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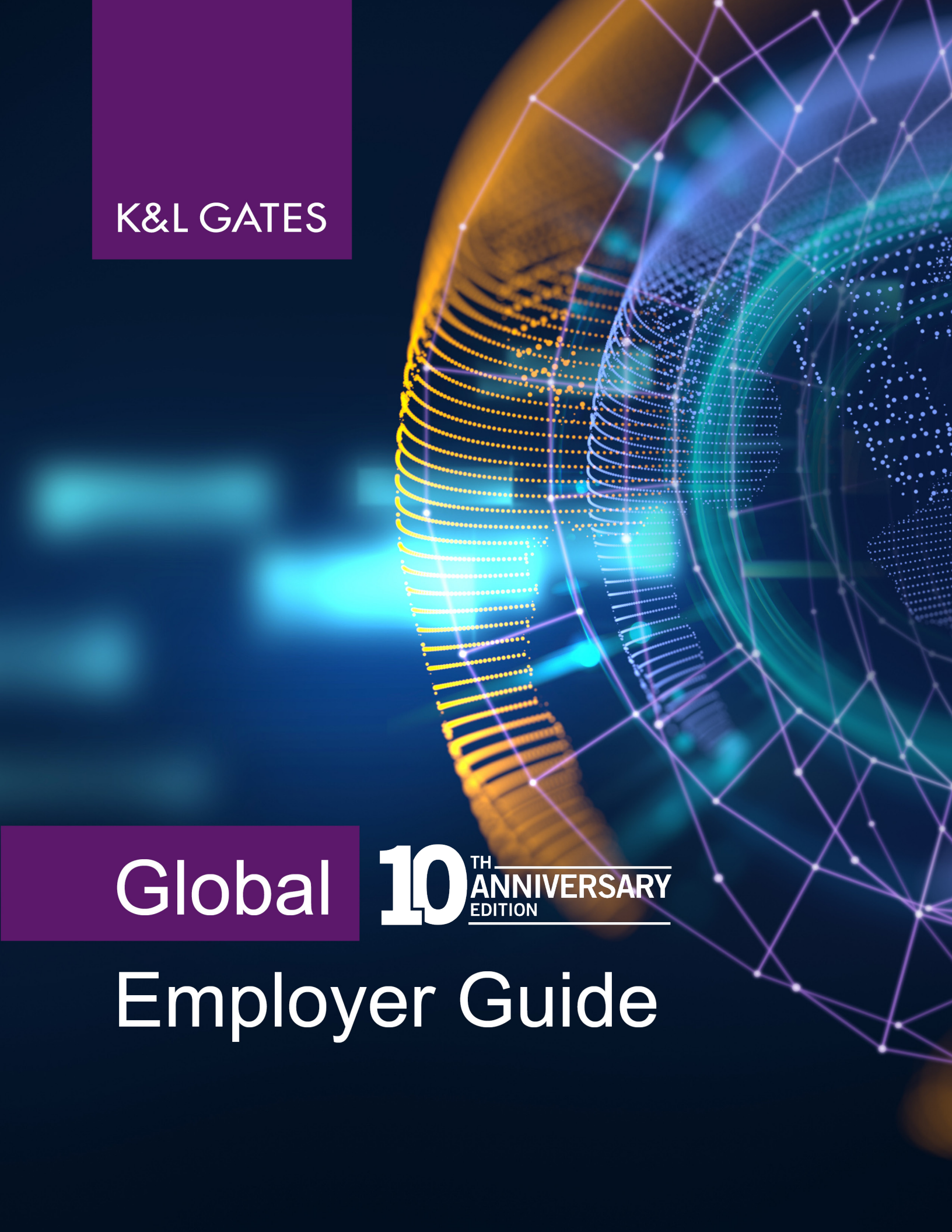

Global Employer Guide

10TH ANNIVERSARY EDITION

INTRODUCTION

Welcome to the 10th anniversary edition of the Global Employer Guide! Each year since 2015, our Global Employer Solutions® group has meticulously updated this concise, yet comprehensive, reference guide of the most notable employment laws of countries across the globe. We are pleased to provide this resource and look forward to maintaining it annually for yet another 10 years.

In the past decade, we have witnessed incredible swings between stability and disruption, global mobility and lockdowns, and standard work models and a gig economy. Heightened awareness surrounding issues such as diversity, equity, and inclusion; work-life balance; employee mental health; and, more recently, the impact of artificial intelligence on the workplace has changed the complexion of employment policies and regulations around the world.

This guide reflects the changes in nearly 20 countries over the past year. Click a country name in the table below to access its section of the guide.

Australia
Belgium
Brazil
China
France
Germany
Hong Kong
Italy
Japan
Korea
New Zealand
Qatar
Singapore
Taiwan
United Arab Emirates
United Kingdom
United States

Content current as of February 2025.

KEY CONTACTS

Our Global Employer Solutions team is comprised of hundreds of lawyers across our five-continent platform. We regularly assist global employers with workforce matters around the world throughout the life cycle of the employment relationship, including advising them on employment contracts and counseling, employee mobility, global employee handbooks, litigation, collective labor issues, and remote and hybrid work models.

Rosemary Alito

Lead Practice Area Leader
Newark
+1.973.848.4022
rosemary.alito@klgates.com

Nick Ruskin

Partner
Melbourne
+61.3.9640.4431
nick.ruskin@klgates.com

Paul Callegari

Practice Area Leader,
Office Managing Partner
London
+44.20.7360.8194
paul.callegari@klgates.com

Gene C. Ryu

Practice Area Leader
Los Angeles
+1.310.552.5035
gene.ryu@klgates.com

Michaela Moloney

Practice Group Coordinator
Melbourne
+61.3.9640.4430
michaela.moloney@klgates.com

Christopher Tan

Partner and Director of
K&L Gates Straits Law LLC
Singapore
+65.6507.8110
christopher.tan@klgates.com

Special thanks to the following law firms for their contributions to this publication:

Altius Brussels
Brussels, Belgium

Bell Gully
Auckland, New Zealand

Kim, Choi & Lim LLP
Seoul, Republic of Korea

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Australia Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

The federal Labor Government (Labor Government), elected in May 2022, has introduced three significant tranches of employment law reform.

At the top of the Labor Government's agenda item was the introduction of the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022, amending a number of Australian industrial relations areas, including fixed-term contracts, enterprise bargaining and equal pay. This legislation has brought about the greatest changes to the Australian employment law space since the introduction of the Fair Work Act 2009.

The Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023 was the second noteworthy reform through its reinforcement of employees' rights to superannuation contributions.

Perhaps the most contentious change is the third tranche of reform, being the Labor Government's Fair Work Legislation Amendment (Closing Loopholes No 2) Act 2024, which overturns the definition of "employment" and makes major changes to casual employment, independent contractors, labour hire, regulation of gig workers and wage compliance.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers are responsible for ensuring that their employees have the right to work in Australia.

Foreign workers wishing to work in Australia must apply for visas to live and work in Australia on either a temporary or permanent basis. There are a number of different types of visas administered by the Australian Department of Home Affairs.

The Temporary Skill Shortage visa (subclass 482) allows employers to sponsor skilled foreign workers to live and work in Australia for up to four years where there is a "genuine" skills shortage.

Some visas restrict the number of hours employees are allowed to work per week.

Reference/Background Checks

An employer is permitted to contact a prospective employee's referees and previous employers to gather and verify information.

Police Checks

Permitted with the applicant's consent if necessary to determine suitability for a particular job.

Working With Children Check

Mandatory for all child-related work.

Medical Examinations

Permitted with the applicant's consent if necessary to determine fitness for a particular job.

Minimum Qualifications

Permitted.

Job Advertisements

An employer must not include pay rates in job advertisements which undercut the employee's minimum entitlements under the Fair Work Act and legally binding "awards" (see below) and collective agreements.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on either a full-time, part-time or casual basis. Employees attract different entitlements depending on what basis they are employed.

Individuals can be employed on a fixed-term or on a maximum-term contract for a limited duration (with certain exceptions, such as high-income employees).

Independent Contractor

Independent contractors are commonly used and can be engaged directly by the company or via a personal services company.

Labour Hire

Labour hire workers are often engaged for short periods and are frequently used. Labour hire workers are not engaged as employees of the company which engages them; they remain employees or contractors of the labour hire firm.

III. INSTRUMENTS OF EMPLOYMENT

Awards

Awards set out the minimum pay and conditions an employee is entitled to if an award covers the business and the work the employee does.

Awards do not apply when a business has a registered agreement and the employee is covered by it.

There are currently 121 modern awards which apply to certain industries and occupations. Awards cover most people working in Australia, which means many employees who are not covered by a registered agreement could likely be covered by an award.

Registered Agreements

A registered agreement (also commonly referred to as an "enterprise agreement") sets out the minimum pay and conditions to which an employee is entitled. When a business has a registered agreement, an award does not apply. The pay and conditions provided in a registered agreement cannot be less than that of the applicable award or the National Employment Standards.

There are several different kinds of enterprise agreements. These are:

- *Single enterprise agreements* between an employer, or two or more related employers, and employees.
- *Greenfield agreements* between a union(s) and an employer(s) relating to a genuine new enterprise that an employer or two or more employers are establishing or propose to establish.
- *Multienterprise agreements*:
    - *Single interest agreements* between employees and two or more employers who have common interests or want to jointly bargain for a single agreement. These were introduced in 2023.
    - *Supported bargaining agreements* between employers with common interests and employees, focusing on whether low rates of pay prevail in the industry or sector.
    - *Cooperative workplace agreements* for employers who have consented to collectively bargain.

Ordinarily, the parties to an enterprise agreement negotiate during what is called a "bargaining period" and reach an agreement on the terms and conditions of a new agreement that will apply once approved by the Fair Work Commission. Where parties cannot reach an agreement and negotiations for a new enterprise agreement between employers and employees become "intractable," the Fair Work Commission may, after nine months of bargaining, issue an intractable bargaining declaration and decide on the terms of the new enterprise agreement that could not be agreed by way of a workplace determination.

