:** defined as any accident or disease to which the employees are exposed in the course of their employment, or any consequences thereof;
- **Industrial Accident:** defined as any organic injury, functional disturbance (whether immediate or subsequent) or death, occurring suddenly in the course of the employment or as a result thereof (i.e., the place where or the time when the accident occurs is related to the employment); or
- **Occupational Diseases:** defined as any pathological condition arising out of the continued action of a cause that has its origin or motive in the employment or in the environment in which the employee is obliged to render his services.

Pensions: Mandatory and Typically Provided

- ***DISABILITY BENEFITS***

For disability benefits, the IMSS retains responsibility for the management and collection of contributions, but private insurance companies provide benefits.

- ***RETIREMENT BENEFITS***

The first pillar of the Mexican pension system, the minimum pension guarantee is equal to the minimum wage on July 1st, 1997, indexed for inflation. The second pillar is based on defined contributions and individual accounts. The IMSS collects the contributions and places them in the worker's account, but the accounts are managed by private retirement fund administrators (AFOREs).

Other Required or Typically Provided Benefits

- ***SURVIVOR BENEFITS***

Survivor benefits are payable provided that the deceased worker was a pensioner and made at least 150 weeks of contributions at the time of death. Upon the death of a covered worker, the social security system pays a funeral benefit to the family equal to two months of the worker's salary.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

An employer may dismiss an employee only where the latter gives cause for dismissal. Under Mexican labour law, "integrity at work" is mandatory behaviour for the employee. An employee is deemed to act with integrity when the work is carried out with intense effort, care, and attention, in the agreed-upon time, place, and manner. "Lack of integrity" is a generic cause for dismissal.

The termination payment is calculated depending upon the cause of termination:

- ***VOLUNTARY RESIGNATION***

The employer must pay all benefits due, including sales incentives, on a prorated basis up to the termination date. If the employee has at least fifteen years of seniority, he is also entitled to a seniority premium of twelve days' salary for each year of service, capped at twice the minimum daily salary in force.

- ***TERMINATION WITH CAUSE***

The employer must pay all benefits due, including commissions, on a prorated basis until the date of termination, and the seniority premium of twelve days of salary for each year of service (but with a cap of twice the minimum daily salary in the same terms as above).

- ***TERMINATION WITHOUT CAUSE***

Employees that are terminated without cause are entitled to the following lump sum severance: (1) three months of the employee's daily aggregate salary, plus: (2) twenty days of the employee's daily aggregate salary for each year of service; (3) a seniority premium of twelve days' salary for each year of service (but with a cap of twice the minimum daily salary in the same terms as explained before), (4) due benefits.

Whistleblower Laws

There is no specific statutory protection for employees who alert or provide information about possible breaches of the law or good corporate governance policies.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Mexican legislation does not provide for garden leave.

TRANSFER OF UNDERTAKINGS

In connection with the sale of a business or transfer of undertaking, the FLL generally requires the acquiring entity to retain the selling entity's workers, as well as to assume existing benefit liabilities, regardless of whether the benefits are privately sponsored (e.g., company-sponsored medical insurance) or legally mandated (e.g., paid vacation and vacation premium). This is known under Article 41 of the FLL as a substitution of employer. As a corollary of this retention obligation, the acquiring entity must recognise the workers' length of service, so as to ensure that changes in the legal structure or the ownership of the employer do not undermine the workers' vested rights. If the sale of a business in Mexico is structured as a stock purchase or a merger agreement that does not affect the seller's corporate entity, a substitution of employer does not come into play. In these cases, the buyer automatically becomes the employer of the seller's workers.

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NETHERLANDS.

HIGHLIGHTS

- Employment law is not consolidated into a single code.
- Employees have a strong legal position.
- Preventive dismissal assessment.
- Relatively long period of salary payment during illness.
- New Dutch employment law as from 1 July 2015: the Work and Security Act.

INTRODUCTION

Dutch employment law is elaborate and relatively complex. It is divided into individual and collective law and is closely related to social security law. In 2015, the Work and Security Act entered into effect in different stages. The Work and Security Act has fundamentally changed Dutch employment law, especially the dismissal law. The following text will report the latest developments in Dutch employment law.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

During the pre-employment phase, only personal data specifically required for the position that the applicant applied for, can be screened. Standard screening procedures are normally not allowed in the Netherlands. The employer can only ask about an applicant's health situation if a medical examination is required for the job by law. Of course, it is prohibited to discriminate against applicants on the grounds of – among others – gender, race, age, civil status, religion, and so on. On the 25th of May 2016, the new EU Regulation on privacy entered into effect. All companies were given two years to comply with the new rules laid down in the regulation. If the employer fails to do so, fines up to EUR 820.000 or 10% of the yearly turnover can be given.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

When an employee works in the Netherlands, Dutch law does not necessarily govern the employment relationship. A foreign employee could remain in the employment of his foreign employer on the basis of his foreign employment contract with a choice of law in favour of the laws of the foreign country and then (for example) be seconded to the Netherlands. In other words, the employer is not obliged to offer employees from another country a Dutch employment contract when they are transferred to the Netherlands. Employees can continue to work on the basis of their current (foreign) employment contract. In case of an international employment relationship, the Dutch tax authorities grant special tax benefits to foreign employees who are temporarily assigned to a Dutch subsidiary or branch from abroad, e.g. employees who reside in the Netherlands or employees who are recruited by a Dutch employer. Under the so-called 30% Ruling, 30% of the employee's salary may be paid out as tax-free compensation for costs. In general, an addendum should be added to the employment contract declaring the applicability of the 30% Ruling in respect of the agreed wages.

EMPLOYMENT CONTRACTS

Minimum Requirements
An employment contract under Dutch law may be concluded orally or in writing. However, the employer will nonetheless need to inform the employee in writing with respect to certain conditions pertinent to the employment.

Fixed-term/Open-ended Contracts
An employment contract can be agreed upon for a fixed period of time (fixed-term contract) or for an unspecified period of time (open-ended/ permanent contract). A fixed-term employment contract will automatically convert into an open-ended employment contract if:

- a chain of temporary employment contracts covers 24 months or more;
- a chain of three fixed-term employment contracts is continued.

Trial Periods
A probationary period must be laid down in writing. As from the 1st of January 2015, it is no longer possible to agree upon a probationary period in an employment contract that has a term of six months or less.

Notice Periods
Dutch law provides for the following statutory notice periods for an employer:

- Fewer than 5 years of service: 1 month
- More than 5 years, but fewer than 20 years of service: 2 months
- 10 or more years of service, but fewer than 15 years of service: 3 months
- 15 or more years of service: 4 months

The employee must take into account a notice period of one month. A longer notice period may be agreed upon if it is laid down in writing. Unless agreed otherwise, the notice period starts running at the beginning of the month following the month in which notice is given.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary
In principle, employer and employee are free to agree to the wages to which an employee shall be entitled. However, the Act on Minimum Wages and Minimum Holiday Allowances contains certain minimum wages and minimum holiday allowances, which are normally adjusted each year.

Health and Safety in the Workplace
Following the Working Conditions Act, the employer is obliged to provide a healthy and safe work environment for its employees. Employers are obliged to make a Risk Inventory and Evaluation, which mentions all the risks in the working environment, and the preventive measures that are taken, or will be taken, to minimise those risks. Employers are also obliged to enter into a service agreement with a certified occupational health and safety service agency.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace
The employer can restrict the use of Internet and social media during working hours by a guideline/ code of conduct that states the rules about this usage. The employer must inform the employees about the email and internet-policy within the company.

Can the employer monitor, access, review the employee's electronic communications?
The employer is allowed to check whether these rules are being followed, but the surveillance of private use of Internet during work cannot conflict with the employee's fundamental right of privacy. If the employer checks this by using investigation equipment, the employees must be informed beforehand about this. If the employer notices a violation, the employee must be informed about

this as well. Especially with the new EU Regulation on privacy that entered into effect on the 25th of May 2018, employers must decide in each situation what level of privacy is required.

EMPLOYEE BENEFITS

Social Security

Social security in the Netherlands can be subdivided into social insurance benefits and social welfare benefits, depending on the source of the funding. Social insurance is funded from the contributions paid by employees. This system is compulsory. All employees are automatically insured and pay a contribution. Social welfare benefits are financed from central governmental funds. Dutch law requires employers to make certain withholdings from the employee's salary for income tax purposes and the employee's national insurance contributions. An employer is furthermore required to pay certain social security premiums for its employees.

Healthcare and Insurances

In the Netherlands, there is no obligation for the employer to provide for a healthcare insurance policy.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Employees are entitled to a statutory minimum number of vacation days equivalent to four times the weekly working hours. For example, an employee with a full-time workweek of 40 hours is statutorily entitled to a minimum of 20 vacation days per year. As from the 1st of January 2012, vacation days will lapse if they are not taken within six months after the year in which they were accrued, unless the employee was not reasonably able to take them, but the scheme applies only in respect to the statutory minimum of vacation days.

In addition to vacation days, employees are entitled to a holiday allowance, which, in general, equals 8% of the annual salary, insofar as the annual salary does not exceed three times the annual equivalent of the minimum wage.

- ***MATERNITY / PATERNITY LEAVE***

Female employees have the right to (at least) 16 weeks of maternity leave. During this maternity leave, the Employee Insurance Agency will pay 100% of the daily wage, not to exceed the maximum daily wage. The maximum daily wage in the Netherlands is currently EUR 214,28 per day.

As of the 1st of January 2019, partners will have five days of birth leave at full pay after the birth of their child (based on fulltime employment). Partners can choose to take this leave immediately after the birth of their child, or to spread the leave over the first four weeks after the birth.

An employee with a child under eight years old in his or her care, is entitled to parental leave. The employee can take at most 26 times his/her number of weekly contractual hours as parental leave. The right of parental leave ends when the child becomes eight years old. Parental leave is unpaid leave and no holiday entitlements will be built up during the hours of parental leave.

- ***SICKNESS LEAVE***

Employers are obliged to continue to pay the salaries of sick employees for the first two years of illness. The employer is obliged to pay 70% of the employee's salary. The salary paid by the employer during the first year of sickness cannot be less than the minimum wage. For the second year, the minimum wage limit does not apply. The 70% is not calculated on the amount of salary that exceeds the maximum daily wage. Most employees in the Netherlands are bound to a diverging clause laid down in either an individual employment contract or a Collective Labour Agreement (such clauses are often more favourable to the employee).

Pensions: Mandatory and Typically Provided

In general, an employer is not obliged to provide pension benefits to an employee unless it has promised the employee that it would provide for a pension scheme, or if a Collective Labour Agreement or government initiative requires so. If the employer has offered a pension scheme to one of the employees, it is obliged to offer the same pension scheme to all other employees.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

A fixed-term employment contract or a contract for a specific project ends by operation of law upon expiration of the term or completion of the project, without notice being required. However, as from the 1st of July 2015 an employer is obliged to notify the employee at least one month before the ending of a fixed-term contract of six months or longer whether the employment contract will be extended and, if so, subject to what terms and conditions. Furthermore, the employer is obliged to inform an employee who has a fixed-term contract about vacancies with an open-ended employment contract. An open-ended employment contract can be terminated under certain circumstances. The transition payment is 1/6th of a monthly salary for every half year for the first 10 years of service and 1/4th of a monthly salary for all years of service above 10 years. The transition payment is capped at EUR 81.000,- gross or - if the employee is entitled to a higher annual salary - one annual salary.

Whistleblower Laws

In the Netherlands, we have the Dutch Whistle-blowers Authority, which is for employees who want to report an abuse in the workplace within the public or private sector. The Whistle-blowers Authority provides advice, support and, if necessary, carries out investigations. The Whistle-blowers Authority Act, which came into force in the Netherlands on the 1st of July 2016, underlies the establishment of the Whistle-blowers Authority. This Act obliges all organisations in the Netherlands with more than 50 employees to introduce an internal reporting procedure for reporting abuses. The Act also bans retaliation against the reporters who have reported a possible abuse in the proper manner.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

In principle, garden leave is not a concept recognised under Dutch law. Unilaterally releasing an employee of his/her duties without the employee's consent, is prohibited. If an employee does not agree to a release, the employer can suspend the employee. However, the employer should be able to substantiate the reason behind the suspension and if a fair reason is not in place, the employee can claim reinstatement (even in Court). The main question is what a "good employer" would do in a similar situation. If a good employer would have never reasonably given a release/suspension in this situation, it would be unlawful for the employer to do so.

TRANSFER OF UNDERTAKINGS

Upon the transfer of a business, the rights and obligations of the employer and that business under the existing employment contracts with the employees will be automatically (by operation of law) transferred to the acquirer of the business. A prohibition of termination is applicable in case the reason of such termination is the transfer of undertaking. The employer has to consult the works council (or other employee representative body) about a proposed decision regarding the transfer of activities. The employer has to provide the works council or employee representative body with information on the grounds of the intended decision, the consequences for the employees, and the intended measures to be taken. The employer also has to inform the individual employees about the transfer of an undertaking and the consequences thereof for the employee. For one year after the transfer of the business, the seller and the acquirer are jointly and severally liable for the fulfilment of the obligations under the employment contracts insofar as these obligations are accrued before the transfer. If an employee explicitly objects to the transfer, the employee will not enter into the employment of the transferee. The employment contract of the employee will thus end by operation of law at the time of the transfer.

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NORWAY.

HIGHLIGHTS

- The Working Environment Act is mandatory, and the employee may not, in advance, renounce his or her rights as provided by the law.
- Collective agreements are quite common, and an employer/confederation for enterprises and a trade union may, where specifically stated in the WEA, enter into collective agreements that deviate from provisions in the WEA.
- The main rule is that an employment shall be indefinite/fixed. The opportunity to enter into temporary employment contracts is limited and rather strictly regulated.
- The employer may only terminate the employment contract if it is objectively justified. The employer has the burden of proof regarding the grounds for termination.
- There is no statutory right to severance pay upon terminating an employment contract. Severance pay is however quite common, and must be assessed on a case-by-case basis.

INTRODUCTION

Norwegian labour law generally refers to the rules and regulations governing individual and collective relationships between employers and employees. Norwegian employment law is quite employee-friendly compared to the USA and many European countries. Employers must comply with the requirements of the Working Environment Act (WEA), which is the main employment legislation. The WEA regulates matters such as employment, whistle-blowing, requirements for work environment, working hours, rights to leave, protection against discrimination, termination of employment, rights of employees in case of a transfer by undertaking and rules regarding disputes concerning termination of employment. It is not possible to waive the rules by agreement in advance, to the detriment of the employee. The WEA applies to all employees including employees in leading positions and managerial positions. To a great extent, the WEA cannot be deviated from for employees working in Norway for foreign employers. Self-employed workers are not subject to the WEA.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

Background checks may include verification of information given by the candidate, or more thorough investigations for mapping personal characteristics. It is common to check education, professional experience, business interests, credit, identity, address and references, as well as performing a media search. It is less common to check work permits, "CV-holes", alcohol or drug issues, salary, medical history, and the reason for termination of the former employment. The employer usually has an extensive right to verify the information given by the candidate. The employer may gather information regarding the candidate's personal cohabitation arrangements or religious views (this line of inquiry must be stated when advertising the vacancy), if the establishment has a main objective to promote specific religious or fundamental values, and the employee's position will be of importance to accomplish such objective.

The employer must not, when advertising for new employees or in any other manner, request applicants to provide information concerning their views on political issues or whether they are members of trade unions. Nor may the employer obtain such information through background checks. Furthermore, the employer may not gather information with regards to family life, religious point of view, ethnicity, functional disability, and sexual orientation (unless such information is of fundamental importance for the performance of the work required in the position). In addition to these limitations, the employer must comply with the relevant personal data regulations when carrying out background checks, in particular, the use of social media. The employer may have a legal basis to review publicly-available information about a candidate on social media, in order to be able to assess specific risks regarding the candidate for a particular function, but only if it is necessary for the job and the candidate is correctly informed (for example, in the text of the job advert).

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Foreign employees from outside the EEA/EFTA area, including self-employed individuals, must hold a residence permit, which may be obtained at the Foreign Service Mission or the Norwegian Directorate of Immigration, that entails the right to work in Norway. There are different types of permits depending on whether someone is a skilled worker, an unskilled worker (such as seasonal workers and seafarers aboard foreign ships), a specialist, a student, a researcher, etc.

EMPLOYMENT CONTRACTS

Minimum Requirements

The employment contract is required to be in writing and must contain certain elements pertinent to the employment.

FIXED-TERM/OPEN-ENDED CONTRACTS

The main rule is fixed employment. Temporary employment engagements shall not exceed 15% of the total number of employees in the undertaking, of course it is always permissible to enter into such engagement with at least one employee in the company.

TRIAL PERIODS

An employment contract may include a "trial period" for a maximum of six months. To be valid, the trial period must be regulated in the written employment contract.

NOTICE PERIODS

During the trial period, the notice period is only 14 days. The employment contract may provide for a shorter or a longer notice period. The notice period may also be agreed upon through collective agreements. Notice of termination given during the trial period runs from the date the employee received the notice.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

There are no statutory regulations concerning minimum wages. However, wage levels and minimum wages are generally laid down in collective bargaining agreements. For some specific sectors, the salaries laid down in the collective agreements also apply to employers in the sector without the collective agreement. Examples of such sectors are construction, cleaning, shipbuilding and seafood production. The collective agreements are only generally applicable in relation to pay and working conditions. The objective of generally applicable agreements is to prevent lower pay and working conditions for foreign workers, than that which is otherwise common in Norway.

Health and Safety in the Workplace

In order to safeguard the employees' health, working environment and safety, the employer shall ensure that systematic health, environment and safety work is performed at all levels of the undertaking. This shall be carried out in cooperation with the employees and their elected representatives.

With regard to the physical working environment factors, such as factors related to buildings and

equipment, indoor climate, lighting, noise, radiation and the like, shall be fully satisfactory with regard to the employees' health, environment, safety and welfare. The workplace shall, among others, be equipped and arranged in such a way as to avoid adverse physical strain on the employees.

When it comes to the psychosocial working environment, the work shall be arranged in a way that ensures the employees' integrity and dignity. Then employer shall make efforts to arrange the work in a way that enables the employees to have contact and communication with other employees of the undertaking. The employer shall ensure that the employees are not subject to harassment or other improper conduct. Furthermore, the employer shall, as far as possible, protect the employees against violence, threats and undesirable strain as a result of contact with other persons.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

The employer is free to restrict the employee's use of Internet and social media, as long as the restriction is not against any agreements between the employee and the employer, or against any statutes of the company. In addition, the restriction must have an objectively justified reason. It is not common to restrict the employee's Internet use in general, since the Internet is necessary for most work. However, it is quite common that the use of social media can be restricted.

Can the employer monitor, access, review the employee's electronic communications?

The employer's right to monitor, access and review the employee's electronic communications is restricted to the employee's e-mail account given by the employer for work related purposes, the employee's personal areas in the company's data network, and other electronic equipment the employer has provided for the employee to use in his or her work. The restrictions apply to both current and past employees in the company. The employer may only access information from such mentioned places when it is necessary to ensure the daily management or other legitimate interests of the undertaking, or when the employer has a justified reason to suspect the employee's misuse of his or her work e-mail account, or other work related electronic equipment, which constitutes a severe breach of the employee's duties in the employment relationship, or that may constitute a reason for dismissal of the employee without a notice period, or termination with a notice period. The employer may not monitor the employee's use of electronic equipment, hereby the Internet use, unless the aim of such monitoring is to either administrate the undertaking's computer network, or to look for, or investigate, security issues in the network.

EMPLOYEE BENEFITS

Social Security

Persons who work or are residents in Norway are, as a rule, obliged to be members of and to pay contributions to the Social Security Scheme. Employers have to pay social security contributions on wages and other remuneration that the employers have to report. The obligation to pay employer's social security contributions does not follow the membership of the employee and can apply even if the employer is not engaged in activity in Norway and even if the employee is not liable to pay taxes in Norway. The employer's social security contributions are stipulated as a percentage of the reported amount. The contributions are differentiated, with rates that vary between different geographical zones. Employees' social security contributions are stipulated as a percentage of personal income.

Healthcare and Insurances

The National Insurance Scheme covers a range of benefits including sick pay, work assessment allowance, disability pension, unemployment benefits, retirement pensions, survivor's pension, occupational injury benefits, healthcare allowance, benefits to single parents and benefits during pregnancy, birth, adoption and parental leave.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

An employee is entitled to a minimum right of 25 working days of holiday leave per year. As a general rule, an employee is entitled to 18 consecutive working days of holiday leave during the period 1 June and 30 September. An employee is also entitled to take the remaining seven working days of holiday leave together. In addition, there are 10 (ten) public nonworking days per year.

- ***MATERNITY / PATERNITY LEAVE***

Maternity leave, including compensation, lasts for a maximum of 59 weeks. 3 weeks before the birth and the first 6 weeks after birth are reserved for the mother, and are compulsory. 15 weeks are reserved for the father. If the father does not utilise the father's quota, the benefit period will be shortened accordingly as the quota may not be transferred to the mother. The remaining period may be shared by the parents in any way they see fit. The employees have the right to compensation during maternity and paternity leave. The compensation is either 80 percent of the salary for 59 weeks or 100 percent for 49 weeks. In addition, parents have the right to take a leave of absence for an additional year without compensation.

- ***SICKNESS LEAVE***

When an employee has a right to leave due to sickness, he also has a right to receive sick pay (the salary is fully compensated), which is customarily split between the employer and the National Insurance Scheme. The employee is protected against dismissal on the grounds of sickness leave, during the first 12 months after the beginning of the period of absence due to such reasons.

Other Required or Typically Provided Leave

- ***PREGNANCY LEAVE***

A pregnant employee is entitled to a leave of absence for up to twelve weeks during pregnancy. Leave during pregnancy is voluntary and may be used at any time during the pregnancy.

- ***LEAVE OF ABSENCE TO CARE FOR A CHILD***

In connection with childbirth, the father or co-mother of the child, is entitled to two weeks' leave of absence in order to assist the mother. If the parents do not live together, the right to leave of absence may be exercised by another person who assists the parent. Adoptive parents and foster parents shall be entitled to two weeks' leave of absence when taking over responsibility for the care of the child. This however, will not apply when adopting stepchildren or when the child is over 15 years of age.

Pensions: Mandatory and Typically Provided

Retirement pensions are divided into three levels: Level 1: Retirement pensions from the National Insurance Scheme ensure an income in old age. Drawing from a retirement pension can begin the month after a person turns 62, as long as sufficient pension rights have been accumulated. The pension rights are adjusted in accordance with the general life expectancy of the population. Level 2: Employers must provide mandatory occupational pensions in addition to retirement pensions. Therefore, at least 2 percent of an employee's gross income is paid into pension funds. Level 3: Private savings, irrespective of employment and the Norwegian pension scheme.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

Grounds for termination include i) Dismissal of an employee due to business related reasons; ii) Dismissal of an employee due to reasons related to the individual employee; iii) Collective dismissal based on objective grounds; iv) Resignation by the employee; v) Expiration of the contract term or end of the specific job; vi) Employer's death, retirement or permanent illness.

There is no statutory right to severance pay in Norway. The only payment that the employee is entitled to is ordinary salary payment and additional contractual benefits during the period of notice in accordance with the terms of employment. Many undertakings are immediately bound by different collective agreements to offer employees severance pay. In addition, employers who are not bound by any collective agreement may choose to offer some kind of severance package including, for instance, job-training, education, release from the duty to work, severance pay, etc. The right to such benefits is normally conditional upon the employee entering into a termination agreement whereby the employee, inter alia, waives the right to institute legal proceedings pursuant to the Employment Act. Termination agreements may be entered into before the employee receives notice, or the parties may reach an agreement after notice is given.

Whistleblower Laws

The Working Environment Act regulates the employee's right to notify the employer, public authorities, the media or others in whistleblowing cases. According to Section 2-A (1) an employee has a right to notify of censurable conditions at the employer's undertaking. The same applies to workers hired from temporary-work agencies. The employee shall proceed responsibly when making such notification, notwithstanding the right to notify in accordance with the duty to notify or the undertaking's routines for notification. The same applies to notification to supervisory authorities or other public authorities. Retaliation against an employee who notifies pursuant to section 2 A-1 is prohibited. The same applies for workers hired from temporary-work agencies. The prohibition applies for both employers and hirers. Anyone who has been subject to unlawful retaliation may claim compensation without regard to the fault of the employer or hirer. It is recommended for the employee to seek counselling before notifying of censurable conditions. The Norwegian Labour Inspection Authority, an employee representative, or a lawyer may consult in such matters.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

The employer cannot legally predetermine the use of Garden Leave. The use of Garden Leave has to be determined in connection with the situation at the time of the termination of the employment. If an employee has resigned, or otherwise had their employment terminated, a period of at least one month's notice shall be applicable to either party, unless otherwise agreed to in writing, or laid down in a collective pay agreement. This means that the employee has a right to remain in his position during the notice period. The employer and the employee may agree to disregard the period of notice. If the right to remain in the position is to be limited by the use of Garden Leave, the employer has to have "particularly weighty reasons", which depends on an overall evaluation of the interests of the parties; of particular importance is whether the employee's right to remain in the position may result in considerable damage. The employee is nonetheless entitled to the same pay and contractual benefits during the Garden Leave.

TRANSFER OF UNDERTAKINGS

The rights and obligations of the former employer ensuing from the contract of employment or employment relationships in force on the date of transfer shall be transferred to the new employer. The previous employer and the new employer are obliged to discuss the transfer of the undertaking with the employees' elected representatives as early as possible. This information shall include reasons for the transfer, date or proposed date of the transfer, the legal, economic and social implications for the employees, changes in circumstances relating to collective pay agreements, measures planned in relation to the employees, rights of reservation and preference and the time limit for exercising such rights. The same information shall also be given to the affected employees as early as possible. Most collective agreements also contain regulations in regard to information and discussion.

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POLAND.

HIGHLIGHTS

- Risks to prepare for:
  - an ever-evolving tax and social security system,
  - high presence and activity of trade unions in case of major employers,
  - labour courts sensitive to employee rights,
  - strict EU data protection regulations, i.e. hindering transfer of personal data outside of the EU.

INTRODUCTION

Poland is well known for its low personnel costs. Due to this fact, it is currently Europe's main outsourcing hub, with companies such as Amazon, General Motors, Dell and various major banks moving its plants and shared service centres to Poland. Easy access to qualified employees results from a state-paid university system, which produces many highly specialised and innovative workers, especially in the field of IT and engineering. Read this article to learn the basics of what you need to know about Polish employment law before establishing a branch in Poland.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

In Polish law, there are strict limitations on background checks. An employer is only allowed to obtain the information concerning the candidate as indicated in legal acts – in the Labour Code or, if applicable, in other specific acts that may concern specific job positions. An employer may require an applicant to provide the following personal data only: name(s) and surname, names of parents, date of birth, place of residence (mailing address), education and employment record. Personal data is provided to an employer in the form of a statement issued by the person whose data is provided. An employer may require the relevant documentation to confirm personal data of the persons. Employer may require the provision of personal data other than the data specified above pursuant to separate regulations only. Additional questions that force the candidate to provide other personal data, especially those concerning the candidate's family life and personal relationships, are strictly prohibited.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Foreigners from the EU member states and from a state within the European Economic Area as well as their family members have unlimited access to employment in Poland. Foreigners from other countries must obtain a work permit and, in some cases an entry visa, if they want to take a job in Poland.

EMPLOYMENT CONTRACTS

Minimum Requirements

The Labour Code distinguishes three types of employment contracts, including an employment contract for a trial period, an employment contract for a fixed term and an employment contract for an unlimited term.

Fixed-term/Open-ended Contracts

Unlimited-term contracts are most typical.

Recently, however, there is a trend to depart from this form of employment toward fixed-term contracts or agreements in civil law. A fixed-term employment contract is concluded either until an agreed calendar date or until the date, which can be defined by a fact, which will occur in the future.

Trial Periods
An employment contract for a trial period is concluded in the event when, prior to making a decision on initiating an employment relation, one or both parties thereto wish to get acquainted with the conditions of the future execution of mutual rights and obligations at a workplace. It is up to the parties to conclude such an agreement. The trial period may not exceed three months.

Notice Periods
The Labour Code allows for a notice period in a contract concluded for a trial period, for a fixed-term and for an unlimited term. The notice period may vary from two weeks, one month, or three months for both fixed and unlimited terms; and 3 working days, 1 week or 2 weeks for contracts wherein the trial period is concluded. In principle, it is possible, by way of normative agreements, to introduce longer notice periods than the ones provided for in the Labour Code.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary
The employee has a guaranteed minimum pay for his/her work, which is set pursuant to the principles and the procedure provided for in the Minimum Wage Act. If, however, a higher minimum salary has been set in collective labour agreements or the remuneration rules and procedures, then the employer is obligated to respect such agreements in place of the act. Apart from his/her basic pay, an employee may receive different allowances. Additional remuneration can be divided into the obligatory ones (e.g., extra pay for working overtime, extra pay for working at night), and the optional ones (e.g., extra pay for working shifts, service premiums). An employee can also be awarded different kinds of awards and bonuses.