During a bargaining period, employees and employers are able to take lawful industrial action to put pressure on the other party to reach agreement. This might take the form of a strike or work bans by the employee or by an employer response action such as a lockout. For employees to take protected industrial action, an application needs to be made to the Fair Work Commission for a protected action ballot order and a majority vote in favour of that action is required. Such an application is usually brough by a union and requires the majority of union members to vote in favour of it to allow those union members to take action. If the Fair Work Commission approves an application for protected

action, it will direct the parties to attend a conciliation conference with a view to assisting the parties in trying to reach agreement before any industrial action commences.

The Fair Work Commission must approve any agreement for it to take effect, and it will consider whether employees are "better off overall" under the agreement compared to any relevant modern award, pursuant to a global as opposed to a line-by-line assessment. The Fair Work Commission has the power to amend or remove terms which do not meet the "better off overall" test.

Common Law Contracts

A contract can be oral or in writing. Written contracts are strongly recommended.

Where no award or registered agreement applies, the contract will apply together with the minimum pay and conditions in the legislation.

Since 6 December 2023, employers cannot employ an employee on a fixed-term contract that would exceed a period of two years or have been renewed more than once unless certain exceptions apply, such as engagement in a relief position (e.g., parental leave), for specialized skills or where the salary exceeds the "high income threshold" (for 2024–2025, the amount is AU$175,000).

Terms relating to pay secrecy in employment contracts, written agreements or fair work instruments have no effect and cannot be enforced (i.e., employees are free to discuss their pay). Employers who include pay secrecy terms could face penalties.

Policies

Policies are not mandatory, but they are strongly recommended. Policies which should exist include those relating to sexual harassment, discrimination, harassment, bullying, and work health and safety.

IV. ENTITLEMENTS

Minimum (Statutory) Employment Rights

There are 11 National Employment Standards set out in the Fair Work Act, which cover the majority of employees.

1. Hours of Work

An employee can work a maximum of 38 ordinary hours in a week, although the employer may require an employee to work reasonable additional hours.

2. Annual Leave

Full-time and part-time employees are entitled to four weeks of paid annual leave, calculated on a pro rata basis based on their ordinary hours of work. Shift workers may be entitled to five weeks of paid annual leave per year. Casual employees are not entitled to annual leave and instead receive leave loading as part of their pay.

3. Parental Leave

Eligible employees are entitled to 12 months of unpaid parental leave (which can be extended by 12 months by agreement) when a child is born or adopted. Additional entitlements include adoption leave, unpaid special parental leave, no safe job leave, a right to be transferred to a safe job and a right to return to the old job. Specific legislation may also entitle eligible employees to parental leave pay from the Australian Government, equivalent to the minimum wage, for a period of up to 22 weeks.

4.a. Personal/Carer's Leave

Full-time employees are entitled to 10 days of paid personal/carer's leave a year. This covers circumstances where an employee is sick or an employee has to care for a family or household member or attend a family emergency. Part-time employees are entitled to a pro rata of 10 days each year depending on their ordinary hours of work. All employees (including casual employees) are entitled to two days of unpaid carer's leave on each occasion.

4.b. Compassionate Leave

All employees are entitled to two days of paid compassionate leave each time a family or household member dies or suffers a life-threatening illness or injury, when a child is stillborn or when the employee or the employee's spouse or de facto partner has a miscarriage.

4.c. Family and Domestic Violence Leave

All employees (including part-time and casual employees) are entitled to 10 days of paid family and domestic violence leave each year. Employees are entitled to the full 10 days from the day they start work. The 10 days renew each 12 months, but they do not accumulate from year to year if they are not used.

5. Community Service Leave

All employees are entitled to community service leave for certain activities, such as volunteering during natural disasters or emergencies and for jury duty. Jury duty entitlements differ among states/territories.

6. Long Service Leave

Full-time, part-time and some casual employees are entitled to paid long service leave once they have worked for an employer for a long period of time. Most entitlements are stipulated by state/territory legislation.

7. Flexible Working Arrangements

Certain employees have the right to request flexible working arrangements. Options include working part time, job sharing, working from home and altering work hours.

An employee is not entitled to make a request unless:

- They are an employee, other than a casual employee, who has worked for the same employer for at least 12 months.
- They are a casual employee who is a long-term employee and has a reasonable expectation of continuing employment by the employer on a regular and systemic basis.

If eligible, an employee can request flexible working arrangements if they:

- Are the parent or have the responsibility for a child who is school-aged or younger.
- Are a carer (under the Carer Recognition Act 2010).
- Have a disability.
- Are 55 years old or older.
- Are experiencing family or domestic violence.
- Provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence.

The right to request flexible working arrangements also applies to employees, or a member of their immediate family or household, experiencing family and domestic violence, or employees who are pregnant.

If a request is refused by the employer, an employee may apply to the Fair Work Commission to conciliate or arbitrate the dispute.

Before refusing a request, employers have an obligation to:

- Discuss the request with the employee.
- Make a genuine effort to find alternative arrangements to accommodate the employee's circumstances.
- Provide a written response that includes an explanation of the reasonable business grounds for refusing the request.

8. Requests to Convert From Casual to Permanent Employment

Casual employees who have worked for their employer for six months (or 12 months for a small business) can request conversion from casual to full-time or part-time (ongoing) employment. An employer must accept such a request if certain eligibility requirements are met.

9. Public Holidays

Employees are entitled to a paid day off for each public holiday in the state or territory in which they work. Some employees are entitled to additional pay if they work on a public holiday.

10. Notice of Termination and Redundancy Pay

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, it must provide the following minimum notice:

- Not more than one year of service – one week.
- More than one year but not more than three years of service – two weeks.
- More than three years but not more than five years of service – three weeks.
- More than five years of service – four weeks.

Where an employee is over 45 years of age and has completed at least two years of continuous service, that employee is entitled to another week's notice.

Alternatively, an employer can make a payment in lieu of notice for all or part of the period of notice.

When an employee resigns, he or she has to provide the notice as specified in the relevant registered agreement/award or contract.

For circumstances where an employer no longer needs a full-time or part-time employee's job to be done by anyone, i.e., a redundancy situation, and has consulted with the employee, an employee is entitled to the following redundancy payment (unless an employment contract or registered agreement specifies a higher payment):

- At least one year but less than two years – four weeks.
- At least two years but less than three years – six weeks.
- At least three years but less than four years – seven weeks.
- At least four years but less than five years – eight weeks.
- At least five years but less than six years – 10 weeks.
- At least six years but less than seven years – 11 weeks.

- At least seven years but less than eight years – 13 weeks.
- At least eight years but less than nine years – 14 weeks.
- At least nine years but less than 10 years – 16 weeks.
- At least 10 years – 12 weeks.[1]

11. Fair Work Information Statements

All new employees must be given a Fair Work Information Statement containing key terms before, or as soon as possible after, the commencement of employment.

All new casual employees must be given a Casual Information Statement containing key terms before, or as soon as possible after, the commencement of employment. Casual staff must then also be given a Casual Fair Work Information Statement after six months and then on the anniversary date of their employment.

There is also a requirement to provide a Fixed-Term Contract Information Statement to fixed-term staff who are protected by the fixed-term limitations in employment contracts.

Superannuation

Employees have a right to superannuation (or pension type) contributions under legislation.

Under the Superannuation Guarantee scheme, employers are effectively required to contribute 11.5% of employees' quarterly base salary to employee superannuation funds from 1 July 2024. Most employers make regular contributions in line with the pay period. This figure will rise on 1 July 2025 to 12%.

Overtime

In many cases, and in particular for those employees covered by a registered agreement or award, time worked outside of ordinary hours can attract overtime rates.

Right to Disconnect

New laws that came into effect in August 2024 give staff the right to refuse to monitor, read and respond to contact or attempted contact from their employer or a third party about work outside of their working hours unless the refusal is unreasonable. This law affects businesses of less than 15 employees from August 2025. What is "unreasonable" considers a range of factors, such as existing compensation for out-of-hours work, their level of responsibility and their personal circumstances.

Discretionary Benefits

Bonuses

It is common for employers to include bonus provisions in employment contracts. Bonuses are usually dependent on individual, department or company performance and are paid at the employer's discretion.

[1]The redundancy payment decreases at 10 years because when this scheme was created some years ago, employees with 10 years service also became eligible for a payment of 'long service leave'-whilst long service leave is now payable on termination earlier than 10 years, the scheme has remianed unchanged.

Salary Sacrifice

Some employers offer employees an additional two to four weeks' paid annual leave per year in exchange for employees sacrificing part of their salary each pay period.

Paid Parental Leave

Some employers offer paid parental leave schemes, which either supplement the income provided by the legislated parental leave pay scheme or offer additional periods of paid parental leave.

Other common discretionary benefits include provision of a mobile telephone, a laptop or a car.

TERMINATION OF EMPLOYMENT

I. GROUNDS

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

II. MINIMUM ENTITLEMENTS

Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, it must provide the following notice:

- Less than one year of service – one week.
- Between one to three years of service – two weeks.
- Between three to five years of service – three weeks.
- Over five years of service – four weeks.

Where an employee is over 45 years of age and has completed at least two continuous years of service, he or she is entitled to another week's notice.

Alternatively, an employer can make a payment in lieu of notice.

Notice does not need to be provided when an employer terminates an employee for serious misconduct.

When an employee resigns, he or she has to provide notice as specified in the relevant registered agreement, award or contract.

Statutory Entitlements

Payment on termination includes:

- Outstanding wages for hours already worked.
- Accrued annual leave.
- Redundancy pay (if applicable).
- Accrued long service leave (if applicable).

III. REDUNDANCY

Genuine Redundancy

Redundancy is only available in circumstances where an employer no longer needs a full-time or part-time employee's job to be done by anyone.