Health and Safety in the Workplace
The employer is responsible for health and safety in the workplace. The employees' main duties in the field of health and safety in the workplace include: being familiar with the provisions and principles of health and safety at work, participation in training sessions and briefings in this field, compliance with the instructions and directives issued by superiors, undergoing initial and periodic medical examinations, check-ups and other medical examinations as recommended, and co-operation with the employer and superiors in the performance of duties concerning health and safety at work. In case of breach of health and safety rules, employees can submit their objections to the health and safety at work service operating at the workplace. Employees cannot be discriminated due to the fact of submitting their objections to the health and safety at work service or the State Labour Inspection.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace
The Employer may restrict the employee's use of Internet and social media during working hours.

Can the employer monitor, access, review the employee's electronic communications?
The employee is obliged to take care of the best interests of the employer's establishment and keep confidential any information, disclosure of which could damage the employer. Violation of employer's personal rights or confidential information may be treated as a serious breach of the employee's basic duties and employer may terminate the employment contract without notice.

EMPLOYEE BENEFITS

Social Security
The principles of social insurance coverage and the rules of establishing social insurance contributions are regulated in the Act on social insurance system under which the employees are subject to mandatory pension, disability, health and accident insurance. Depending on the type of contribution, it is financed by the employer and the employee

in different proportions. Nevertheless, it is the employer who is obligated to calculate the amount of the contribution to the Social Insurance Agency and deduct it from the employee's income. The employer is also responsible for punctual transfer of the contributions to the Social Insurance Agency.

Healthcare and Insurances

From the contributions made to the social insurance, an employee has a right to sickness benefits, maternity benefits, an attendance allowance, compensation benefits and a funeral allowance and to damages in the event of bodily injury caused by an on-the-job accident. However, health insurance entitles each employee to benefit from public health care centers.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

An employee is entitled to annual, uninterrupted, paid holiday leave, the duration of which, depending on the number of years worked, is twenty or twenty-six days. Upon the employee's application, the holiday leave may be divided into parts. In such a case, however, at least one such part of the holiday leave should last no less than fourteen consecutive calendar days. The employee is entitled to the remuneration for the holiday leave, which he/she would have received had he/she been working. Apart from the holiday leave the employee is entitled to Sundays and public holidays off work. At present, there are thirteen public holidays in a calendar year.

- ***MATERNITY / PATERNITY LEAVE***

A female employee has a right to maternity leave of 20 weeks upon giving birth to one child. This leave is extended proportionately in the event of giving birth to more than one child. The female employee can use no more than six weeks of the maternity leave before the anticipated date of the birth. An additional 32-week-long parental leave (resulting in an entirety of a 52 week leave related to childbirth) may be granted to any of the parents. As a general rule, the parent on parental leave will receive 60% of his or her basic allowance. Additionally, the employee – the father who is raising the child has a right to two-week paternity leave.

- ***SICKNESS LEAVE***

While an employee is unable to work due to an illness or isolation caused by a contagious disease, lasting in total up to 33 days in a calendar year, and in the case of an employee who has reached 50 years of age, lasting in total up to 14 days in a calendar year, the employee retains the right to 80 per cent of his/ her remuneration. In case of an illness during pregnancy - within the period specified above - an employee retains the right to 100 per cent of her remuneration.

- ***DISABILITY LEAVE***

A person classified as a severe or moderate degree of disability is entitled to an additional holiday leave of 10 working days in a calendar year. The right is acquired by the person after working one year and after being classified in one of the above degrees of disability.

Other Required or Typically Provided Leave

The employer is obliged to release an employee from work for a period of:

2 days - in the case of the employee's wedding, or his/her child's birth or death and funeral of his/her spouse or child, father, mother, stepfather or stepmother;

1 day - in the case of the employee's child's wedding or death and funeral of the employee's sister, brother, mother-in-law, father-in-law, grandmother, grandfather, and other individuals maintained by the employee or under his/her direct care.

Pensions: Mandatory and Typically Provided

The current pension system in Poland consists of three segments generally referred to as the pillars. In the first pillar, the Social Insurance Agency manages the funds. The means are not invested although they are recorded on the insured person's individual account and are subject to valorisation. The second pillar is based on the operations of Open Pension Funds whose task is to trade and multiply the fund. The third pillar consists of the Employee Pension Schemes and Individual Retirement Accounts. The first and the second are mandatory whereas participation in the third one is voluntary.

At present, the retirement age is 60 years for women and 65 years for men. Only after reaching this age one may apply for the retirement pension. The exceptions are bridge retirement pensions for those working under special conditions or

performing work of special character. Such persons have a right to pension benefits at the age of 55 for women and 60 years of age for men.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
An employment contract can be terminated only on the grounds listed in the Labour Code. The employment contract is therefore terminated:

- under a settlement agreement between the parties thereto;
- by a unilateral statement of either party to the employment agreement while preserving the notice period (termination on a notice);
- by a unilateral statement of either party to the employment agreement without keeping the notice period (termination without notice);
- upon the end of the term for which the employment agreement was concluded.

In connection with terminating employment relations within a collective dismissal and individual dismissals for reasons which do not concern the employee (if the employer employs at least 20 employees), the employee is entitled to a severance payment. The amount of the severance payment may not, however, exceed the amount of 15 times of a minimum remuneration for work as set forth in the provisions of the Act on minimum wage (approx. 7.300 EUR). The Labour Code also provides for severance payment to an employee in connection with his/her retirement or disability, and the payment of a death benefit.

Whistleblower Laws
Works on the Act on Transparency in Public Life, which includes regulations on protection of whistleblowers, are currently in progress.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave
The employer may exempt the employee from the obligation to perform work until the lapse of the notice period upon termination of the employment contract. During the period of exemption, the employee shall retain the right to remuneration.

TRANSFER OF UNDERTAKINGS

Under the law, the new employer becomes a party to the current work relations. Consequently, under the principle of a legal successor, the new employer acquires any and all rights resulting from the work relations established with the previous employer and all obligations with which the previous employer was burdened toward the employees of the entity. This entity's employees preserve the rights they were entitled to prior to the business transfer and they are bound by the same duties they had toward the previous employer.

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HIGHLIGHTS

- A relevant reform to labour law took place in 2009 and additional changes were introduced after 2011. These reforms had a significant impact on employee rights and obligations.
- Two of the most striking features of Portuguese law are probably the variety of its sources and the level of protection it grants employees.
- Collective bargaining agreements are entered into at regional, national or industry level, between the unions and employers' organisations or on company or multiple company levels between the unions and the relevant employing companies.
- The scope of application defined in a collective bargaining agreement may be extended, after its entry into force, by a government extension act. In such cases, the provisions of the extended collective agreement, depending on the extension terms, will apply either in a specific region or at a national level, to all companies operating in the relevant business sector or industry and employees at their service (regardless of such employees being union affiliated).

INTRODUCTION

Portuguese labour law is highly protectionist. Its rules and principles apply both to individual employment relationships and to collective bargaining agreements, which endow trade unions with an important role, particularly in business areas or industries where said agreements are applicable on a broader scale as a result of government extension measures. In 2009 the Labour Code (originally issued in 2003) underwent a relevant reform. This resulted in more flexible solutions, namely on work time organisation issues. From 2011 onwards, in view of the austerity package measures, a number of relevant changes were also introduced. Reductions to the severance compensations due in case of redundancy and reductions to extra work pay. Some of these measures were changed in 2016 under a tendency to withdraw some of the previously applied austerity provisions (e.g. national holidays that had been suspended were put back in place in 2016).

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

There are some legal restrictions on conducting background verifications on job candidates and employees such as drug tests, financial and credit checks, criminal checks, academic qualifications or previous employments. Some legal restrictions also apply to conducting health checks and to selecting a candidate on the basis of health information. Under data protection laws, personal data must be maintained only for the period strictly required.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

A general principle foresees that expatriates working on work permit are granted equal rights and obligations as national employees. In accordance with the law, companies must assure

the candidate holds a residence visa or permit specifically granted for carrying out a professional activity as employee in Portugal. In cases where the employer has the intention to employ a foreign citizen (non-EU) currently living abroad, a statement confirming that the employment offer is included in the legal defined quota or that no quota has been set and that no preferential candidate (Portuguese, EU citizen) was found to perform the job shall be issued by the Portuguese Institute of Employment and vocational training and delivered to the candidate for submission together with the visa request.

EMPLOYMENT CONTRACTS

Minimum Requirements

Generally speaking, the employment contract does not require any special form and may, therefore, be agreed under written form or verbally. However, there are certain situations in which the contract or some clauses must be executed in writing, examples of which are: 1) fixed term employment contract; 2) part-time employment contract; 3) temporary work contract or intermittent employment contract; 4) teleworking contracts; 5) single employee contracts with multiple employers; 6) non-competition clauses. There is no legal requirement for employment contracts to be executed in Portuguese, thus the use of other languages (e.g. English) is acceptable provided the employee understands the language used. Nevertheless, contracts drawn in a foreign language, as a rule, will have to be translated into Portuguese when filed with a Portuguese authority or official and a translation certification may also be required.

Fixed-term/Open-ended Contracts

Unless otherwise specified by the parties, employment contracts are deemed open-ended (i.e. permanent employment). Fixed term contracts are permitted by law provided that they are executed in written form and provided they are meant to fill a role required on the basis of a merely temporary need of the employing company. Hence, if there is no written contract, the employment contract will be deemed to be an open-ended contract.

Trial Periods

Trial periods (initial probation) for permanent employees are 90 days, 180 days for high complexity, trust or responsibility roles and 240 days for management, directorate and equivalent responsibility roles. Fixed and unfixed term temporary contracts are subject to shorter probation periods (i) 15 days if agreed for an expected or fixed duration shorter than 6 months; and (ii) 30 days for durations equal to or longer than 6 months.

Notice Periods

The employee is free to resign, subject only to certain prior notice periods. It is not possible to agree on longer probation periods than those legally foreseen, but it is possible to agree on shorter probation periods, as well as to fully exclude probation periods. Companies often pay salary in lieu of notice period in situations of collective dismissal, but the legality of this practice is questionable. The employee is allowed to do it with the consent of the employer. The salary must be fully paid until the date of the proper termination of the contract.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

The monthly minimum wage in Portugal in 2018 was fixed at €580. However, in the Azores islands the minimum wage was €609 and in Madeira island €591.60, in order to compensate for insularity.

Health and Safety in the Workplace

The employer has the obligation to permanently ensure employee health and safety conditions at work. To comply with such duty, the employer must follow a set of general principles focused on the prevention of work accidents and professional illnesses, and thus to comply with several duties.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

Employers may dictate the terms for the use of company information technology (IT) and communication means but employees are entitled to keep their private use confidential, including the

content of personal emails and Internet access. According to the Portuguese Data Protection Authority, the employer may define the rules on the admitted private use of IT and communication means made available at the workplace and rules should form part of internal company regulations.

Can the employer monitor, access, review the employee's electronic communications?

In the workplace, surveillance cameras may be used to protect the safety of persons and goods or when the nature of the activity so requires. As with any other data processing activities, the employer, whilst acting as Controller in the processing of data regarding its employees, must fulfil the information duties set by the General Data Protection Regulation, as well as all other principles and duties resulting for the GDPR. Generally, the transfer of personal employee data outside the EEA can only happen when the country of destination ensures the same level of protection for the rights and freedoms of the individuals, in relation to the processing of their data, as the Member States of the EEA or if there is an adequacy decision from the Commission regarding the State which will receive the data.

EMPLOYEE BENEFITS

Social Security

Several sectorial compensation funds mostly incorporated during the second decade of the twentieth century and in a nationwide basis are at the origin of the Portuguese Social Security system. These insurance funds were included in the Social Security System in the 70s, giving rise to the unified Social Security System. However, the General Retirement Fund, established in 1929 to ensure the protection of civil servants, maintained its autonomy, allowing employees of public administration benefit from a special regime. The employer and the employee are subject to social insurance contributions, which must be paid on a monthly basis. The global contributory rate is 34.75% of the contribution base. The employer is in charge of 23.75% and the employee of 11%. Nevertheless, the employer has to deduct the employee's contributions from its gross wage and to deliver them to Social Security. Civil servants have a specific welfare protection scheme also subject to compulsory contributions. The Social Security System covers (i) sickness, (ii) maternity, paternity and adoption, (iii) unemployment, (iv) professional diseases, (v) disability, (vi) old age and (vii) death.

Healthcare and Insurances

The employer does not have a duty to provide any specific fringe benefits to an employee, such as health insurance, life insurance, etc. In a number of cases, nevertheless, this type of benefit is established in collective bargaining agreements and will be required and apply accordingly. All employers are required to retain insurance for the protection of employees against work related accidents.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Employees are entitled to 22 business days of paid vacation per year. In the case of temporary contracts lasting up to 6 months, the employee is granted 2 working days of holiday for each completed month of service, and in the case of those lasting up to 12 months or ending in the year subsequent to the year of hiring, the employee is entitled to a holiday leave period proportionate to the duration of the contract.

- ***MATERNITY / PATERNITY LEAVE***

Women may take up to 15 weeks of maternity leave (with a possible extension of 2 weeks in case of multiple births). At least nine weeks must be taken after the birth and at least one week must be taken before the expected date of birth. Following the birth of a child, the father has a right to ten days of paternity leave, seven of which will be paid for by the social security system at 82 percent of the employee's ceiled salary. This leave must be taken up within four months after the birth.

- ***SICKNESS LEAVE***

Employees are entitled to receive a sickness allowance from the social security system when temporarily unable to work due to illness. The sickness leave suspends the employment contract as of 30 days and has no maximum period. Most employees are entitled to 1095 days of paid sick leave, independent workers and research fellows to 365 days of paid sick leave. The amount of the sick leave allowance depends on several factors and will range between 55% and 100% of the worker's reference remuneration.