Consultation

If the position being made redundant is covered by an award or registered agreement, the consultation provisions in that award or registered agreement should be followed.

Redeployment

Where an employee's award or enterprise agreement covered or earns less than AU$175,000 per annum, before terminating an employee's employment because of redundancy, an employer is also

required to consider whether it is reasonable in all the circumstances to redeploy the employee within the employer's enterprise or an associated entity of the employer.

Payment

An employee is entitled to the following redundancy payment (unless an employment contract or registered agreement specifies a higher payment):

- At least one year but less than two years – four weeks.
- At least two years but less than three years – six weeks.
- At least three years but less than four years – seven weeks.
- At least four years but less than five years – eight weeks.
- At least five years but less than six years – 10 weeks.
- At least six years but less than seven years – 11 weeks.
- At least seven years but less than eight years – 13 weeks.
- At least eight years but less than nine years – 14 weeks.
- At least nine years but less than 10 years – 16 weeks.
- At least 10 years – 12 weeks[2].

IV. POST-TERMINATION RESTRAINTS

Post-employment restraints are enforceable only if reasonably necessary to protect an employer's legitimate business interests.

Noncompetes

Typically, no longer than 12 months (with some exceptions). There is a federal government review to consider removing or limiting noncompete clauses in employment contracts.

Customer Nonsolicits

Permissible, subject to the government review referred to above.

Employee Nonsolicits

Permissible.

V. REMEDIES

Unfair Dismissal

Eligible employees who have completed six months of service with their employer (or 12 months in the case of a small business employer with fewer than 15 employees) and earn up to the high-income threshold (AU$175,000 for Financial Year (FY) 2024–2025) or are covered by a modern award or registered agreement are eligible to make a claim for unfair dismissal.

The remedy can vary and includes reinstatement or an award for compensation (up to six months' salary being a maximum of AU$87,500 for FY 2024–2025).

Adverse Action

Employers are prohibited from taking "adverse action" (including termination) against employees because an employee has or proposes to exercise a "workplace right" or engages or proposes to

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[2] *Id*

engage in “industrial activity” or because of a protected attribute. Further protections include a prohibition on an employer dismissing an employee because the employee is temporarily absent from work due to injury or illness.

The remedy can vary and includes reinstatement or an award for compensation (with no maximum amount) and penalties.

A “workplace right” includes an employee’s right to share, or not share, information about his or her pay or employment terms and conditions, or an employee’s right to ask other employees about their pay or employment terms and conditions.

VI. CORPORATE REGULATIONS

Payment of Benefits/Directors

Company officers or directors are not entitled to termination benefits or an increase in termination benefits if there is a change in shareholding or control of a company.

For directors, or executive-level officers/directors in listed companies, there is a cap on termination payments, unless the payments received prior shareholder approval.

VII. STATUTORY REQUIREMENTS

Transfer of Business

The Fair Work Act contains a number of rules that apply if there has been a “transfer of business.”

These rules apply when:

- There is a connection between two employers (including the sale of all or part of a business, certain outsourcing and in-sourcing arrangements, and where the two employers are associated entities).
- The new employer agrees to employ some or all employees of the old employer.
- An employee begins working for the new employer within three months of ending his or her job with the previous employer.
- The employee’s role has not significantly changed.

The main effect of the rules is that a transferable instrument (i.e., a registered agreement) that covers the employee before the transfer will continue to apply after the transfer. The Fair Work Commission can make certain orders altering the effect of the rules if it deems it appropriate.

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

There are statutory provisions which require continuity of service when there is a transfer between related entities or where service is recognised by the purchasing employer.

VIII. RESTRUCTURING

Notification

Awards and registered agreements require employers to notify employees of the likely effects of any restructure and to discuss the change with employees.

Consultation

If a position that is subject to restructure is covered by an award or registered agreement, the consultation provisions in that award or registered agreement should be followed.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the employer's confidential information, including intellectual property, clients and other company employees.

II. CONTRACTUAL RESTRAINTS

Confidentiality provisions restrict employees from using confidential information for anything other than their duties. These provisions restrain employees from using confidential information during, and for a period of time after termination of, employment.

III. PRIVACY OBLIGATIONS

State and federal legislation imposes stringent obligations with respect to an employer's collection, use and disclosure of an employee's personal information. The Australian Privacy Principles, which apply to all businesses with an annual turnover of over AU$3 million a year, protect an individual's personal information, unless the information falls within one of the legislated exemptions. The privacy laws only apply to some employee records. In determining this, employers follow the Australian Privacy Principles and enforce policies to restrict use of personal information.

IV. WORKPLACE SURVEILLANCE

There are limitations on the way in which employers may monitor employees. Generally, the law prohibits employee monitoring in areas such as toilets, bathrooms and changing rooms. Some states also limit employee surveillance on computers, telephones and cameras without first notifying employees of that surveillance and the nature of the surveillance.

V. WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict resolution tool to determine policy breaches, misconduct or misuse of confidential information. The conduct of these investigations is determined by company policy. Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment.

WORKPLACE BEHAVIOUR

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies and agreements provide for management of employee performance and conduct.

Unfair dismissal provisions and caselaw require an employer to warn an employee before terminating his or her employment due to poor performance.

Employee misconduct may also warrant a warning, disciplinary action or, if the conduct is serious, termination of employment. Employees terminated for serious misconduct do not receive all of their usual notice and (in some states) long service leave entitlements on termination of employment.

II. BULLYING AND HARASSMENT

Bullying

Bullying is covered by the Fair Work Act and work health and safety laws. These cover all employees, contractors, outworkers, students gaining experience and volunteers.

A worker is bullied at work if:

- A person or group of people repeatedly act unreasonably towards him or her or a group of workers.
- The behaviour creates a risk to health and safety.

Reasonable performance management action carried out in a reasonable way is not bullying.

Harassment

Harassment is unwanted behaviour which is aimed at offending, humiliating or intimidating another person. Harassment in employment for an unlawful reason, such as sexual harassment, is prohibited by anti-discrimination legislation.

The Fair Work Act specifically prohibits a person from sexually harassing another person who is a worker (or seeking to become a worker) in a business or undertaking, or conducts a business or undertaking, in connection with work.

III. MANAGEMENT OF RISKS TO PSYCHOSOCIAL HEALTH

To help address mental health issues in the workplace, each Australian state and territory has introduced new regulations specifically requiring employers to identify and mitigate risks to psychosocial health in the workplace, The common psychosocial risks include bullying, harassment, violence, aggression, traumatic events, job demands and poor support.

To comply with these requirements, each employer needs to, at minimum, conduct a risk assessment to identify the risks to psychosocial health across its organisation and reasonably practicable measures to control those risks.

IV. DISCRIMINATION

Discrimination in employment, on certain grounds, is prohibited by state and federal anti-discrimination legislation. The legislation differs from state to state. Most jurisdictions make it unlawful to discriminate on the basis of sex, colour, race, sexual preference, disability (both mental and

physical), age, marital status, family or carer's responsibilities, pregnancy, breastfeeding, religion, political opinion, nationality, social origin, intersex status, gender identity or trade union membership.

In most cases, an employer is taken to be vicariously liable for its employees' actions. Employers also have a positive obligation to eliminate sexual harassment, sex-based harassment, conduct that subjects a person to a hostile work environment and victimisation under the Sex Discrimination Act 1984 (Cth).

Employees also have recourse for unlawful discrimination through the general protection provisions of the Fair Work Act.

In the anti-discrimination jurisdiction, the most common form of remedy is compensation. Reinstatement is also a remedy for unlawful discrimination under the Fair Work Act.

V. THEFT/FRAUD/ASSAULT

These are criminal acts which can amount to serious misconduct and result in immediate dismissal from employment.

VI. UNIONS

Representation

All employees and independent contractors can choose to be represented by a union or not. Any union validly appointed to represent an employee or employees must be recognised and dealt with according to the law.

Right of Entry

Union officials can enter the workplace if:

- The employer agrees for them to enter.
- They have a valid right-of-entry permit issued by the Fair Work Commission.

There are many rules surrounding union officials entering a workplace.

Workplace Delegates' Rights

New legislation and changes to industrial instruments now give workplace delegates the right to use employer facilities to represent and communicate with staff and the right to take paid union training leave.

Industrial Disputation

It is only lawful to take industrial action (e.g., strikes, lockouts, slowdowns) during particular times.

VII. STAND DOWN – FAIR WORK ACT

Employers may, in some circumstances, stand down an employee without pay during a period in which the employee cannot usefully be employed because of:

- Industrial action (other than industrial action organised or engaged in by the employer).
- A breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown.
- A stoppage of work for any cause for which the employer cannot reasonably be held responsible.

VIII. REMOTE/HYBRID WORK

There has been a sizeable increase in the number of employees working remotely that arose during COVID-19 lockdowns or as a cautionary measure to minimise the risk of infection. However, while staff are returning to their workplaces, many employers, where they can, enable staff to work a portion of time away from the workplace/at home.

While there has been no change in laws governing the right to work remotely, the union movement is calling for this to be included as a right in collective agreements, and employers are acutely conscious of permitting hybrid working models in order to attract and retain staff.

AUTHORS AND CONTRIBUTORS

Michaela Moloney

Practice Group Coordinator
Melbourne
+61.3.9640.4430
michaela.moloney@klgates.com

Nick Ruskin

Partner
Melbourne
+61.3.9640.4431
nick.ruskin@klgates.com

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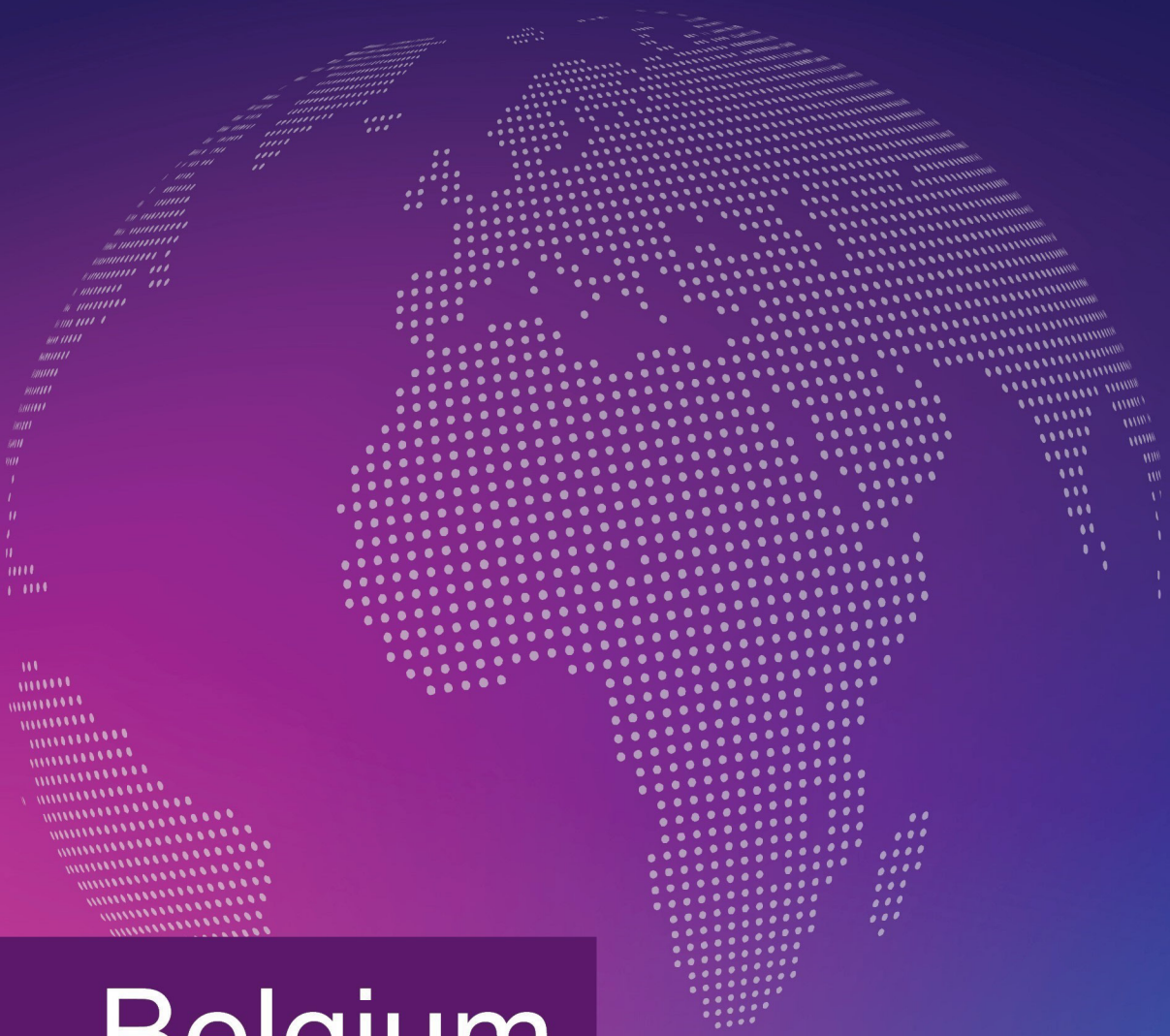

Belgium

Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

Over the past year, Belgian employment legislation has once again seen some important changes. The most significant reform has been the introduction of an obligation for employers with 50 or more workers to appoint a person of trust within the company. This person can hear workers and can advise them on the procedures available regarding psychosocial risks at work.

For the termination of employment contracts, the legislator has capped the notice period for employees who resign at 13 weeks in all cases and now also for employment contracts that entered into force before 1 January 2014. Moreover, a new dismissal protection has been introduced for employees undergoing infertility treatment and medically assisted reproduction procedures, and employees whose employment contract has ended can now reclaim their original phone number if the employer had taken over the employee's telephone subscription and phone number during the performance of the employment contract.

Finally, the Belgian Federal Parliament adopted a new Private Investigations Act that targets internal investigations conducted by an external investigator or an in-house investigation service. This new act, which has not yet entered into force, has a strong focus on protecting the rights of the person subject to an internal investigation.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Work Permit and Visa Requirements

European Economic Area and Swiss Citizens

Nationals of the European Economic Area (EEA) and Switzerland have a right to work in Belgium without a work permit.

Non-EEA and Non-Swiss Citizens

In principle, every non-EEA or non-Swiss national working and residing in Belgium must be in possession of the necessary permits.

If an employer and an employee want to establish a working relationship in Belgium for a period exceeding 90 days, the employer needs to request that the appropriate regional authorities issue a so-called “single permit” for the employee, which is a combined work and residence permit. Applications for this “single permit” must be submitted through an online portal.

Employers that want to employ an employee in Belgium for a period not exceeding 90 days will need to request the appropriate regional authorities to issue a work permit via email (and in the near future through an online portal as well).

To obtain a single permit or a work permit, the employer must submit a file that comprises, among other documents, a passport, an application form, and an employment contract.

There are a number of exceptions to the obligation to apply for a work permit or single permit.

Depending on whether the employee is already residing in Belgium (and the reason for doing this), on the term of the employment in Belgium (more or less than 90 days), and on the country of origin of the employee, the employee will also need to request a visa to be able to travel to Belgium.

Reference/Background Checks

Reference checks are allowed with the applicant’s consent. However, if the applicant clearly marks a certain former employer as a “reference” on his or her CV, then such designation as a referee can be considered as “giving consent.” The employer must inform the applicant prior to actually making contact with the former employer. In addition, all references and background checks must be limited to what is proportionate for the purpose of the recruitment (following the concept of data minimization).

Police and Other Checks

The mere checking of a criminal record excerpt without keeping a copy of it or processing it in any way is allowed when this is relevant for the job function and proportionate. However, there is a general prohibition on the processing of criminal records, except for functions for which the law explicitly requires a clean criminal record (e.g., director functions in the financial sector, security agents) and subject to proportionality requirements.

Education checks are common and allowed with the applicant’s consent.

Medical Examinations

Biological tests, medical examinations, or the gathering of oral information for the purpose of obtaining medical information are only permitted when intended to verify the current (not the future) suitability of

an employee or prospective employee for a vacant position, taking into account the specific characteristics of that position. Medical tests are only permitted for certain functions (safety functions, functions with increased vigilance, or an activity with a specific risk) and must be related to the specific nature of the position. The medical checkup of a candidate is only allowed insofar as the checkup is the last step in the selection procedure and will result in an employment contract being entered into if the candidate is declared medically suitable.

Minimum Qualifications

Generally speaking, this is not applicable, but in order to obtain or renew a work permit/single permit, it can be required to file, for example, diplomas or certificates and pay slips.

II. TYPES OF RELATIONSHIPS

Employee

Employees can be hired for an indefinite period, for a fixed-term period, for a specific project, and on a full-time or part-time basis.

Independent Contractor

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

Agency Worker

Agency workers are common but can only be employed (a) to temporarily replace an employee whose employment contract was terminated or suspended, (b) to address an increase in workload, (c) for the execution of an exceptional job, or (d) to fill a vacancy. In the latter case, the user company is offered the opportunity to test the skills of the temporary agency worker with the aim of providing to the temporary agency worker a permanent job with the user when the period of temporary agency work of a maximum of six months has come to an end. Agency workers are subject to strict conditions and are employed for a limited time.

Remuneration for agency workers cannot be lower than what would be received by a permanent worker for the same job.

Different collective bargaining agreements (CBAs) set out the benefits enjoyed by agency workers, and a joint committee has been created specifically to cover the agency workers.

An employment contract between a temporary work agency and a temporary agency worker must be entered into in writing no later than the time when the worker starts working.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

An employment contract for an indefinite duration can be concluded orally or in writing. However, the following contracts must be in writing:

- Fixed-term contracts.
- Contracts for specific projects.
- Part-time contracts.
- Replacement contracts.
- Contracts for domestic servants.
- Contracts for working at home.
- Contracts for temporary work and temporary agency work.

- Student contracts.

The essential elements of the employment contract include:

- The function performed.
- Amount of wages.
- Working time.
- The workplace.

There are specific requirements for written employment contracts in regard to certain clauses, which include schooling clauses and noncompete clauses.

Three elements need to be present to qualify a contract as an employment contract:

- An employee performs work for wages.
- Payment by the employer.
- The work is performed under the authority of the employer.

Following the act of 7 October 2022 on transparent and predictable working conditions, which transposes an EU directive, employers must ensure that they inform their employees at the latest on their first working day, whether in writing or electronically, and either in the employment contract or in a separate document(s), about the essential aspects of the employment relationship. Besides more "standard" elements, such as the place of work, the function, the start date, the salary, and fringe benefits, these essential aspects also include "less standard" elements, such as information about the fixed or variable work schedule; the function title; the rank, capacity, or category of the work performed to determine the employee's salary and employment conditions; and the arrangements relating to the performance of overtime hours and additional hours (for part-time workers).

This act and CBA no. 161 have also introduced the right of employees with at least six months' length of service to request a form of employment that is more predictable and secure (e.g., an indefinite-term employment contract for employees with a definite-term contract, fixed working schedules for employees with variable working schedules). The employer has the obligation to justify any postponement or refusal of such a request. The employees making use of this CBA benefit from protection against dismissal and any negative action.

Belgian labor law allows employment agreements to be signed electronically. However, an electronic employment contract is only legally compliant if it is signed with the employee's e-ID and card reader or through a qualified electronic signature (e.g., DocuSign) and if the contract is archived with a qualified electronic archiving service. Currently, there is only one qualified electronic archiving service in Belgium, namely Docbyte. However, the Employment Contracts Act does not provide for a specific penalty when the electronically signed employment contract is archived with another electronic archiving service.