- ***DISABILITY LEAVE***

There are two types of disability leave and benefits in Portugal: 1) Disability pension and 2) Special protection in disability. The disability pension is a benefit attributed to persons who are permanently incapacitated for work. The special protection in disability is aimed at people who are incapacitated for work with a prognosis of rapid evolution, to a situation of loss of autonomy with a negative and irreversible impact on the profession they carry out, caused by specific diseases (familial paramiloidosis, Machado-Joseph disease, AIDS - virus human immunodeficiency virus (HIV), multiple sclerosis, cancer of the skin, amyotrophic lateral sclerosis, Parkinson's disease, Alzheimer's disease and rare diseases or other diseases of non-professional or third party liability, sudden onset or early onset).

Pensions: Mandatory and Typically Provided

The typically provided pension, besides those previously mentioned for illness and disability cases, is the old-age retirement pension, which is comprised of a monthly amount paid to protect the beneficiaries of the general social security scheme, in the old-age situation, replacing the remuneration of work. In 2018, the retirement age was set at 66 years and 4 months, and, as stated in the introduction, it increased by one month for 2019, being 66 years and 5 months. If the person in question is younger than the aforementioned ages, they may be eligible for one of the following: i) early retirement due to long-term unemployment; ii) early retirement under the age flexibility scheme; and iii) special schemes for anticipating the age of access to the old-age pension - exercise of activity in certain professions. In general, employees must have a minimum of 15 calendar years of work with records of remunerations, or 144 months with records of remuneration - beneficiary covered by voluntary social insurance.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

According to Portuguese law, the termination of an employment contract depends on very strict rules that demand the gathering of grounds and several formal procedures.

Employees subject to collective dismissal, dismissal resulting from job extinction or failure to adapt to the job position are entitled to compensation which calculation basis varies, depending on the seniority period under consideration and date on which the contract was initially executed, between 1 month, 20, 18 or 12 days base salary and seniority premiums per year of service (fractions of seniority are to be calculated on a proportional basis).

Whistleblower Laws

The Portuguese data protection authority (CNPD) addressed the specific matter of "Whistleblowing Hotlines" in a guideline decision in 2009, containing the authority's official guidelines for Whistleblowing procedures, which should be taken into account when an employer wishes to set-up and manage such lines. As with other matters that concern personal data, the applicable law for this type of processing activity is now the GDPR. As such, GDPR principles and duties must be fulfilled by the employer when developing and implementing whistleblowing hotlines and similar mechanisms.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

When resigning or when having been served a prior notice for dismissal (e.g. collective dismissal) employers frequently choose to grant the affected employee a paid leave. Employers cannot actually instruct the employee to stay away if he/she choses to continue performing his/her work role until the prior notice period is completed. The only possibility given to the employer is to instruct the employees to use any unused holiday period during the final part of the prior notice being served and, therefore, in practical terms, to actually leave before the end of the prior notice period. Garden leaves in the context of pending disciplinary proceedings are allowed particularly after the accusation note has been served to the employee.

TRANSFER OF UNDERTAKINGS

When proceeding to the business transfer that involves the transfer of undertaking (one or more business units or parts of business units, i.e., organised means pursuing an economic activity) transferor and transferee must consult with employee representatives and provide relevant information on the planned transfer. The employee is entitled to maintain his job position previously held with the predecessor, with all existing terms and conditions, with the successor, once the transfer of the undertaking occurs. Prior to transfer, employee representatives (Works Council and trade union representatives) or, in their absence, employees directly have to be informed in writing prior to the transfer about the transfer's date, motives and legal, economic and social consequences, as well as measures envisaged in relation to the employees. Where there are employee representatives and special measures are put in place as result of the transfer, employee representatives have to be consulted prior to the transfer.

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ROMANIA.

HIGHLIGHTS

- Most disputes involve financial claims from employees that usually include overtime payment, granting of working conditions, bonuses, etc. Employers often face collective actions from employees regarding these financial claims. Unions usually start such collective actions.
- Unions must represent 50%+1 of the employees in one company in order to be representative and part of a collective agreement. In order to still make the collective negotiations accessible to unions, the law allows union federations to participate in company level collective negotiations if they represent 7% of the employees in the industry sector.
- Employers have the right to regulate working hours, but special legal provisions limit this right.
- Great importance is given to the form of the documents drafted by the employer. Court cases usually involve verifying the form of the documents, and a vast number of rulings are based exclusively on this aspect.
- Strict regulations apply to individual and collective dismissals. In case of unlawful dismissal, the employee has the right to reinstatement and is granted all financial rights for the entire period in which he was unlawfully dismissed. Dismissed employees will often sue for unlawful dismissal.

INTRODUCTION

Romanian Employment Law is the product of constant changes made over the last years in order to establish equilibrium between the power of union organisations and the power of the employers. This has proven a hard task. As a result, Romanian legislation has both pro-employee regulations, being one of few that establishes the mandatory reinstatement of wrongfully dismissed employees, allowing the union federations to participate in collective negotiations at the company level, as well as pro-employer regulations limiting the right to strike for employees under collective agreements.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

Private companies cannot conduct background checks, other than requiring information from the candidate and recommendations from previous employers. They can however, ask the candidate to present a criminal record issued by the competent authorities. The employer has to ask the candidate for a medical certificate that ascertains that the candidate is medically fit to be employed, since his medical fitness prior to the signing of the agreement is an issue of the employment agreement's validity. Public companies and public institutions can ask the candidate to present proof of not belonging to a political party, a proof of not being a former collaborator of the communist political police ("Securitate"), fiscal information and other specific information that is relevant to the public company or institution.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

In Romania, citizens of the EU or the EEA do not need a work and residence permit. Foreign citizens (who are not EU or EEA citizens) must obtain a work permit in order to perform work. The work permit is issued by the Romanian Office for Immigration. As a rule, the work permit is issued for a one-year

period. The number of working permits issued every year is limited and is determined by a government decision. In August 2018, the maximum number of working permits was raised due to the high demand. Non-EU and EEA citizens have the right to work in Romania under certain conditions.

EMPLOYMENT CONTRACTS

Minimum Requirements

As a rule, the individual employment contract is an unlimited term contract. However, the individual employment contract may also be fixed term or part time. Any kind of individual employment contract must be concluded in writing, in the Romanian language and on the basis of both parties' consent (employer and employee). Before the beginning of the employment relationship, the employer has the obligation to conclude the individual employment contract and register it with the employees' electronic program (ReviSal).

Fixed-term/Open-ended Contracts

Open-ended contracts are the rule under Romanian law. The fixed term contracts may be concluded only for the limited cases provided by the Labour Code and must contain the general imperative information plus the duration of the contract.

Trial Periods

In order to verify the skills of the employee, the parties may agree upon a probationary period, mentioned within the individual employment contract, of a maximum 90 calendar days for standard positions and a maximum 120 calendar days for managerial positions. With respect to disabled persons, the probationary period will be of a maximum 30 calendar days.

Notice Periods

The individual employment contract may be terminated by the employer or by the employee. In case the contract terminates due to the employer's decision, with the exception of 1) dismissal for disciplinary reasons or 2) if the employee is arrested for more than 30 days, the employee is entitled to a notice period of no less than 20 working days.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

As of January 1st, 2018, the minimum gross monthly wage is LEI 1900.00 (about EUR 410.00 and US $479.00) for a 168-hour work month. Employers cannot pay a full-time employee less than the minimum gross monthly wage. Special provisions apply to public servants (there are public servants categories that are paid less than the minimum gross monthly wage). Employees can be granted other benefits, financial or otherwise, such as the use of company car, the use of other company owned property (housing, telephones, laptops etc.), insurances other than the mandatory ones. Fiscal treatment of each benefit is to be determined according to the Fiscal Code (some of the benefits are exempted of all fiscal taxes, some are exempted of some of the fiscal taxes and some are considered to be part of the monthly wage).

Health and Safety in the Workplace

With regards to the measures to be implemented for the health and safety of their employees, employers should bear in mind that there exists a series of principles aimed at preventing health and safety issues, such as avoiding risks, evaluating the risks that cannot be avoided, adapting the work to the individual, especially when designing the workplace and when choosing the equipment, as well as work methods and training for employees. At every employer's level, a health and safety committee has to be organised. Equal numbers of members will represent the employees and the employer within this committee.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

On objective grounds and with the use of clear internal procedures, the employer can restrict the employee's use of Internet and social media during working hours. This restriction applies to the use of the Internet and social media on company provided platforms, including portable devices.

Can the employer monitor, access, review the employee's electronic communications?
A relevant national case that was brought also to the attention of the European Court for Human Rights confirmed that in the case where the employer has strict, clear and objective rules on the use of the Internet and other programs that require the use of Internet such as instant messaging programs, that the employee acknowledged, the violation of such rules can result in a disciplinary action and even in a disciplinary dismissal (Barbulescu v. Romania).

EMPLOYEE BENEFITS

Social Security
In Romania there are mandatory pensions, healthcare, unemployment common national systems that apply to all employees and employers. There are mandatory contributions made to each of these systems, by the employees. The employer pays a single contribution. The systems cover predetermined benefits for the employees. For the employer, the required monthly contribution is 2.25% of the gross income for each employee. For the employee, the required monthly contributions are 25% of the employee's gross income for the pension system and 10% of the employee's gross income for the healthcare system.

Healthcare and Insurances
Apart from the mandatory contributions that we referred to previously there are no other mandatory insurances that the employer is required to provide. Additional health and life insurance can be provided by the employer as a benefit. The fiscal regime of such benefits takes into consideration the amount paid by the employer.

Required Leave
- ***HOLIDAYS AND ANNUAL LEAVE***

The Romanian law establishes a minimum duration of 20 working days of annual paid leave. There are approximately 13 public holidays in Romania and the workers are entitled to remuneration for each. Since some of the public holidays are religious there are legal provisions that state that paid holidays are to be granted to employees of other religions than the Christian Orthodox, considered majoritarian in Romania. Employees have the right to benefit from a minimum of 20 working days of paid annual leave each year. Compensation with financial benefits is only allowed in case of the termination of the employment. The employer has to ensure that employee benefits from a continuous period of 10 consecutive working days of paid annual leave.

- ***MATERNITY / PATERNITY LEAVE***

There is a period of 126 mandatory maternity leave days, of which 63 days can be granted before the due date and 63 days after the due date.

- ***SICKNESS LEAVE***

Medical leave is granted to the employee if the illness prevents him/her from performing his/her activity. The medical leave indemnity is paid by both employer and the state healthcare system depending on the number of days of medical leave.

- ***DISABILITY LEAVE***

Disability leave can be a form of medical leave or a form of pension, depending on the type of disability (people with permanent disabilities that cannot work benefit from a special type of pension).

Other Required or Typically Provided Leave
Employees have the right to paid or unpaid training leave. The employer has to grant paid training leave if he failed to ensure the periodic training of the employee. Unpaid training leave can be granted to employees who engage in training activities on their own initiative.

Pensions: Mandatory and Typically Provided
The mandatory contribution to the pension system covers in Romania 2 Pylons of the pension system – the state provided pension (Pylon 1) and the mandatory private pension (Pylon 2). In order to fund these two pylons, the mandatory pension contribution of both the employer and the employee are divided between the state pension system administrator and private insurance companies. The percentage of the mandatory contribution that is given to private insurance companies is very low – 5% in 2018.

In addition to these 2 mandatory pylons the pension system in Romania recognises 2 more pylons. Pylon 3 or the individual facultative pension system allows the employee to contribute to a private pension system with up to 15% of his monthly income, while pylon 4 allows the employee to contribute to a private pension system without any limits to the contributions. Pylon 4 pension plans usually include life insurance. Pylons 3 and 4 are not mandatory.

The employer can offer the employees the benefit of one of these facultative insurances.

Other Required or Typically Provided Benefits
Any uniform of equipment necessary for health and safety reasons will be provided, free of charge, to the employee by the employer. In certain industries where there are known risks to the health of the employees (such as exposure to toxic or irritant materials) additional rights to cover what is known as a protection diet should be granted. The employer can also grant daily meal tickets to employees as an additional benefit. The meal tickets are strictly regulated, have a legally established value, and have a distinct fiscal treatment (they are only subject to income tax). Employers can grant vacation tickets (vouchers) with distinct fiscal treatment that can only be used for traveling services within the country. Vacation tickets are more common in public companies. Other forms of benefits that can be granted by the employer are the kindergarten tickets or gift tickets, all having a distinct fiscal treatment.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
Under Romanian law, the employment contract may terminate de jure, by mutual consent or by notice given by one of the two parties. The grounds for dismissal must be real and serious and there are two types of valid grounds: Objective grounds and Economic grounds.

Severance pay for individual dismissals is to be paid only if it is agreed as such in the individual or collective employment agreement. The only time that the Labour Code states that a severance payment (not specifying the amount) should be negotiated is for physical and/or mental unfitness to perform the activity required by the job description. The Labour Code only states that such compensation should be negotiated in the collective employment agreements, meaning that in the absence of such an agreement, the employer cannot be made to pay the employee any amount upon his termination.

Whistleblower Laws
Only whistleblowing within public institutions, and the protection of employees and public servants in public institutions, is legally regulated in Romania. The whistleblower has to act in good faith and for the general interest in order to be protected. For the private sector, customary rules have to be used when considering the protection of an employee in whistleblowing cases.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave
Garden Leave is not regulated under Romanian law. If the employment is terminated and the employer does not require the presence of the employee during the notice period, he can ask the employee to not perform work during the notice period. In case of resignation the employer can waive his right to benefit from the notice period, meaning that he can agree for the employee to stop working immediately (and not pay the employee anymore). However, in case of dismissal the employer has to be careful in forcing the employee not to work during the notice period since the employer still preserves his constitutional right to work. Some collective employment agreements have provisions that allow the employee that was dismissed to perform work only for half of the normal working hours during the notice period in order for the employee to be able to actively seek employment (in this case it is up to the employee if he wants to benefit from this contractual clause).

TRANSFER OF UNDERTAKINGS

Prior to the transfer, both the seller and the purchaser have the obligation to consult their trade unions or the employees' representatives with respect to the judicial, economic and social implications related to the transfer of undertaking. All of the seller's existing rights and obligations arising from the employment contracts and collective labour agreements will be transferred to the purchaser, except for cases when the seller is subject to restructuring or insolvency procedure. Nevertheless, the transfer of undertakings cannot

be a reason for the individual or collective dismissal of the transferred employees by the seller or purchaser. The purchaser is bound by all rights and obligations resulting from the existing employment contracts at the time of the transfer and has the obligation to maintain all the rights until the contracts expire or are terminated. Beginning one year following the transfer, the purchaser has the possibility to renegotiate the collective clauses with the employees' representatives.

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SPAIN.