Codes or Rules

CBAs can be concluded at three different levels:

- At the national level, within the National Labour Council.
- At the sector-of-activity level, in joint committees or joint subcommittees.
- At the company level.

CBAs at the national or sector level can be made compulsory by royal decree, which means that the CBA will also apply to those employers who are not represented by an employer's representative organization and their employees.

Where the CBA is not compulsory, only the clauses that are not contrary to the written contract of employment will apply to the employers who are not represented by an employer's representative organization and their employees.

Registered Agreements

No requirement to lodge an employment contract with, or get approval from, a third party.

Policies

A distinction has to be made between work rules, which are a mandatory document, and other policies (e.g., car policy, Internet policy).

The mandatory work rules must contain specific information required by law (e.g., work schedules, an overview of disciplinary measures, grievance procedures, policy on alcohol and drug abuse, a written health and safety policy).

In order to prepare and amend the work rules, specific procedures must be followed.

IV. ENTITLEMENTS

Minimum Employment Rights

Working Hours

There is a limit on working time of an average of 38 hours per week.

Deviations exist on the sector level provided in CBAs.

Generally, working at night, on Sundays, or on public holidays is prohibited. However, the law provides for certain exceptions.

Employees holding managerial positions or positions of trust (this includes a director, manager, or any person exercising authority who has responsibility for all, or a significant subset of, the enterprise), as well as sales representatives, home workers, and domestic servants, are not affected by the regulations on working time.

The Act of 5 March 2017 on Practicable and Flexible Work modernized Belgian employment law in regard to working time. This act introduced, among other things, a legal framework for flexitime (working with core time frames and flexible time frames within certain limits), provided that certain formalities are met and a time registration system is put in place.

In a landmark judgment of 14 May 2019, the Court of Justice of the European Union (CJEU) held that EU member states must oblige employers to set up a system for recording the time worked each day by each worker. Following this judgment and like other member states, Belgium will have to amend its working time legislation and oblige employers to introduce a working time registration system for all employees and not only for employees with flexitime, as is the case today. On 22 May 2020, the Brussels Labour Court of Appeal rendered the first Belgian judgment applying this ruling of the CJEU. However, caselaw from different Labour Tribunals of 2020 and 2021 ruled that as long as the Belgian state has not adapted its legislation, an employer cannot be obliged to introduce a time registration system.

The Labour Deal Act of 3 October 2022 has introduced (a) a four-day work week (i.e., an option for full-time employees to work their working week during four rather than five days and to perform the same working time during four longer work days), (b) a varying weekly working regime (i.e., an option to work more in one week and have more time off in the following week), and (c) an obligation to

increase the notification period for variable working time schedules for part-time workers from five to seven days.

Rest Breaks

An employee cannot work for more than six hours without a break. After six hours, an employee is entitled to a break of at least 15 minutes.

An employee is entitled to a break of 11 hours between two working periods. Once per week, an employee is entitled to 35 hours (11+24) of uninterrupted rest.

Overtime

Grounds

In principle, overtime hours can only be performed on the basis of a limited number of specific grounds, such as sudden, unexpected increases in workload and work to prevent or repair damage to assets.

However, there is an exception to the employer's obligation to prove such specific grounds of justification. Employers can indeed use voluntary overtime hours in their company without any need for justification, provided that the employee's prior written approval is given in this regard. Such approval is valid for six months, but it can be renewed.

There exist two types of voluntary overtime hours:

- "Ordinary" voluntary overtime hours that can be performed up to 120 hours per employee per year. A CBA at sector level can even increase this credit of "ordinary" voluntary overtime hours by up to 360 hours.
- "Relance" voluntary overtime hours that can only be performed during the period from 1 July 2023 to 30 June 2025. The maximum number of "reliance" voluntary overtime hours that an employee can perform is 120 hours per year. However, the combined maximum of "ordinary" and "reliance" voluntary overtime hours may not exceed 220 hours per year.

For some grounds of overtime, the employer needs the prior consent of the trade union delegation and the social inspection services or needs to provide notice to the trade union delegation and the social inspection services.

Overtime Pay and Compensatory Rest

In principle, working overtime entitles the employee to 50% extra pay for the overtime performed, while working on Sundays or on public holidays entitles the employee to 100% extra pay for the overtime performed.

Compensatory rest breaks are also provided.

Working time may be performed on average during a certain reference period, which is in principle a quarter, but it can be extended to one year. At no time during such reference period may the number of overtime hours exceed 143 hours, i.e., the so-called internal threshold, but a sector CBA can provide for a higher threshold (without upper limit). If the threshold is reached, the employee should immediately receive compensatory rest before he or she is allowed to perform more overtime hours. However, provided that certain procedures are followed and for certain types of overtime hours, employees can waive their entitlement to compensatory rest for a maximum of 91 hours per calendar year (which can be extended to 130 or 143 hours if certain procedures are complied with) and agree on a simple payout.

As an exception to the rules above, employees performing “ordinary” voluntary overtime hours are entitled to normal pay and overtime pay (50% or 100%), but they are not entitled to any compensatory rest. Employees performing “relance” voluntary overtime hours will not be entitled to overtime pay nor to compensatory rest.

Wages

Minimum wages are determined in CBAs (on a national or sectoral level) and are, in general, based on an employee’s professional experience and seniority.

With the recent European Pay Transparency Directive, the European Union wants to close the gender pay gap by defining key concepts, introducing binding pay transparency measures and strengthening remedies and enforcement mechanisms. Belgium has not yet transposed this directive into national legislation. The deadline for doing so is 7 June 2026.

Vacation

Employees are entitled to four weeks’ paid annual leave (20 days for those working five days a week, and 24 days for those working six days a week), provided that they worked the entire preceding calendar year.

Employees receive their normal remuneration together with an extra payment of holiday pay equivalent to 92% of their monthly remuneration (so-called “double holiday pay”).

Employees who are starting their careers or who are restarting their activities after a long time off are entitled to additional holidays after an introductory period of three months, so they have the possibility of benefitting from four weeks of holiday over the period of one year. The employee will receive holiday pay that is equal to his or her regular salary. Holiday pay will be financed through a deduction from the double holiday pay of the next year.

As from 1 January 2024, employees who fall ill during their legal holidays are allowed to take up these legal holidays at another time within a period of 24 months.

There are 10 public holidays a year. An employee is entitled to a replacement holiday day when a public holiday falls on a normal rest day.

The Act of 5 March 2017 on Practicable and Flexible Work introduced an option for employees to “save” time and to take this up as holidays at a later stage during their careers, e.g., the saving of voluntary overtime hours or conventional holidays or the converting of a premium in paid annual leave (if provided for by royal decree). The legal framework on “career saving” entered into force on 1 February 2018. However, this system can only be called upon if a sector CBA is entered into setting out the framework. If, after six months following such a request, no sector CBA is entered into, then the system can be introduced by company CBA. In some sectors, like the clothing sector and the insurance sector, a CBA on career savings has been adopted. In other sectors, such as, among others, the additional national joint committee for white-collar workers (which applies to a large proportion of white-collar workers), the chemical industry, the food industry, and the metal and the petroleum sectors, a request has been submitted but no sector CBA has been entered into within a period of six months, which means that employers in these sectors can now enter into a company CBA on career saving.

Sick Leave and Pay

Employees are entitled to sick leave due to incapacity to work. Employees are entitled to 30 days of “guaranteed” remuneration in these circumstances, paid by the employer as follows:

- A white-collar worker is entitled to 100% of his or her remuneration.

- A blue-collar worker is entitled to 100% of his or her remuneration for the first seven days, then 85.88% of his or her remuneration from day eight to day 14 and 30% of his or her remuneration from day 15 to day 30, topped up with an allowance from the National Health Service.
- After the 30-day period, the employee is entitled to disability allowances paid by the National Health Service.

If so provided for in the work rules or in a CBA, the employee must submit a medical certificate for any work incapacity. Recent legislation now provides that the employee will be exempted from this obligation to submit a medical certificate three times a year for the first day of work incapacity. Companies that employ less than 50 employees can deviate from this exemption in their work rules.

To accommodate the reintegration of sick employees, a so-called "reintegration track" exists in which the occupational physician (arbeidsgeneesheer – médecin du travail) examines whether or not a disabled employee can continue to work temporarily or permanently by giving him or her adjusted work or another function within the company. The procedure for "medical force majeure" (i.e., establishing the termination of the employment contract without any notice period to be performed or indemnity in lieu of notice to be paid) can only be initiated after at least nine months of incapacity for work and will have to be established through a separate "medical force majeure" track. Since 1 April 2024, an employer who terminates an employment contract for medical force majeure must pay a contribution of €1,800 to a "Back to Work Fund" set up within the National Health Service. This contribution replaces the obligation to pay an outplacement package.

Maternity/Parental Leave and Pay

Maternity leave normally lasts for 15 weeks, which includes six weeks of prenatal leave (of which one week is compulsory and five weeks can be carried over as postnatal leave) and nine weeks of postnatal leave.

In the case of multiple births, maternity leave normally lasts for 19 weeks, which includes eight weeks of prenatal leave (of which one week is compulsory and seven weeks can be carried over as postnatal leave), nine weeks of postnatal leave, and two additional weeks at the request of the employee.

Maternity leave can be extended in specific cases, e.g., for up to 24 weeks in the case of hospitalization of the newborn.

Maternity leave allowances are paid by the National Health Service. Within the first 30 days, 82% of normal pay is paid, then 75% of normal pay is provided thereafter.

Employees have the right to return to work, and there is protection against dismissal from the date the employer is notified about the pregnancy up until a month following maternity leave.

The father or co-parent of a newborn child is entitled to 20 days of paid birth leave. The father or co-parent benefits from protection against dismissal as from the notification of the birth leave and up to five months following the date of birth. Birth leave can be taken within four months from the date of the newborn's birth.

For birth leave, the employer is required to pay the normal remuneration for the first three days of leave, with the other 17 days being paid as an allowance by the National Health Service.

Carer's Rights

Employees are entitled to carer's breaks in order to assist or provide care to a household or family member suffering a serious illness, parental leave, palliative care leave, etc., under certain conditions.

This carer's break system enables employees to suspend their employment contract completely (full break) or to reduce their working hours by half or one-fifth for a maximum period of 51 months (in some cases). During this period, they will receive a lump-sum monthly allowance from the National Unemployment Office on top of their reduced salary.

Different forms of parental and thematic leave exist, for example:

- One-tenth parental leave (for full-time employees), e.g., the possibility for parents to stay with their children on Wednesday afternoon.
- Flexible forms of taking up full-time and half-time parental leave.
- Flexible forms of taking up thematic leave for providing medical assistance.

A national CBA no. 162, which entered into force on 1 October 2022, allows employees with at least six months' of service to ask their employer for a more flexible working scheme (e.g., telework, an amendment of their work schedule, a reduction of working time) for specific reasons relating to child care or personal care of a severely ill family member. The employees making use of this CBA benefit from protection against dismissal and any negative action. The employer has the obligation to justify any postponement or refusal of such a request.

Discretionary Benefits

An employment contract of an individual employee can always stipulate that an employee will also receive other benefits, including a car, laptop, mobile phone, and insurance, for example.

In Belgium, one of the most popular discretionary benefits is the provision of "meal vouchers." These vouchers can be used to buy food and other provisions and are accepted in stores and most restaurants. Another very popular benefit is the granting of a company car, which the employee can use for private purposes. In an attempt to solve road congestion caused by such company cars, the Belgian government introduced a so-called "mobility budget."

This "mobility budget" is a budget that an employee can freely allocate to three "buckets" (a company car that is more environmentally friendly, alternative means of transportation, or a cash balance amount).

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination of the employment contract resulting from a unilateral decision taken by either party usually takes one of the following forms: termination with notice, termination with payment of an indemnity in lieu of notice, or termination for serious cause.

An employer may give notice to, or dismiss, an employee on any grounds as long as the grounds are not prohibited by law (e.g., discrimination) and as long as the dismissal is not considered to be "clearly unjustified" (see "Dismissal Action" below). No administrative or legal approval is needed. There is specific protection against dismissal on the basis of a number of reasons, including, among others:

- Employee representatives in the works council and the Committee for Prevention and Protection at Work.
- Nonelected candidates for the works council and the Committee for Prevention and Protection at Work.
- Trade union delegates.
- Application for maternity or birth leave.
- Parental leave or adoption leave.
- Being a candidate for a political mandate.
- Redundancy or threatened redundancy due to new technologies.
- Application for paid education leave.
- Application for leave in order to assist a person who is suffering a serious disease.
- Request by a night worker to return to a daytime working schedule.
- The lodging of a claim in relation to violence, harassment, or sexual harassment.
- The lodging of a claim in relation to discrimination.
- New protection grounds, such as the filing of a request for a form of employment that is more predictable and secure (CBA no. 161) or a more flexible working scheme due to child care or taking care of a severely ill family member (CBA no. 162), a request for a four-day work week, or the making of a report as a whistleblower.
- Very recently, a new dismissal protection has been introduced for employees undergoing infertility treatment and medically assisted reproduction procedures.

The employer will have to prove that the grounds of dismissal are not related to the reasons listed above or it will have to comply with a strict dismissal procedure before the employee is terminated.

The employer may terminate an employment contract without notice and without paying any compensation in the event of a serious cause, i.e., a fact due to which the relationship between the employer and the employee is immediately and irrevocably damaged beyond repair, provided that the reason is not known by the employer for more than three working days.

II. MINIMUM ENTITLEMENTS

Payments/Notice

An employer wishing to terminate an employment contract does not have to consult or obtain prior approval from the works council or any other regulating body or court (unless the employee would have a protected status for which such prior approval is provided).

Notice of termination subject to a notice period by the employer may only be validly given in a written statement, sent by registered mail, or a delivery by bailiff, specifying the starting date and duration of the notice period. For a termination subject to the payment of an indemnity in lieu of notice, no specific

formalities apply. However, it is advisable to send the employee a notice letter as proof of the date of termination.

For employment contracts that became effective before 1 January 2014, notice periods are calculated in two distinct steps. The first step of the notice period is calculated based on the seniority of the employee on 31 December 2013. The second step is calculated based on the seniority acquired after 1 January 2014.

The following notice periods apply when an employee is dismissed under an employment contract that became effective on or after 1 January 2014. They also apply to the second step of the calculation for employment contracts that began before 1 January 2014:

- Zero to three months of continuous service – one week.
- Three to four months of continuous service – three weeks.
- Four to five months of continuous service – four weeks.
- Five to six months of continuous service – five weeks.
- Six to nine months of continuous service – six weeks.
- Nine to 12 months of continuous service – seven weeks.
- 12 to 15 months of continuous service – eight weeks.
- 15 to 18 months of continuous service – nine weeks.
- 18 to 21 months of continuous service – 10 weeks.
- 21 to 24 months of continuous service – 11 weeks.
- Two to three years of continuous service – 12 weeks.
- Three to four years of continuous service – 13 weeks.
- Four to five years of continuous service – 15 weeks.
- As of five years – plus three weeks per commenced year of continuous service.
- As of 20 years – plus two weeks per commenced year of continuous service.
- As of 21 years – plus one week per commenced year of continuous service.

The first step for employment contracts that became effective before 1 January 2014, taking into account the seniority of the employee on 31 December 2013, is calculated as follows for white-collar employees:

- If the annual remuneration of the employee was below the amount of €32,254 gross on 31 December 2013, the first part of the notice period amounts to three months per started period of five years of seniority.
- If the annual remuneration exceeded the amount of €32,254 gross on 31 December 2013, the first part of the notice period amounts to one month per started year of seniority, with a minimum of three months.

For blue-collar workers, the first step for contracts that entered into force before 1 January 2014 gives rise to shorter notice periods.

For workers who resign, a recent Act of 16 March 2023 has capped the notice period to be performed at 13 weeks in all cases and is thus now also for employment contracts that entered into force before 1 January 2014.

Where the individual is entitled to an indemnity in lieu of notice, this is calculated on the basis of the gross annual compensation at the time of termination, which includes all benefits earned over the last 12 months of employment. The indemnity in lieu of notice is equal to the salary that would have been due for the full duration or the remaining part of the notice period.

The Labour Deal Act of 3 October 2022 has introduced a so-called “transition path” providing for the option to already have an employee start working for a new employer (known as the “user”) during the employee’s notice period with their employer. Such work will be organized by the temporary work agencies or by the regional employment agencies. An agreement will have to be concluded between the initial employer, the employee, the new employer (known as the “user”), and the temporary work agency or regional employment agency regarding the modalities and the duration of this transition path.

Statutory Entitlements

During the notice period, the employee is entitled to paid time off to look for new employment: a half-day per week and up to one day per week during the last 26 weeks of the notice period.

All employees who are entitled to a notice period (or an indemnity in lieu of notice) of at least 30 weeks are entitled to outplacement services (the general system). If the employment contract is terminated with a notice period, the employee must use this outplacement support during his or her working hours. In case the contract is terminated with an indemnity in lieu of notice, the employer may deduct four weeks’ salary from the indemnity in lieu of notice. Employers are exempt from the obligation to offer outplacement to employees proving their medical incapacity to follow the outplacement support (for example, a terminally ill employee). If the contract is terminated with an indemnity in lieu of notice, the full amount of the indemnity in lieu of notice will in that event be due without deduction of the four weeks’ salary.

Please note that the general system does not apply to companies that are considered companies in “restructuring.” If the employee is not entitled to a notice period (or an indemnity in lieu of notice) of at least 30 weeks but he or she is older than 45, subsidiary rules pertaining to outplacement services apply.

Employees with a notice period or indemnity in lieu of notice of at least 30 weeks will be entitled to a one-off budget of €1,800 to pay for additional redeployment measures, such as extra outplacement, coaching, or training. This budget will not entail an extra cost for the employer but will be financed through the employer’s social security contributions on part of the notice period or the indemnity in lieu of notice. This system will enter into force on a date still to be determined but by the latest on 1 April 2025.

Employees will also be entitled to a pro rata end-of-year premium (known as the “13th month”) if provided for in the applicable sectoral CBAs.

An employee will also be entitled to departure holiday pay, which is an anticipated payment of the holiday pay for the year following the year in which the employment relationship came to an end and will, therefore, be deducted from the holiday pay normally due by the new employer of the employee concerned for that year.

Following a recent legislative change, employees whose employment contract has ended can now reclaim their original phone number if the employer had taken over the employee’s telephone subscription and phone number during the employment contract’s performance.

Dismissal Action

Since 1 April 2014, each dismissed employee has the right to know the precise reasons that have led to his or her dismissal and can request a “motivation” or “justification.” Failure to comply with the obligation to provide the reasons for dismissal within the prescribed period can lead to an administrative fine amounting to two weeks’ salary. If the employee is not satisfied with the reasons given by the employer, he or she can bring a claim for “clearly unjustified dismissal” before the Labour Court. If the court accepts that the dismissal was “clearly unjustified,” the employer can be liable to

pay damages to the employee amounting to a minimum of three and a maximum of 17 weeks' salary, according to the "degree of unreasonableness."

Litigation involving termination disputes is not unusual. Such litigation usually takes between 12 to 15 months after the application is made before being tried before the Labour Tribunal, with an additional year if an appeal is lodged with the Labour Court.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

There are protections under the EU Acquired Rights Directive/CBA no. 32 to automatically transfer employee entitlements in the event of transfers of an undertaking or part thereof. All employees' rights and obligations are automatically transferred to the new employer, and it is not necessary to sign a new employment contract.