HIGHLIGHTS

- Non-EU citizens must obtain a work permit.
- In principle, employment contracts are presumed to be for an indefinite term. However, there are a limited number of fixed-term employment contracts.
- Minimum working conditions are principally set out in the Workers Statute and applicable collective agreements.
- Employment contracts are automatically transferred with the business to the new employer. Employees' rights and obligations are also transferred.
- Termination can be based on objective grounds.
- Dismissals are void if the termination is discriminatory or involves protected employees.

INTRODUCTION

As is the case in other European countries, Spanish labour law is very comprehensive and provides significant protection for employees. The labour law regulates individual and collective relationships between employees and employers, the scope of which extends to other related areas such as Social Security, health and safety at work, special employment relationships and procedural law.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

Information regarding criminal records is confidential and public disclosure is prohibited as it could violate data protection regulations. Additionally, there is a general prohibition forbidding discrimination against any employee, for any reason, either before or after being hired. In addition, access to the Central Registry of Convicts will only be allowed for certain state agencies, judges and courts, as well as the judicial police, when there is such a requirement. Therefore, the employer cannot obtain such data unless the candidates or the employees provide the data voluntarily.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Foreign employees from outside the European community, including self-employed individuals, must obtain an administrative authorisation, or work permit, to work in Spain. The work permit may be requested at the Immigration Bureau.

EMPLOYMENT CONTRACTS

Minimum Requirements

Generally, Spanish Labour Legislation allows for freedom of form when making a contract. Employment contracts can be verbal or in writing. However, during the term of a verbal contract, either of the parties may require that the verbal contract be reduced to writing. As an exception to the freedom of form, certain employment contracts must be in writing, including, but not limited to, temporary employment contracts, contracts involving special labour relations (such as those concerning lawyers, top managers or commercial representatives) and part-time contracts.

Fixed-term/Open-ended Contracts
In principle, employment contracts are presumed to be for an indefinite term. There are, however, a limited number of definite-term employment agreements. If the employee continues to work past the original term of the temporary agreement, the relationship becomes indefinite in time and the employee becomes entitled to the standard severance upon termination.

Trial Periods
In the event that no special provision is contained in an applicable collective bargaining agreement, notice periods cannot exceed six months for workers with an academic degree and for any other employees. However, the contract for entrepreneurs has established a trial period of one year.

Notice Periods
The Labour Law requires that a party seeking to terminate an employment agreement provide the other party to the agreement with a minimum of fifteen (15) days' notice prior to termination. This rule does not apply to interim contracts. The parties in the contract may agree upon longer notice periods.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary
An employee's salary includes all amounts received by an employee in compensation for services rendered. Salary can be monetary or in kind, but the latter cannot be higher than 30% of the total amount received by the employee.

Health and Safety in the Workplace
The employer shall take the necessary measures to ensure that the use of the workplace does not create risks to the health and safety of its employees or, if this is not possible, so that these risks are minimised. A company's Health and Safety Committee is an internal body tasked with consulting on a regularly basis the company's actions in the field of risk prevention. It will be constituted in all companies or work centres that have 50 or more employees. The Committee will participate in the preparation, implementation and evaluation of risk prevention plans and programs in the company, as well as promote initiatives on preventive methods and procedures.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace
There is no express legal prohibition for the employee not to use social media at the work place. Such a prohibition can be regulated by the employer by written form, with a detailed policy on surveillance and control of the company's property and the use of social media tools during working hours. Although there is no need to seek approval with the employees' representatives to implement or negotiate such policies, some companies choose to negotiate directly with these representative bodies, before communicating such policies to the individual employees. Therefore, if the employer considers the particular use of multimedia contents by its employees detrimental to the company's activities, the employer may within its responsibilities, issue the appropriate guidelines and instructions to regulate the use of these tools and seek greater productive capacity from the employees, and even prohibit the use of social media at the work place.

Can the employer monitor, access, review the employee's electronic communications?
Spanish law recognises the employer's right to take the most appropriate measures to control the work of their employees, so as long as they do not violate their fundamental rights.

EMPLOYEE BENEFITS

Social Security
In Spain, the Social Security's national insurance contributions cover:

- Common contingencies, these contributions cover the situations included in the Social Security's general regime.
- Professional contingencies cover expenses resulting from labour accidents and occupational diseases.
- Overtime.

- Other concepts such as unemployment, training or the Wage Guarantee Fund.

Healthcare and Insurances
The Social Security offers public medical care to all affiliated workers.

Required Leave
- ***HOLIDAYS AND ANNUAL LEAVE***

Employees are entitled to a minimum of thirty (30) days of paid vacation per year. This can be improved by contract or collective agreement. In addition, there are fourteen (14) public nonworking days per year, which may differ slightly by region.

- ***MATERNITY / PATERNITY LEAVE***

Maternity leave lasts sixteen (16) uninterrupted weeks. The mother must take six (6) of these full-time weeks right after birth. The remaining ten (10) can be exchanged for twenty (20) weeks of part time work if the employee reaches an agreement with the employer. Paternity leave is a subsidy given to workers who suspend the work contract or cease their activity during the legally established days, on the occasion of the birth of a child, adoption or fostering.

- ***SICKNESS LEAVE***

Temporary Disability Benefits are daily subsidies that cover the worker's loss of income due to any sickness such as common diseases or non-work-related injuries, occupational diseases or work-related injuries. The maximum duration of the benefit is 365 days, but it can be extended for a further 180 days if, during this period, the person is expected to be cured.

- ***DISABILITY LEAVE***

Whoever, for reasons of legal custody, needs to be in charge of the direct care of a child under twelve years of age, or a person with a physical or sensorial disability who does not perform any paid activity, shall have the right to a reduction of their working day, with the proportional decrease in salary between, at least, an eighth, and at most, half of its duration. Workers shall also have the right to a leave of not more than two years, unless a greater period is established by collective bargaining, in order to attend to the care of a family member up to the second degree of consanguinity or affinity who, for reasons of age, accident, illness or handicap, cannot fend for him/herself and who does not perform any paid activity.

Other Required or Typically Provided Leave
The Worker's Statute recognises other benefits, including, but not limited to fifteen calendar days in case of marriage; one day for change of domicile; to perform union or personnel representation functions under the terms legally or conventionally established; etc.

Pensions: Mandatory and Typically Provided
Retirement pensions are included in all Social Security regimes and are for life. The conditions to obtain a pension are:

- having turned sixty-five (65) years of age (there are exceptions - it could gradually change from 65 to 67 years old if it attests 38,5 of contribution).
- having paid national insurance contributions for a minimum of fifteen (15) years. At least two years of contributions must have taken place within the fifteen (15) years prior to retirement.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
In Spain, the following are grounds for termination: Mutual consent of the parties; Grounds established in the contract; Expiration of the contract term or end of the specific job; Employee resignation; Death or permanent illness; Retirement of employee; Employer's death, retirement or permanent illness; Force majeure that makes it impossible to continue rendering services; Collective dismissal based on objective grounds; Employee's voluntary departure based on breach of contract by employer; Dismissal of employee.

A disciplinary dismissal does not entitle an employee to receive any compensation from the company.

A severance payment will only be required in cases that involve a court ruling declaring the dismissal unfair. The severance pay resulting from an objective dismissal is a tax-free payment in the amount of twenty (20) days' salary per year of service, up to twelve (12) months' salary.

Whistleblower Laws

There is no specific employment legislation in place that provides legal protection for whistleblowers. However, internal company policies usually provide for protection as well regulate specific procedures to report illegal practices. Internal policies must be implemented in accordance with what is established within the law and regulations. The most recent reform of the Criminal Code, which came into force on 1 July 2015, introduced the need to have internal prevention mechanisms and channels in order to reduce or avoid any potential criminal liability for companies or their representatives.

Whistle-blower programs have also been regulated by the Data Protection Authority's ("DPA) guidelines, in particular by the "Guide for Data Protection in Labour Relationships". Usually, protection in an internal policy will be limited to the company's employees, which have a direct hierarchical relation with the company. The reporting system must rely on wrongdoings which could affect the contractual relationship between the companies and the incriminated employee. The reporting system is created to uncover wrongdoings by other employees or company officials, which could be considered a breach of their contractual relationship. The main principle, however, is that confidential information is only available to those people that are essential to the investigation of the complaint. The whistle-blower's identity will only be revealed if he/she acted in bad faith.

The possibility of filing an anonymous complaint is generally prohibited, because there is a real need to identify the complainant and the accused party. Finally, the organ responsible for the investigation will need to inform the accused party regarding the protection and confidentiality of their personal information during all stages of the process, even upon its conclusion.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

The term during which an employee remains on normal salary and is bound by his/her contract of employment, but at the same time requested by the employer not to attend the office or contact clients or customers, is usually used only on disciplinary procedures while the investigation takes place. The employer cannot, unless expressly referred to in the employment agreement, put the employee under garden leave, as they are not provided for statutorily. This is the reason why they may only be mutually agreed to within the scope of the employment contract. Employers often use garden leave during an employee's notice period to prevent the employee from having further access to customers, clients and staff and to prevent the employee from working for a competitor, but that is usually used in Spain when there is very serious evidence that there has been a gross misconduct from the employee.

TRANSFER OF UNDERTAKINGS

Employees' rights and obligations are subrogated to the new shareholder and maintained intact. This includes special benefits and retirement compensation that employees may be entitled to. The Workers Statute requires formal notice to employees in the event of transfer of undertakings, including date or proposed date of the transfer, reasons for the transfer, legal, economic and social implications for the employees and any measures envisaged in relation to the employees.

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SWEDEN.

HIGHLIGHTS

- An employment agreement does not have to take any specific form to be valid.
- An employment may only be terminated on objective grounds, such as redundancy or personal reasons.
- An employer has certain consultation and information obligations towards trade unions even if the employer is not bound by any collective bargaining agreement.
- Generally, citizens of countries outside the EU must have a work permit to work in Sweden.

INTRODUCTION

The labour market in Sweden is to a great extent self-regulated by employers' organisations and trade unions. The Swedish labour law model is based on civil rules that govern most aspects of the employer-employee relationship. Mandatory laws and regulations in collective bargaining agreements provide a comprehensive framework for the terms and conditions of employment. Disputes are finally settled by the Swedish Labour Court, which is the final instance in employment related disputes. However, the majority of disputes are solved by the parties on the labour market through consultations and negotiations.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks
Employers have limited possibilities of obtaining information from registers containing information regarding applicants, such as medical or criminal records, and are limited by the EU General Data Protection Regulation (GDPR) as regards the processing of such personal data. An applicant can, on the other hand, voluntarily present medical or criminal information about himself or herself, if the employer should request it in connection with the recruitment. There is no obligation for the applicant to comply with such a request, but the non-compliance may result in the applicant not being offered the position in question. Applicants to positions such as teachers and day-care teachers, however, may be obliged to provide an excerpt from their criminal records before an employment agreement is entered into. As regards credit checks, these are allowed and may be conducted by the employer, if the credit check is of relevance to the applied position, i.e. the position will involve economy related tasks such as accounting or handling payments as a cashier. Otherwise, consent should be provided by the applicant prior to a credit check.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work
Generally, citizens of countries outside the EU must have a work permit to work in Sweden. EU and EEA citizens do not need a visa and they have the right to work in Sweden without work and residence permits. People who have a residence permit in an EU country, but are not EU citizens, can apply to obtain the status of long-term resident in that country. They thereby enjoy certain rights that are similar to those of EU citizens. Furthermore, the Posting of Workers Act applies to posted workers in Sweden.

EMPLOYMENT CONTRACTS

Minimum Requirements
An employment agreement does not have to take any specific form. However, Sweden has implemented the directive on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. As such, an employer must provide certain information in writing to the employee concerning the principal terms of the employment. This information must be provided to the employee within one month of the commencement of the employment.

Fixed-term/Open-ended Contracts
The general rule is that an employment agreement is for an indefinite period, unless otherwise agreed. The Employment Protection Act allows a general fixed-term employment when the employer is in need of fixed-term employees. A fixed-term employment agreement may also be concluded for a temporary substitute employment, for a seasonal employment and after the employee has reached the age of 67. If, during the past five years, an employee has been employed in a fixed-term employment for in aggregate more than two years the employment is transformed into an indefinite-term employment.

Trial Periods
The Employment Protection Act permits probationary employment for a period of no more than six months. If the employment is not terminated before the expiry of the probationary period, the employment will automatically become employment for an indefinite term.

Notice Periods
An employer must provide a prior notice of termination before dismissing an employee. Notices shall always be made in writing and must state the procedure to be followed by the employee in the event the employee wishes to claim that the notice of termination is invalid or to claim damages as a consequence of the termination. The notice shall also state whether or not the employee enjoys rights of priority for re-employment. Statutory notice periods vary between one and six months, depending on the length of the employment term.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary
There are no provisions regarding minimum salary in Swedish law. However, provisions regarding such matters are often found in the collective bargaining agreements.

Health and Safety in the Workplace
Sweden has extensive legislation providing guiding principles regarding the work environment including, but not limited to, regulations concerning the obligations of employers and others responsible for safety, to prevent ill health and accidents at work. regulations as regards the cooperation between employer and employee, for example rules about the activities of safety representatives at the workplace. Employers should investigate, implement and monitor activities so that ill health and accidents at work are prevented and a satisfactory work environment is achieved, by carrying out risk assessments, investigating ill health, accidents, serious incidents, implementing measures, controlling measures and allocating work environment assignments.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace
An employer has the right to direct and allocate work and thus is able to restrict employees' use of Internet and social media during work hours. However, practically, this depends on the type of work that is being performed.

Can the employer monitor, access, review the employee's electronic communications?
Furthermore, an employer with a legitimate aim to supervise communications of the employee may be allowed to do so as far as the employee has been informed of it beforehand and the supervision is not excessive in regard to the employee's right to privacy.

EMPLOYEE BENEFITS

Social Security

The employer's social security contributions, paid in addition to the salary, amount to 31.42 percent (2018) of the employee's gross salary. These contributions are mandatory and include specific charges, such as, old-age pension, survivor's pension, fees for health insurance and work injury. The fees constitute parts of the Swedish social security system.

Healthcare and Insurances

Except for insurances included in the mandatory employer social security contribution, there is no obligation under the law for the employer to provide the employees with different insurances. However, employers that are bound by collective bargaining agreements are obliged to take out certain insurances, such as, group life insurance (TGL) or work injury insurance (TFA), in addition to the insurances included in the employer social security contributions.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Vacation entitlement is regulated by the Annual Leave Act, which distinguishes between unpaid and paid vacation, and between a "vacation year" (1 April to 31 March) and a "qualifying year" (the 12-month period prior to the vacation year). An employee earns his or her entitlement to paid vacation during the qualifying year and is entitled to use his or her paid vacation during the vacation year. The basic vacation entitlement is 25 paid days per year. Furthermore, it is possible for employees to carry over their entitlement to paid, but not unpaid, vacation days to the next vacation year, but only if the employee has earned more than 20 days of paid vacation, and only for those days that exceed 20 days.

- ***MATERNITY / PATERNITY LEAVE***

The employee may be on parental leave until the child is 18 months. In addition to the parental leave, the mother can start drawing parental allowance 60 days prior to the expected birth of the child. The father of the child may also be on paternity leave for 10 working days in connection with the child's birth. Compensation is paid by the state for a total of 480 days per child. This entitlement of parental days is divided equally between the parents, but they have the right to transfer their entitlements to each other, with the exception of 90 days. These 90 days will be forfeited if they are not transferred to the other parent, hence, one parent may use a maximum of 390 days. For 390 days the allowance is capped at 80 percent of the employee's salary, though, the allowance can be SEK 942 per day as a maximum. For the remaining 90 days, the compensation is SEK 180 per day.

- ***SICKNESS LEAVE***

The employee is entitled to mandatory sick pay payable by the employer, provided that the employment is expected to continue for more than 1 month or if the employee has been working for more than 14 consecutive days. From 1 January 2019, sick pay is paid by the employer during days 1-14 at 80 % of salary, but the employer is entitled to make a deduction (Sw. karensavdrag) of approx. 20 % of the employee's employment benefits during a week.

- ***DISABILITY LEAVE***

Disability Leave is not recognised as being any different from sickness leave. However, a partial or full disability may entitle the disabled person to activity compensation or sickness compensation paid by the state.

Other Required or Typically Provided Leave

Employees who have been employed during the preceding six months, or for a total of at least 12 months during the preceding two years, have the right to educational leave. Employees are also entitled to full leave from his or her work for, at most, six months in order to start a business. Additionally, there are several circumstances which entitle an employee to leave in special situations, such as to take care of a closely related person or to take Swedish-language education as an immigrant.

Pensions: Mandatory and Typically Provided

The Swedish pension system is based on an income-related pension, premium pension and guarantee pension. The pension system is administrated by the state and financed by employers and employees jointly. The employer's contribution is paid through the employer's social security

contributions. In addition to the state pension, the employees usually are entitled to supplementary pension provided by the employer, which, under a CBA, the employers are obliged to pay, and for those not bound by a CBA, such additional pension benefits are completely optional. The predominant pension scheme for white-collar employees in the private sector is the ITP pension plan, which is a supplementary pension plan. The plan includes old-age pension, supplementary old-age pension, disability pension and family pension. The employee belongs to ITP-1 (a defined contribution plan) or ITP-2 (a defined benefit plan) depending on the employee's age. For blue-collar employees the SAF-LO pension plan applies, which is a defined contribution plan.

Other Required or Typically Provided Benefits
There are no other required benefits, but it is common for employers to offer their employees a fitness benefit.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
Employers may dismiss employees either with or without notice. A dismissal with notice must be based on objective grounds. Objective grounds are not defined by statute or case law, but can be either for objective reasons or subjective personal reasons. Objective reasons are dismissals based on redundancy, re-organisation or the economic situation of the employer, while subjective personal reasons are all dismissals that relate to the employee personally, such as the employee's conduct or performance.

There are no statutory provisions regarding severance pay. However, an employee may be entitled to severance pay in accordance with an employment agreement, a collective bargaining agreement or a separation agreement.

Whistleblower Laws
An employee who reports criminal activity or other gross misconduct, of which the employee has a valid reason to suspect in the employer's business, shall be protected from reprisals from the employer. Protection from reprisals according to the Whistleblowing Act, however, generally requires that the employee try to report information on suspected conduct internally before disclosing it externally. Should the employer not act on the information reported by the employee, the employee may disclose it to the public or to the authorities. Furthermore, the protection offered by the Whistleblowing Act may not be set aside through an agreement, such as a confidentiality clause in the employment agreement.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave
The employer may under certain circumstances unilaterally release the employee from the duty to perform work during the notice period. When the parties agree on a mutual separation, it is common to agree also on a release from work, i.e. garden leave.

TRANSFER OF UNDERTAKINGS

In conjunction with the transfer of a business from one employer to another, the rights and obligations under employment agreements and employment relationships that existed at the time of the transfer to the new employer shall also be transferred. Where an employee's employment agreement and the employment relationship have been transferred to a new employer the new employer shall be obligated, for a period of one year from the date of the transfer, to apply the employment terms and conditions of the collective agreement which the previous employer was bound to. The terms and conditions shall be applied in the same manner in which the previous employer was obligated to apply them. Prior to the decision to transfer the business (or a part of it), the acquiring company, as well as the transferring company, must, as a rule, call for and conduct union consultations with the local union representatives under the applicable collective bargaining agreements. Even if the companies are not bound by collective bargaining agreements, they are obliged to consult with any

trade unions of which any concerned employees may be members. Union consultations must be initiated and concluded before a decision regarding the transfer is made. If the consultation requirement is not observed, the breaching company may be obliged to pay damages to the unions concerned.

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SWITZERLAND.

HIGHLIGHTS

- Switzerland has a dual system for the admission of foreign workers (preferential treatment of EU/EFTA nationals).
- Every employee has the right to decide whether to join a trade union or not. The unions are financed through the contributions of their members.
- Basically, the Swiss employer is fully liable for social security contributions in respect of his employees.
- Where the employer transfers a business or a part of a business to a third party, the employment relationship and all attendant rights and obligations pass to the acquirer as of the day of the transfer, unless the employee refuses to transfer.
- In principle, no cause to terminate an employment relationship is required.

INTRODUCTION

The legal regime governing employment relationships in Switzerland is generally more liberal and favorable towards the employer than in many other countries. This is partly because labor unions are somehow less influential in Switzerland compared to, for example, labor unions in European Union countries, but also because the unemployment rate traditionally has been and remains relatively low in Switzerland. According to the principle of freedom of contract, the parties of an employment agreement are free to agree on the content and terms of their agreement to an extent that is substantially greater than in most other European jurisdictions. Swiss employment law, however, does contain some basic mandatory provisions. Most important are mandatory provisions aiming to protect the safety and the health of the employee. Public labor protection regulations cover, among other things, working hours and breaks, special protection for young employees, pregnant women and breastfeeding mothers, work-related injury insurance and industrial accident prevention.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

As a general rule, the employer may handle data concerning the employee only to the extent that such data concerns the employee's suitability for this job or are necessary for the performance of the employment contract. This also applies to pre-employment screening and hiring practices. Employers cannot screen a candidate's social media accounts. However, professional sites such as LinkedIn and Xing may be screened. Employers may contact references given in an applicant's CV or job application.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

In order to employ staff in Switzerland, it is not necessary to set up your own company in Switzerland. Employees can be employed directly

by a foreign company. So far, Switzerland has a dual system for the admission of foreign workers. Nationals from EC or EFTA countries benefit from the Agreement on Free Movement of Persons and, in general, do not need a work permit if residence is taken in Switzerland, subject to certain restrictions and exceptions for nationals from the new EC countries. This situation may change since the Swiss voters recently backed proposals to reintroduce immigration quotas with the European Union. In regard to non-EC and non-EFTA nationals, only a limited number of management-level employees, specialists and other qualified employees are admitted from all other countries (subject to a quota as determined by the Federal Council). If non-EC or non-EFTA nationals (without residence in Switzerland) work in Switzerland temporarily for more than eight days for a non-Swiss company, such employees must be reported to the authorities in advance, even if no work or residence permit is required.

EMPLOYMENT CONTRACTS

Minimum Requirements

- ***MATERIAL REQUIREMENTS***

Under Swiss law, an employment contract is a contract whereby the employee is obliged to perform work in the employer's service for either a fixed or an indefinite period of time, and the employer is obliged to pay salary either based on time periods or based on the work performed. As compared to other contracts involving the rendering of personal services, the most distinctive feature of the employment contract is that the employee's personal and organizational dependence reflects a relationship of legal subordination, i.e. the employee is not free to choose the time, place or type of work he or she will perform. By contrast, for example, contracts for legal services concluded between attorneys and their clients typically lack such legal subordination and, accordingly, do not qualify as employment contracts.

- ***FORMAL REQUIREMENTS***

Except for a few special agreements - such as the apprenticeship contract, the employment contract with a commercial traveler or the employment contract between a commercial staff supplier and an employee (which all require written form) - an employment contract is not subject to any specific form and may even be agreed verbally or by implication. Certain contractual provisions are, however, only valid if agreed in writing (e.g. restrictive covenants, exclusion of compensation for overtime, notice periods differing from statutory law, etc.).

Fixed-term/Open-ended Contracts

The parties are free to enter into an unlimited or a fixed-term contract. The sequence of several fixed-term contracts between the same parties may, however, be regarded as circumvention of the employee's protection against dismissal (if there is no objective reason for such sequence). In this case, the employment contract is considered to be unlimited.

Trial Periods

During the trial period, either party may terminate the contract at any time by giving seven days' notice; the trial period is, by statutory law, considered to be the first month of an employment relationship. however, the probation period may not exceed three months.

Notice Periods

- ***ORDINARY TERMINATION***

Any employment contract concluded for an indefinite period of time may be unilaterally terminated by both employer and employee, subject to statutory notice periods ranging from one to three months, depending upon the length of service.

- ***EXTRAORDINARY TERMINATION***

Both employers and employees have a right to terminate the employment contract immediately and without notice for cause, regardless of whether or not the contract was concluded for an indefinite period of time and regardless of any statutory notice periods, which would apply to an ordinary termination.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

Salary is usually paid at the end of the calendar month deducting all applicable social security contributions and withholding taxes (if any). Swiss law explicitly provides that the salary paid to employees must be stated in a pay slip.

Health and Safety in the Workplace

Occupational health and safety in Switzerland is primarily based on two laws: the Labour Act (Arbeitsgesetz ArG, 1964) and the Accident Insurance Act (Bundesgesetz über die Unfallversicherung UVG, 1981). The Labour Act stipulates "The employer shall take all measures necessary to maintain and improve health protection and to ensure the physical and mental health of workers". The Accident Insurance Act contains provisions on the compensation and prevention of accidents and occupational diseases.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

In principle, the employer can restrict the use of the Internet and social media during working hours. An employer may control social media in the workplace if it is necessary for the performance of the employment contract and further is proportionate. Under these conditions, an employer may block social media completely. In contrast, it is rather unlikely that an employer is able to show a legitimate interest in controlling an employee's use of social media outside the workplace.

Can the employer monitor, access, review the employee's electronic communications?

Monitoring mechanisms are not permitted if they are directed at the employee's behaviour. However, they may be permitted if they pursue other aims, for example, security or controlling the proper use of the work infrastructure and working time. Monitoring mechanisms need to be codified in internal regulations and the latter communicated to the employees.

EMPLOYEE BENEFITS

Social Security

Basically, the Swiss employer is fully liable to social security contributions in respect of its employees. This system, however, only applies to resident employers and non-resident enterprises having a permanent establishment in Switzerland. The contributions are borne fifty-fifty by both employer and employees. However, the employer contributes insurance premiums for occupational accidents and diseases. He can deduct insurance premiums for non-occupational accidents (as well as the employee's share for pension, sickness and unemployment insurance) from the employees' salary. The rates are, in general, based on the gross salary.

Healthcare and Insurances

The mandatory Accident Insurance (UVG) contributes to the costs of medical treatment and gives financial support after accidents and occupational diseases. All employees occupied in Switzerland are covered.

Sickness allowance insurance compensates for loss of salary due to incapacity for work caused by illness or pregnancy.

All employees in Switzerland who have not yet reached the legal retirement age must be covered by unemployment insurance, subject to certain conditions.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

The minimum paid annual holiday entitlement in Switzerland for all employees is four weeks. Young employees up to the age of 20 are entitled to five weeks of holidays per year. Vacation must be used and cannot be compensated by payment; compensation of vacation by payment is admissible only at the end of an employment relationship. In addition, and depending on the canton in which they work, employees enjoy between five and fifteen public holidays per year. Whenever a public holiday falls on a work-free day, employees are not entitled to a substitute day off. A public holiday is not deducted from the vacation entitlement whenever it falls within the vacation of an employee.

- ***MATERNITY / PATERNITY LEAVE***

Maternity leave lasts 98 days (or 14 weeks) from the day it starts. Both full-time and part- time employees are entitled to maternity leave. Women who return to work earlier lose their entitlement to compensation. Mothers are paid 80% of their wages in the form of a daily allowance up to the

maximum of CHF 196 per day. Cantonal provisions, staff rules and collective labour agreements may provide additional solutions. Women must not work during the first eight weeks after the birth.

Pensions: Mandatory and Typically Provided
The Swiss pension system rests on three pillars:
The first pillar provides old age pensions as well as benefits for widowers and orphans. The ordinary age of retirement is 65 years for men, 64 for women. It can be anticipated or postponed, with financial consequences. It is an PAYGO system, financed by contributions from employees and employers (4.2% of the employee's income each) and shall cover the basic living expenses.

The occupational pension scheme (2nd pillar) shall, together with the Old-age, Survivors' and Invalidity Insurance, enable the insured person to maintain his or her previous lifestyle in an appropriate manner. It is a funded pension plan. It is compulsory for employees and is financed by both employees and employers. The sum of the contributions of the employer should be at least equal to the sum of the contributions of his employees. The second pillar offers old age pensions. The pension funds also provide benefits in case of invalidity and benefits to survivors in case of premature death. Under certain conditions, the second pillar can be used before retirement to buy a principal home or to start an independent activity.

The third pillar consists of private pension schemes provided by the private sector. It is optional and financed entirely by the individual.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
As a principle, both parties to an employment contract may terminate the employment agreement at any time, subject to either the statutory or contractual notice period; without the need to fulfill any statutory grounds for termination. The party issuing the termination must however provide a written explanation of the termination upon the other party's request. Employees are, however, protected against abusive dismissal. In addition, the employer shall not give notice of termination during protected periods, and such notice shall be null and void.

There are no statutory severance payment obligations. An obligation may, however, be provided by a collective agreement or by a social plan in case of collective redundancy.