There is a duty to inform and consult with employee representative bodies or, in the absence of representative bodies, to inform employees directly.

If an employee is dismissed because of a transfer, this is considered unfair unless economic, technical, or organizational reasons can be established or it is a case of a serious cause.

II. RESTRUCTURING/REDUNDANCY

Collective Dismissal/Plant Closure: Definitions

Regarding the employer's information and consultation obligations, a collective dismissal occurs when the following number of employees are laid off during a 60-day period:

- Where there is an average of 20 to 100 workers employed in the year prior to the redundancies, 10 or more employees are laid off.
- Where there is an average of 100 to 300 workers employed in the year prior to the redundancies, 10% or more of employees are laid off.
- Where there is an average of more than 300 workers employed in the year prior to the redundancies, 30 or more employees are laid off.

An employer planning a collective dismissal must follow strict procedures in terms of information and consultation.

A plant closure occurs:

- In the case of a definitive cessation of the main activity of the company.
- If the number of employees is reduced below one-quarter of the average number of employees employed in the company during the four quarters preceding the quarter in which the definitive cessation of the company takes place.

Information and Consultation

The employer must give notice of its intention to conduct a collective dismissal to the employee representatives (or the employees directly in case of absence of employee representatives), as well as to the appropriate public authorities.

The employer must inform and consult with the works council before any decision of collective redundancies is taken and before any public announcement is made. Where there is no works council, the employer must inform and consult (in accordance with a prescribed format) with the trade union delegation; where there is no works council and no trade union delegation, the Committee for Prevention and Protection at Work must be informed and consulted; and where there is no works

council, no trade union delegation, and no Committee for Prevention and Protection at Work, the employees must be informed and consulted directly.

Following the information and consultation, if the employer decides to proceed with the collective dismissal, the employer must send a second notification to the appropriate public authorities that sets out the number of employees normally employed, the number of employees being laid off, the reason for the collective dismissal, the period during which the layoff will occur, etc.

In principle, the collective dismissal cannot occur during the 30 days following the second notification to the appropriate public authorities, i.e., the cooling-off period.

During the cooling-off period, it is common to negotiate a social plan detailing the conditions under which the concerned employees will be dismissed and to set up an employment cell if the employer is required to do so. An employment cell is a redeployment body aimed at assisting the dismissed employees in finding new employment and to comply with formalities toward authorities. It must be set up by employers employing more than 20 employees, together with the trade unions and the regional employment agency. An employer employing 20 employees or less is only obliged to set up such cell if it wishes to dismiss employees within the framework of “bridge pension” (a system of unemployment benefits with company top-up) at a lower age than the age that is normally applicable for “bridge pension” within the company. The employment cell must make an outplacement offer to the employees who participate in the cell.

After the cooling-off period, the employer can, in principle, proceed with the individual dismissals in accordance with legal provisions and the provisions of the social plan (if any).

It should be noted that additional formalities would need to be complied with if the collective dismissals were to be accompanied by the closure of the company or a division of the company.

Payment

Employees made redundant during a collective dismissal are in principle entitled to receive a collective dismissal allowance. This collective dismissal allowance is not due to employees who are entitled to the special closure indemnity.

Contrary to the definition of “collective dismissal” in the context of information and consultation obligations, a “collective dismissal” with respect to the specific collective dismissal indemnity is defined as: any dismissal of personnel due to economic or technical reasons and involving, over a period of 60 days, a 10% reduction of the workforce, with a minimum of six dismissals in the case of companies employing between 20 and 59 employees.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Following Article 17 of the law regarding employment agreements, an employee may not disclose, even after termination of employment, any “trade secrets” or secrets concerning personal or confidential matters that he or she has obtained during his or her employment with the company.

A law of 30 July 2018, transposing the European Directive 2016/943 on the protection of trade secrets into Belgian law, introduced, among others, a definition of what is understood by a “trade secret” within the Belgian Code of Economic Law. To qualify as a trade secret, company information must meet three cumulative criteria:

- The information must be secret.
- The information must have commercial value.
- The person holding the information must have taken reasonable protective measures to safeguard its confidentiality.

Article 17 of the law regarding employment agreements has been brought in line with this definition of “trade secrets” in the Code of Economic Law. However, in practice, this should not lead to substantial changes, as this update is a mere modification of terminology (making it clearer and consistent with other legislation) and is in line with existing caselaw on this concept.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

In order for an “ordinary” noncompete to be valid, certain requirements must be met:

- The clause must be in writing.
- It must concern activities similar to those activities that the employee exercised at his or her former company and the activities are exercised with a competitor of the former company.
- A geographic limitation is to be taken into account.
- The noncompete clause must not exceed 12 months, starting from the termination of the employment contract.

The employer is obliged to provide payment of a single lump-sum amount in compensation for a noncompete clause of at least 50% of an employee’s gross salary corresponding to the duration of the clause, unless the employer waives the application of the clause within 15 days of the end of the employment relationship.

A “derogating” noncompete clause is also used in Belgium but only for certain categories of undertakings. This is an alternative for multinationals to protect their cross-border interests.

Specific rules apply to noncompete clauses for sales representatives.

Employee nonsolicitation clauses are permissible but are only enforceable if they are reasonable.

The recent local implementation of the EU Directive on Transparent and Predictable Working Conditions has significantly reduced the application of exclusivity clauses, limiting them to situations of fair or unfair competition by the employee, the disclosing of business secrets, or the disclosing of secrets relating to personal or confidential matters.

III. DATA PROTECTION OBLIGATIONS

Data Protection Legislation

The General Data Protection Regulation (GDPR) entered into force on 25 May 2016. It harmonizes data protection legislation in the European Union and strengthens the rights of individuals regarding the collection and processing of their personal data.

The GDPR still leaves room for member states to lay down specific rules, which may not deviate from the GDPR, in national legislation. In Belgium, a new Data Protection Act of 30 July 2018 entered into force on 5 September 2018.

Protection of personal data is also guaranteed by the Act of 13 June 2005 on electronic communications, which lays down the principles applicable to the secrecy of communications, data processing, and protection of users' privacy.

The Belgian Data Protection Authority is responsible for monitoring compliance with data protection legislation. It has the power to sanction companies that violate the data protection rules with huge administrative fines of up to €20 million or 4% of the company's annual global turnover.

Legal Basis for Processing

Circumstances where the processing of personal data is allowed, in principle, include:

- Where it is necessary for the performance of a contract to which the data subject is a party.
- Where it is necessary for compliance with a legal obligation of the controller.
- Where the person concerned has given his or her explicit consent, although consent is often considered to be problematic in an employment context considering the hierarchical imbalance between employers and employees. Moreover, consent may be freely revoked.
- Where it is required to achieve the legitimate interests of the controller or of a third party.
- Where it is necessary to protect the vital interests of the data subject or another natural person.
- Where it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

The processing of sensitive personal data (i.e., ethnic origin, political opinions, religious beliefs, union membership, genetic or (certain) biometric data or data relating to health or sexual orientation) is, in principle, prohibited, but there are some limited exceptions under the GDPR (e.g., the processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law; the data processing is necessary to protect the vital interests of the employee).

Recording Obligations

Employers are required to maintain records of their personal data processing activities. In the context of labor law, this includes documenting what, how, why, for how long, and by whom employee data is collected and processed; details of (any) transfers to third countries; and information about technical and organizational security measures.

When processing operations are likely to result in high risks to data subjects (e.g., when involving new technologies, such as artificial intelligence), employers will additionally need to conduct a specific Data Protection Impact Assessment, detailing the risks and ways to remedy such risks, prior to implementing the relevant processing operations.

Employee Information

An employer is obliged to inform individuals in detail about the collection and processing of their personal data, including data sharing and international transfers. Such information should generally be provided through various privacy notices for each category of individuals (e.g., employees, applicants), in order to only convey the information relevant to that category.

Data Sharing

Data sharing with third parties (including service providers such as payroll providers and marketing partners) must be thoroughly assessed and framed within a data sharing agreement to ensure that GDPR requirements are complied with throughout the data life cycle. Additionally, both disclosure of data to and receipt of data from third parties must be indicated in the records of personal data processing activities.

There are no intragroup exemptions, so group companies have to be treated as third parties and any data flows among group companies need to be carefully assessed.

Data Transfers

There are limited ways in which data can be transferred to third parties outside the EEA. Where the recipient is not located in a country benefiting from an "adequacy decision" or all involved parties have implemented binding corporate rules, a data transfer agreement will generally need to be implemented to ensure that GDPR requirements are complied with throughout the data life cycle.

Data Subject's Rights

Employees have several rights under the GDPR regarding the processing of their personal data, including:

- The right to access, rectify, or delete their data.
- The right to restrict the processing.
- The right to data portability.
- The right to object.
- The right to freely withdraw consent.

Upon receiving a data subject's access request, the employer will need to address the request within one month of its receipt, but an additional two-month time extension may be applied to complex requests.

Data Protection Officer

Employers, especially larger organizations, may be required to designate a data protection officer (DPO) responsible for monitoring GDPR compliance and engaging with data subjects and supervisory authorities.

A DPO must have expert knowledge of data protection, a good understanding of the organization's operations, and independence when performing his or her tasks.

The DPO is a protected employee who may not be dismissed for performing his or her tasks.

IV. WORKPLACE SURVEILLANCE

Camera Surveillance

An employer has the right to monitor an employee's activity during work time if the following requirements are met:

- The monitoring is temporary.
- The monitoring demonstrates one of the following purposes: (a) health and safety, (b) protection of company assets, (c) monitoring the production process of machines or workers to check that they are working properly and to assess and improve the organization of workers' tasks, or (d) control of the employee's work (which cannot be permanent).
- The purpose of monitoring cameras is clearly defined.
- The employer informs and consults with the works council or, failing that, the Committee for Prevention and Protection at Work, which must regularly evaluate the monitoring systems used and make proposals for their revision in line with technological developments.
- The employer informs each employee individually prior to the implementation of the monitoring system (including the number and location of cameras, whether or not images are retained, the purpose of the cameras, and the relevant periods during which they are in operation), and monitoring by the camera must not lead to interference in an employee's private life.