Whistleblower Laws
Swiss labour law still lacks explicit labour law protection for whistleblowers despite political advances and government efforts. De lege lata, an employee must first turn to the employer's internal departments to uncover grievances. Only if they do not react can the authorities or the public be informed. However, there is still no effective protection against dismissal. A dismissal as a result of a permissible disclosure of grievances would be abusive, but valid. The employer could be sanctioned by penalty of payment up to a maximum of 6 monthly salaries.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave
Once notice of termination of employment has been issued, case law permits release from duties (garden leave), subject to the employee's personal rights. There is much dispute about what duties remain in force during garden leave. However, it is generally accepted that the duty of loyalty continues to apply to an employee on garden leave. If the employer does not state otherwise in the notification of garden leave, the employee is entitled to start a new job (subject to non-competition covenants). During garden leave, employees retain all contractual entitlements to remuneration, including pension entitlements. The only exception to the above rules is a fully discretionary bonus to which there is no entitlement during garden leave.

TRANSFER OF UNDERTAKINGS

If a transaction qualifies as a (partial) business transfer, the employment relationships existing at the time of the transfer (including the ones under

notice) are automatically transferred including all rights and obligations as of the date of transfer, unless the employee objects to the transfer. If an employee objects to the transfer, the employment relationship is terminated upon the expiration of the statutory notice period even if longer or shorter contractual notice periods apply. If any redundancies, terminations or changes in the working conditions are planned in connection with a business transfer, the works council, if any, or otherwise the employees, must be consulted in due time, prior to the decision that employees are made redundant or the changes in the working conditions implemented. This consultation process is also necessary if the employees will be dismissed or the changes implemented after the transfer (by the new employer), because such dismissal and changes would be seen as a result of the transfer of business if implemented within the first few months after the transfer. It is important to note that the consultation process needs to be conducted before any decisions in regard to any measures are made. The employer needs to give the works council or the employees at least the possibility to make suggestions on how to avoid any measures, specifically on how to limit the number of dismissals. The current employer and the new employer are jointly and severally liable for any employee's claim that have become due prior the transfer, and that will later become due until the date upon which the employment relationship could have validly been terminated. If a collective employment contract applies to any employment relationship transfer, the new employer would need to comply with it for one year, unless the collective employment contract expires earlier or is terminated by notice.

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UNITED KINGDOM.

HIGHLIGHTS

- Termination of employment is process-driven so if the right procedure is followed, liability can usually be avoided.
- Discrimination and whistleblowing laws provide a high degree of protection in the workplace; claims are frequently brought in the tribunals and compensation is based primarily on financial loss (with no cap) and there are no punitive damages.
- Although union representation is declining, workplace representation is becoming more common but is generally not problematic for employers.
- Women are entitled to take one year's maternity leave, and this leave can be shared with their partner; maternity pay can also be shared but is limited to 39 weeks, capped at GBP 145.18 except for the first 6 weeks.

INTRODUCTION

This guide is intended as a brief outline of employment law in England & Wales. Much of the relevant legislation also applies in Scotland. Northern Ireland has a separate statutory code although much of its employment law is coordinated with that of England, Wales and Scotland. This guide is therefore not to be used as authority for the law in Scotland or Northern Ireland. The abolition of employment tribunal fees in July 2017 has re-set the balance of employment rights in England & Wales squarely in favour of employees. However, the bottom line remains that, provided they are prepared to pay sufficient compensation, employers in England & Wales can usually achieve what they wish. In any event, most businesses are conscientious about wanting to be seen as "good' employers".

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

There are certain background checks that must be carried out before hiring an individual. Employers have a duty to prevent illegal working in the UK by carrying out prescribed document checks on candidates before employing them to ensure they have the right to work in the UK. The processing of criminal convictions data is restricted under the GDPR and Data Protection Act 2018, and guidance is currently awaited to clarify what this means in practice for employers.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Any non-EEA national seeking entry or permission to remain in the UK for the purpose of employment may need to apply under Tier 2 of the Points Based System (PBS) via an approved Home Office Sponsor. The Tier 2 (General) route is open to overseas nationals who have been offered a skilled role by a UK employer who has been unable to fill the skilled role with an EEA worker. Applications for permits can only be made by UK-based employers on behalf of the person they wish to employ (and not by the person themselves).

EU nationals currently have the right to enter, remain in and work in the UK without a work permit. However, as a result of Brexit, from March 2019 the UK government plans to implement a new EU Settlement Scheme whereby all EU nationals will be required to register for Settled Status (if they have been in the UK for 5 continuous years) or Pre-Settled Status (if they have been in the UK for less than 5 years). The deadline to register under the new scheme is 30 June 2021. The UK government is due to release further information on new rules for EU nationals which will apply from 1 January 2021. As negotiations between the UK and EU are ongoing and there is the possibility of a 'no-deal' scenario, UK employers should regularly check for updates in terms of employing EU nationals.

EMPLOYMENT CONTRACTS

Minimum Requirements

The standard type of employment contract in the UK is an "open-ended" contract which can be terminated on notice (subject to the protection which the law provides on unfair dismissal). An employment contract need not be in writing and may be partly written and partly oral. The standard type of employment contract in the UK is an "open-ended" contract which can be terminated on notice (subject to the protection which the law provides on unfair dismissal). An employment contract need not be in writing and may be partly written and partly oral.

Fixed-term/Open-ended Contracts

Workers may be contracted to work for a fixed period only or to perform a particular task with the contract terminating at the end of this period or on the completion of the task. There is no requirement for fixed-term contracts to specify the reason why it is a fixed-term, although a job title should be included in the contract to comply with the employer's statutory requirements on the written statement of particulars of employment.

Trial Periods

Employment contracts often provide that the employee will undergo a trial or probationary period at the start of their employment, during which the employer has the opportunity to assess the employee's suitability for the position. The trial period will typically last between three and six months. During this time, the employee may not be entitled to certain benefits.

Notice Periods

Employees have a statutory right to receive a minimum period of notice from employers once they have been employed for one month.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

Employers must pay all workers (not just employees) at least the statutory minimum pay per hour that they are entitled to. The National Minimum Wage ("NMW") is the minimum pay per hour payable for those under the age of 25. There are four hourly rates for the NMW, depending on the age of the worker and whether they are an apprentice; the top rate is currently GBP 7.38 (for those aged 21 and over). The National Living Wage ("NLW") is payable to most workers aged 25 and over and is currently GBP 7.83 per hour. Men and women have the right to be paid the same for the same, or equivalent, work. Where they are paid at different rates, an employee can bring an equal pay claim and the employer must prove that the reason for this is not gender-related, or be able to objectively justify this.

Health and Safety in the Workplace

Employers have a general duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. Workers are protected from being subjected to a detriment or being dismissed because they have made a protected disclosure about malpractices at work, this includes disclosures of information about health and safety breaches or risks.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

Employers can set their own rules in relation to use of the Internet and social media at work.

Can the employer monitor, access, review the employee's electronic communications?
It is advisable for employers to implement clear policies on the use of social media and social networking websites, setting out the standards of conduct expected from staff and making clear that a breach may lead to disciplinary action, including dismissal. Otherwise it could be difficult for employers to defend dismissing an employee for inappropriate conduct on a social networking site. Employers can lawfully intercept, monitor and record communications for certain specified purposes, including investigating or detecting unauthorised use of the system by employees, provided they have made "all reasonable efforts" to inform employees that they may monitor email and Internet use.

EMPLOYEE BENEFITS

Social Security
The social security system provides state benefits to cover maternity/paternity/adoption, childcare, disability and carer matters. It also administers retirement pensions. State benefits can be contractually supplemented by employers. The National Insurance Fund aims to provide subsistence level benefits to all those in need. Employers are under an obligation to collect income tax at source from employment income, pensions and taxable state benefits under the Pay As You Earn ("PAYE") system. Employed earners and their employers must also pay National Insurance Contributions ("NICs"). Various contributions are required to be made in respect of all UK employees. Class 1 contributions are payable in respect of earnings by both employer and employee.

Healthcare and Insurances
Employers carrying on business in Great Britain are required to have in place employer's liability insurance against liability for bodily injury or disease sustained by employees and arising out of and in the course of their employment in Great Britain. Some employers may offer employees benefits such as life insurance, permanent health insurance, private medical insurance and company cars.

Required Leave
- ***HOLIDAYS AND ANNUAL LEAVE***

Employees and workers are entitled to 5.6 weeks' paid annual leave (pro-rated for part-timers). This holiday entitlement can include public holidays, of which there are currently eight in England and Wales. Statutory holiday entitlement under the WTR cannot normally be carried over into the following year, nor can workers be paid in lieu of taking statutory holiday, except on termination of employment.

- ***MATERNITY / PATERNITY LEAVE***

Family rights to leave and pay have been subject to major reform in Great Britain with the introduction of shared parental leave and pay which applies to all qualifying working parents of children. Whilst the default 52 weeks' maternity/adoption leave for employed mothers/adopters remains, those employees are entitled to give up their leave and pay and share it with the father/their partner (i.e. whoever shares the main caring responsibility for the child at the date of birth/adoption). Employees with 26 weeks' service also qualify for Statutory Maternity/Adoption Pay which is calculated as follows: (1) six weeks at 90% of salary; and (2) 33 weeks currently at a flat rate of GBP 145.18, or 90% of salary if that is lower. Shared Parental Pay follows the same flat rate for up to 37 weeks. Fathers/co-adopters continuously employed for 26 weeks are entitled to: two weeks' Ordinary Paternity Leave; and two weeks' Statutory Paternity Pay: currently at GBP 145.18, or 90% of salary if that is lower.

- ***SICKNESS LEAVE***

Employers are required to pay Statutory Sick Pay ("SSP") to employees who are off work due to illness or injury, after the third day of absence (subject to certain qualifications). The current rate of SSP is GBP 92.05 per week from April 2018, for a maximum of 28 weeks. Employers often supplement SSP with contractual sick pay for a specified period.

- ***DISABILITY LEAVE***

Employers are required to pay Statutory Sick Pay ("SSP") to employees who are off work due to injury, after the third day of absence (subject to certain qualifications). (See 3c Sickness Leave). The current rate of SSP is GBP 92.05 per week from April 2018, for a maximum of 28 weeks. Employers often supplement SSP with contractual sick pay for a specified period.

Other Required or Typically Provided Leave
Parental leave - eligible employees can take unpaid parental leave to look after their child's welfare.

They can take up to 18 weeks' leave for each child and adopted child, up to their 18th birthday. The limit on how much parental leave each parent can take in a year is four weeks for each child (unless the employer agrees otherwise). The employee's employment rights (such as the right to holiday and to return to a job) are protected during parental leave.

Time off for dependants - all employees are entitled to reasonable unpaid time off work to deal with an emergency involving a dependant (for example, if a dependant falls ill or is injured, if care arrangements break down, or to arrange or attend a dependant's funeral).

Time off for public duties - employees can take time off work for certain public duties. All employees have to be allowed time off for jury duties/service. Employers do not have to pay employees for time spent on public duties or jury service, but some choose to do so.

Pensions: Mandatory and Typically Provided
Employers have to ensure that workers in the UK, between the ages of 22 and state pension age, and earning a salary of at least GBP 10,000 per annum are automatically enrolled into a qualifying pension scheme to which the employer must contribute. There are minimum total contribution that have to be made. Currently for employers this is 2% of each employee's qualifying earnings until 6 April 2019, then rising to 3%.

Other Required or Typically Provided Benefits
Some employers choose to provide other benefits to employees such as season ticket loans to enable employees to buy an annual train ticket to commute to work or subsidised gym membership, but this is entirely at the employer's discretion.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay
There are several ways in which a contract may be terminated. These include: Notice being given by either the employer or the employee; Mutual agreement; Expiry of a fixed-term contract. A fixed-term contract automatically terminates at the end of the fixed-term without the need for notice; Dismissal by the employer; Termination by the employee based on a serious breach of contract by the employer (that is, constructive dismissal).
Except for redundancy dismissals (where an eligible employee will be entitled to a statutory redundancy payment) there is no statutory entitlement to a severance payment as such. An employee is entitled to notice, and it is common for employees to be paid a sum in lieu of notice, usually equal to the value of pay over the notice period.

Whistleblower Laws
The dismissal of an employee will be automatically unfair if the reason or principal reason for their dismissal is that they have made a "protected disclosure". Workers are protected from being subjected to any detriment on the ground that they have made a protected disclosure. A qualifying disclosure arises where a worker discloses information which in their reasonable belief shows a certain type of wrongdoing has and/or will take place within the workplace. The worker must also have a reasonable belief that the disclosure is in the public interest. There is no requirement for good faith. A qualifying disclosure is "protected" if it is made directly to the employer, a "responsible" third party or a "prescribed" person such as a regulator. Wider disclosures (e.g. to the police or to the media) may be protected but only if they meet certain rigorous conditions. Workers should be encouraged to raise concerns internally in the first instance. A whistleblowing policy should be put in place to encourage this. As with discrimination claims: there is no qualifying period of employment necessary to bring a "whistleblowing" claim nor is there a cap on the level of compensation that may be awarded.

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Garden leave is a tool by which an employer can prevent departing employees from performing their regular duties. Typically, the employee will be prevented from attending the workplace but will still receive full pay. This has the effect of restricting the employee's access to customers, clients, staff and information, and hampers their ability to work for a competitor. If an employer wishes to put an employee on garden leave there must, in most circumstances, be an express term in the employment contract permitting it to do so. Otherwise, they could be breaching the employee's implied right to work and therefore be in breach of contract.

TRANSFER OF UNDERTAKINGS

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") applies to employees when either: a business or asset is transferred from one entity to another; or there is a change of identity in an entity providing a service (e.g. outsourcing). The effect of TUPE is that all employees "assigned" to the economic entity or activity will transfer to the transferee (i.e. the successor). In addition, the transferor's (i.e. the original employer's) rights, powers, duties and liabilities under the employment contracts of those employees who are transferring, transfer to the transferee. The transferor and transferee have a duty to inform and consult with "appropriate representatives" (generally trade union representatives or representatives elected from the affected employees) of "affected employees" about the facts and implications of the transfer. Finally, subject to certain exceptions, dismissals are automatically unfair if the sole or principal reason for dismissal is the TUPE transfer unless there is an economic, technical or organisational reason entailing changes in the workforce. Certain information must be provided to the appropriate representatives long enough before the transfer to enable consultation to take place.

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UNITED STATES.

HIGHLIGHTS

- The laws governing employment relationships in the U.S. come from federal, state and local statutes, agency regulations, and case law.
- Under United States law, there are no minimum requirements for an employment contract.
- Except in certain mass dismissals or as provided for in an employment contract or a collective bargaining agreement, U.S. law does not impose a formal "notice period" to terminate an individual employment relationship.
- Employees employed on an "at-will" basis may be terminated, with or without cause or grounds, provided it is not for an illegal reason, notably discrimination on grounds of a category protected by law or protected "whistleblowing" activity (reporting certain employer activity where the employee reasonably believes that the information he or she provided relates to potential violations of specific laws).
- Under U.S. labor law, if a majority of the employees in the bargaining unit who cast their vote had voted in favor of union representation, the union obtains the right of "exclusive" representation of all the employees in the bargaining unit (not only the employees who voted in favor of the union).

INTRODUCTION

The employment relationship in the United States is subject to markedly less regulation than in other countries. With the exception of some protections on wage and hours and a prohibition on discrimination, the parties to an employment relationship in the United States are generally free to negotiate and set the terms and conditions of their relationship. Moreover, the default position is that private-sector employment relationships are at-will: either the employer or the employee may terminate the employment relationship at any time, for any (non-discriminatory or non-retaliatory) reason with or without notice.

ISSUES ARISING UPON HIRING INDIVIDUALS

PRE-EMPLOYMENT CONSIDERATIONS

Limitations on Background Checks

It is illegal in certain U.S. states (and cities) to ask about an applicant's criminal history on an employment application. Such laws typically make exceptions for certain positions for which criminal history information may be required by law. The best practice under U.S. law is generally to avoid asking about arrests and/or convictions on the job application and, instead, wait until the employer has made a conditional offer of employment. In the case of a conviction revealed later in the application process, the best practice is to conduct an individualized assessment of the job-relatedness of the conviction to the job to which the candidate applied. Another consideration in the application process is compliance with the federal Fair Credit Reporting Act ("FCRA"), which governs the collection, assembly and use of information about consumers by consumer reporting agencies, including credit information, criminal background, motor vehicle reports, and other public record information. Though FCRA applies only to "consumer reports," employers must ensure they comply with any relevant requirements if they seek to obtain such information.

AUTHORISATIONS FOR FOREIGN EMPLOYEES

Requirement for Foreign Employees to Work

Foreign nationals without permanent resident status or a work visa are not permitted to work in the United States. An employer seeking to hire a foreign national may file, on behalf of its prospective employee, a petition with the United States Department of Homeland Security/ United States Citizenship and Immigration Services ("USCIS") for an employment visa. Canadian citizens are exempt from this requirement. Alternatively, an employer may sponsor a potential employee's application for permanent resident status, referred to as a "green card," if they are able to establish that the potential employee is a multinational executive/manager transferee, has unique skills, or is being offered a job in the United States for which the employer has been unable to recruit a U.S. worker who meets the minimum requirements of the position.

Rather than hiring workers one by one, U.S. companies may engage outsourcing and staffing firms that obtain H-1B visas and hire groups of high-skilled foreign workers who then are placed with the U.S. company as needed. As part of its effort to protect the U.S. workforce and prevent the abuse of immigration programs as outlined in the "Buy American, Hire American" Executive Order, the Trump Administration has targeted outsourcing and staffing firms that use H-1B visas. The Administration said abuses of the H-1B program, such as not paying the required wage or having workers do "non-specialty occupation" work, harm the U.S. workforce and are more likely to occur at third-party worksites.

EMPLOYMENT CONTRACTS

Minimum Requirements

Under United States law, there are no minimum requirements for an employment contract. Also, in most states, no written memorialization of any terms is required. An employment relationship in the United States is presumed to be "at-will," i.e., terminable by either party, with or without cause or notice. Indeed, a majority of employees in the United State are employed on an "at-will" basis, without a written employment contract, and only with a written offer of employment that outlines the basic terms and conditions of their employment. There are no requirements as to the minimum contents of an offer letter. Whether the employment relationship is "at-will" or pursuant to a written employment contract, parties are free to negotiate and set the terms and conditions of their relationship, so long as none of the provisions violate any federal, state or local law, rules or regulations governing the employment relationship.

Fixed-term/Open-ended Contracts

No legal provision governs fixed or unlimited term contracts. Unlike many other countries, American law does not limit the duration of a fixed-term employment contract or the circumstances under which the parties may enter into a fixed-term employment contract. In the absence of an employment contract, employment relationships are presumed to be "at-will," terminable by either party at any time, with or without cause.

Trial Periods

No legal provision governs a formal "trial period." However, many employers have an internal policy on trial periods, often referred to as "introductory periods" or "probationary periods." They generally provide for a formal performance evaluation after an initial stated period of employment (often ninety (90) days).

Notice Periods

Except in certain mass dismissals or as provided for in an employment contract or a collective bargaining agreement, U.S. law does not impose a formal "notice period" to terminate an individual employment relationship. Most employees are employed "at-will" and either party can terminate the employment relationship without notice. Under the Worker Adjustment and Retraining Notification Act ("WARN Act"), employers must give 60 days' advance notice to affected employees in advance of plant closings or covered mass layoffs.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

WORKING CONDITIONS

Salary

The (national) minimum wage set forth for all non-exempt employees is $7.25 per hour. Effective January 1, 2018, the minimum wage for federal contractors working on or in connection with contracts covered by Executive Order 13658 will be $10.35 per hour. States are free to legislate a higher minimum wage. The majority of U.S. states have minimum wage rates above the federal standard. Some cities impose higher minimum wage rates for employees that work for employers in the municipal areas of those cities. For example, in San Francisco, the minimum wage is $15 per hour as of July 2018.

Health and Safety in the Workplace

The Occupational Safety and Health Act ("OSHA") requires employers to provide employees with a safe and healthy place of employment, which is free from recognized hazards (death or serious physical harm). The OSHA regulations govern a wide variety of workplace conditions, and require employers: a) to remedy known workplace hazards; b) to limit the amount of hazardous chemicals workers can be exposed to; c) to use certain safe practices and equipment; and d) to monitor hazards and keep records of workplace injuries and illnesses.

SOCIAL MEDIA AND DATA PRIVACY

Restrictions in the Workplace

While there is no specific rule prohibiting employers from restricting employees' social media use during working hours, there are certain laws, discussed below, that employers should consider, particularly with respect to any type of monitoring of employees' social media use.

Can the employer monitor, access, review the employee's electronic communications?

The Stored Communications Act ("SCA") generally prohibits accessing the online account of another without that individual's consent. Similarly, simply asking employees for the passwords to access their social media or online account generally is impermissible in a number of states. In addition, employees have common law "privacy rights" which are enforced through tort claims based on invasion of privacy theories.

Further, the National Labor Relations Board ("NLRB") has ruled employees have a right to use their employers' email systems for nonbusiness purposes, including communicating about union organizing. Specifically, the NLRB held "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted," Purple Communications, Inc., 361 NLRB No. 126 (Dec. 11, 2014) (emphasis added).

Recently, the NLRB asked for briefs on whether it should modify or overrule its rule in Purple Communications. Rio All-Suites Hotel and Casino, No. 28-CA-060841 (Aug. 1, 2018). The Board also asked whether its standard should apply to computer resources beyond email systems, such as instant messages, text messages, and postings on social media.

While different employers can reach different conclusions about whether to monitor employees' social media use, in all cases, employers should avoid efforts to gain unauthorized access to an employee's social media account information and should carefully consider any employment decisions it intends to implement on account of information obtained through social media.

EMPLOYEE BENEFITS

Social Security

United States law provides for retirement benefits and subsidized health insurance under federal Social Security and Medicare programs. Employers are required to contribute 6.2% of each employee's salary (in 2018, on the first $128,400 of an employee's gross wages) to Social Security, as well as 1.45% of each employee's salary (without any limit on the wage base) to Medicare. Equal contributions are deducted from each employee's wages and act as an "employee contribution." These federal programs provide benefits for retirees, the disabled, and children of deceased workers. Social Security benefits include old-age, survivors, and disability insurance. Medicare provides hospital insurance benefits.

Healthcare and Insurances

Under the Patient Protection and Affordable Care Act, certain large employers who do not offer affordable health insurance that provides minimum value to their full-time employees may be subject to significant penalties. Specifically, covered employers will be subject to an annualized employer "shared responsibility" penalty of $2,000 (indexed) per full-time employee (less the first 30 full-time employees in 2016) if the employers do not offer health insurance to at least 95% of their full-time employees and their dependents. Employers may also be required to provide employees with health insurance benefits pursuant to a negotiated collective bargaining agreement or employment contract.

Required Leave

- ***HOLIDAYS AND ANNUAL LEAVE***

Although the United States government recognizes several "national holidays," no federal law requires employers to provide employees with time off for a holiday. However, it is customary for employers to provide employees with paid time-off to observe nationally and locally recognized holidays. For example, the public holidays widely observed by employers in private industry are: New Year's Day, Memorial Day (in late May), Independence Day (July 4th), Labor Day (early September), Thanksgiving Day (third Thursday in November), and Christmas Day. Some states require that employees working on enumerated holidays be paid at a higher rate of pay. Similarly, no federal law requires employers to provide employees with paid vacation time. In practice, all employers provide employees with paid vacation time. It may range from one week per year during the first few years to three weeks or more for long-serving employees. Employees who are represented by a labor union may receive more generous vacation time.

- ***MATERNITY / PATERNITY LEAVE***

The Family and Medical Leave Act ("FMLA") requires employers with fifty (50) or more employees within a seventy-five (75) mile radius to provide covered employees with twelve (12) weeks' unpaid leave in a 12-month period for the birth or placement of a child. Some state laws provide for maternity leave for employees who are not covered under the FMLA. In addition, several states provide workers with partial pay during parental leave. Whether the trend toward state paid family leave laws will continue remains to be seen.

- ***SICKNESS LEAVE***

Employees may be entitled to unpaid sick leave under the FMLA, which allows eligible employees to take up to twelve (12) weeks' unpaid medical leave in a 12-month period for a serious health condition that prevents the employee from performing the functions of his or her job. Though there is no national law guaranteeing paid sick leave, a number of states, counties, and cities require employers doing business within their boundaries to offer paid sick leave. Further, employers must offer paid sick leave to employees working on certain federal contracts.

- ***DISABILITY LEAVE***

A disabled employee may be entitled to unpaid leave under the FMLA as discussed above. In addition, workers' compensation insurance administered at the state level may provide for paid leave. Finally, while the Americans with Disabilities Act ("ADA") does not expressly provide for disability leave, employers are required to make reasonable accommodations for qualified employees with disabilities, which could include leave, so long as doing so does not pose an undue burden on the employer.

Pensions: Mandatory and Typically Provided

Unless otherwise provided for pursuant to a collective bargaining agreement or and employment contract, employers are not required to provide employee pensions or any retirement benefits. Many American employers do provide some retirement benefit to their employees, increasingly in the form of a retirement savings plan, which is a defined contribution plan and commonly named after the applicable section of the Internal Revenues Code as a "401k" plan.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

TERMINATION OF EMPLOYMENT CONTRACTS

Grounds for Termination and Severance Pay

Generally, employees employed on an "at-will"

basis may be terminated, with or without cause or grounds, provided it is not for an illegal reason, notably discrimination on grounds of a category protected by law or protected "whistleblowing" activity (reporting certain employer activity where the employee reasonably believes that the information he or she provided relates to potential violations of specific laws). The employment contracts of executives and other highly-skilled individual often incorporate a "just cause termination" clause, mandating that the employee may only be terminated for "cause" and lists the permissible grounds. In such cases, the grounds for a "just cause" termination are negotiated by the parties on a case-by-case basis.

Except as otherwise provided in an employment contract or collective bargaining agreement, employers need not make severance payments to terminated employees. However, employers often offer severance payments to bind an agreement made between the employer and employee at the time of termination to waive any potential claims arising out of the employment relationship.

Whistleblower Laws

Two major whistleblower laws in the U.S. are the Sarbanes-Oxley Act of 2002 (SOX) and the Dodd-Frank Act of 2010. There are also a number of OSHA whistleblower statutes that prohibit retaliation, or "adverse action," against workers who report injuries, safety concerns, or other protected activity. Further, there are a number of whistleblower laws at the state and local levels which generally prohibit retaliation against employees who report misconduct. In some states (e.g. New Jersey under the very broad Conscientious Employee Protection Act), it is very important for the employer to consider potential whistleblowing exposure whenever disciplining or terminating an employee.

The Sarbanes-Oxley Act includes provisions prohibiting discrimination against corporate whistleblowers who have revealed financial and other wrongdoing within a publicly traded company. SOX includes a broad range of corporate accountability and transparency measures, including a requirement that corporate boards establish internal independent audit committees. These audit committees must establish complaint procedures and accept anonymous complaints. SOX also includes provisions for enhanced financial disclosures, as well as provisions addressing auditor independence and certification of financial statements by corporate officers. Sarbanes-Oxley's whistleblower provisions create broad protection for employees of publicly held companies (and their contractors, subcontractors, and agents) who have a reasonable belief that fraud or other wrongdoing has occurred in violation of U.S. securities laws.

The Dodd-Frank Act allows for the award of monetary incentives to individuals who voluntarily provide original information relating to a violation of the securities laws, which results in the collection of monetary sanctions exceeding $1 million dollars. The bounty can range from 10 to 30 percent of the aggregate amount of sanctions collected, to be set at the discretion of the Commission (a number of factors are considered).

RESTRICTIVE COVENANTS

Use and Limitations of Garden Leave

Garden leave is a period during which a departing employee provides notice to the employer and is given his or her salary for a set period of time, but is not permitted to work. The underlying rationale for garden leave is to prevent the employee from competing in some way with the employer or taking confidential information during this period of time. Like restrictive covenants more generally, there is no clear federal law regarding garden leave and each situation will be examined independently. Unlike in many countries, however, it should not be assumed that garden leave would be valid in the U.S. if it does not satisfy restrictive covenant requirements.

TRANSFER OF UNDERTAKINGS

If a transfer of undertaking will result in a plant closing or mass layoff, as defined under the WARN Act, employees are entitled to 60 days' advance notice by the seller/old employer. If a union represents the employees of the seller, the new employer may be under a duty to bargain with the labor union and cannot change any terms and conditions of employment without first bargaining with the labor union. There is no obligation for a party acquiring a business (an asset sale) to retain any of the seller's employees. However, if the new employer reorganizes the workforce after the transfer, which results in a covered plant closing or mass layoff, the new employer or "take

over party" must provide the employees with 60 days' advance notice. In addition, an employer who acquires a workforce consisting of unionized employees is required to bargain with the union in good faith regarding the effect of the layoff on unionized employees and, in certain situations, may be required to honor the terms and conditions of employment articulated in an existing collective bargaining agreement.

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