Information obtained in violation of these rules is null and void, will not constitute evidence, and cannot justify either sanction or dismissal. In Belgium, it is up to the court to assess the admissibility of evidence irregularly obtained, taking into account all the elements of the case.

Except where a formal requirement under penalty of nullity has not been complied with, irregular evidence may only be refused if the irregularity committed affects the reliability of the evidence or if the use of the evidence is contrary to the right to a fair trial.

Whistleblowing

The Belgian Act of 28 November 2022 on whistleblowing, which transposes the EU Whistleblowing Directive, obliges companies with at least 50 workers to install an internal reporting channel.

The obligation to set up an internal reporting channel does not apply for legal entities with less than 50 employees, with the exception of companies falling within the scope of the provisions on financial services, products, and markets and the prevention of money laundering and terrorist financing. Therefore, a law firm must establish an internal reporting channel as soon as there is one employee working in the firm.

The categories of persons who may act as a whistleblower include employees but also self-employed persons, shareholders, board members, volunteers, and (un)paid trainees, as well as persons who work under the authority and supervision of contractors, ex-employees, subcontractors, or suppliers. Companies must open their internal reporting channel to their employees. Whether or not they also open it to other categories of persons is optional. External reporting is always possible.

Workplace Investigations

Employers may conduct a workplace investigation to determine policy breaches, misconduct, or misuse of confidential information. However, the investigation has to be open, and evidence must be shared with the employee in question to allow him or her to defend himself or herself.

There are significant restrictions on the monitoring of entrances and exits, emails, and Internet use.

In May 2024, the Belgian Parliament adopted a new Private Investigations Act that targets internal investigations conducted by an external investigator or an in-house investigation service. This new act, which has not yet entered into force, has a strong focus on protecting the rights of the individual subject to an internal investigation.

Internal investigations falling under the new act's scope must meet stringent obligations, such as the obligation (a) to prepare a "mission statement" detailing the investigation's scope and purpose; (b) to

draft a written policy outlining the rules and conditions of the internal investigation; (c) to inform persons that are being interviewed of their rights, which closely mirror the rights granted in police interrogations (e.g., the right to be accompanied by another person, such as legal counsel); and (d) to draft a final report that must comply with certain requirements, etc. For some obligations (e.g., the obligation to have a written policy), the act provides for the nullity penalty, implying that the courts may declare findings of an internal investigation null and void if certain obligations are not complied with.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Given legislation regarding the reason for dismissal, it has become more important to keep a file and to document information such as remarks, assessments, warnings, and absences relating to individual employees. This will allow an employer to duly communicate the specific reasons that have led to the dismissal in case of a request from the employee for detailed information. This will also ensure that the reasons for each dismissal are evidenced to the extent possible and cannot be considered as "clearly unreasonable."

The recent Labour Deal (Act of 3 October 2022) provides that each company with at least 20 employees will be required to respect the right for employees to be "offline" after working hours.

II. BULLYING AND HARASSMENT

Bullying

In Belgium, workplace bullying is more commonly referred to as "moral harassment" (harcèlement moral – moreel geweld).

"Moral harassment" is defined as an unlawful set of repeated, similar, or different behaviors of any origin, internal or external to the enterprise, which include notably unilateral conduct, words, intimidations, acts, gestures, or writing having as their purpose or effect to negatively affect the personality, dignity, or the physical or mental integrity of an employee during the performance of the employment, to jeopardize the employee's employment, or to create an intimidating, hostile, degrading, humiliating, or offensive environment.

Harassment

Sexual harassment and violence at work are covered by the law relating to the well-being of workers when carrying out their work (4 August 1996).

"Sexual harassment" is defined as "any form of verbal, nonverbal, or physical conduct of a sexual nature that has an effect on the dignity of a person or creates an intimidating, hostile, degrading, humiliating, or offensive environment at the workplace."

The law provides for a very specific procedure to be followed in cases of moral or sexual harassment or violence at work.

The employer must conduct a risk analysis and identify measures that can be taken to prevent violence, moral harassment, and sexual harassment at work and, in general, all psychosocial risks at work. These measures are then implemented after consulting the Committee for Prevention and Protection at Work. The employer must also call upon a prevention advisor specializing in the psychological aspects of work.

Since 1 December 2023, it has been mandatory for employers employing 50 or more workers to appoint a person of trust who can listen to workers and advise them on the available procedures. For employers employing fewer than 50 workers, the designation of a person of trust is an option, not an obligation, unless all members of the union delegation or all workers would request the appointment of such a person of trust. In principle, the person of trust is a company employee; if the company employs less than 20 workers, then the person of trust can also be external.

An employee who is a victim of harassment can request a formal intervention by the prevention advisor, which protects him or her against dismissal. He or she may be entitled to compensation that is equal to six months' pay in case of unlawful dismissal.

III. DISCRIMINATION

In Belgian employment law, there are three relevant laws in relation to anti-discrimination: the general anti-discrimination law, the anti-racism law, and the law that imposes equality between men and women.

Direct and indirect discrimination is prohibited on the grounds of age; sex; social origin; language; sexual orientation; marital status; birth; wealth; religious or philosophical beliefs; political beliefs; union membership; past, current, and future health situations; disability; physical or genetic characteristics; and family responsibilities.

Direct discrimination is when there is a direct distinction, based on a protected criterion, and results in a person being treated less favorably, without justification, than another person in a comparable situation. Direct discrimination is prohibited unless the distinction is based on an objective and reasonable justification.

Indirect discrimination occurs when a seemingly neutral term or criterion appears to be especially disadvantageous to certain people characterized by a given protected criterion in comparison to other people.

The Belgian anti-discrimination legislation was modified in 2023 to recognize the concepts of "cumulative discrimination" (discrimination based on several protected criteria that are distinct) and "intersectional discrimination" (discrimination based on several protected criteria that interact and are inseparable).

Also, new types of discrimination have been introduced, such as "discrimination by association" (i.e., discrimination against a person based on the fact that this person is closely linked to an individual with a protected criterion) and "discrimination based on a presumed criterion" (i.e., when an individual believes that a person presents a protected criterion when this is not the case).

The anti-discrimination provisions stated in the Anti-Discrimination Act cover all employment aspects, including the interview stage, the hiring process, terms and conditions of employment, equal pay, promotion opportunities, fringe benefits, and termination.

Remedies include uncapped compensation for discrimination based on the claimant's financial loss or a lump-sum indemnity that is equal to three or six months' remuneration. For "cumulative discrimination," lump-sum damages based on each protected criterion can be cumulated.

Where discrimination is alleged, it is up to the employer to prove that there is no discrimination.

Employees also benefit from protection against any detrimental measure related to the filing of a complaint for discrimination. This protection includes compensation for damages equal to a lump-sum amount of six months' salary or to compensation for the actual damages suffered.

Not only the victim of discrimination but also witnesses, whether "official" witnesses who can produce a written testimony or employees who have simply "stood up" for a victim of discrimination, are protected against retaliation.

IV. UNIONS

Representation

With over 54% of all employees being members of a particular trade union, Belgium has one of the highest participation levels in the world.

Employees' personal data relating to their union activities is considered as sensitive data under the GDPR, as it reveals political opinions. The processing of such data is, in principle, prohibited.

Trade unions represent the interests of their members through their bargaining role by negotiating with employer organizations on issues such as wages, compensation, working conditions, and health and safety issues, as well as consulting with different levels of government when preparing new labor legislation.

A Committee for Prevention and Protection at Work must be established when there are at least 50 employees. In principle, the committee is composed equally of elected employee representatives and employer representatives. It promotes and actively contributes toward the welfare of employees and exercises certain works council powers if a works council does not exist within a company.

A works council must be established when the company has at least 100 employees. This is a consultative body with equal representation of employee representatives and employer representatives. It has duties in relation to information, consultation, and active participation.

Right of Entry

At the request of the trade union and in accordance with the applicable national or sectoral provisions, an employer is obliged to allow the setting up of a trade union delegation within the company. Trade union delegations negotiate CBAs at the company level, monitor compliance with employment legislation, and play an important role in conflict situations.

Industrial Disputes

The right to strike is based on the European Social Charter. Otherwise, there is no specific Belgian law that governs industrial actions and lockouts.

The Belgian courts have acknowledged the right of an employer to declare a lockout or lockdown; however, this has rarely been seen in Belgium.

V. REMOTE/HYBRID WORK

Belgian labor law distinguishes between two forms of telework, namely:

- Structural telework, where the employee works at a chosen location outside the company premises on a regular basis and using information technology.
- Occasional telework, where the employee is offered the option to occasionally perform telework in the case of "force majeure" (e.g., an unplanned train strike or serious traffic disruption) or for personal reasons (e.g., a doctor's appointment or a car-servicing appointment).

Both systems are characterized by their voluntary nature—an employee cannot be obliged to telework—as well as by the fact that the employee can carry out this work in his or her home and also in any other place of his or her choice (e.g., an Internet café).

In addition to the above “telework” regimes, there is also the system of “home working,” where the employee works from his or her home or other location of his or her choice but without the use of information technology.

Structural telework must be formalized in a written agreement between the employer and employee and concluded, at the latest, when the telework starts. This agreement must contain a number of mandatory provisions, such as the number of teleworking days, the periods during which the employee must be reachable and by what means (email, telephone, Microsoft Teams, Skype, etc.), and an agreement on the costs associated with the telework.

For occasional telework, the employee must make a request, but the employer may refuse. The employer can lay down a framework for this type of telework in a CBA or the work rules, but it is not obliged to do so.

In principle (i.e., if they are not under the employer’s direct control), teleworkers are excluded from the stringent rules regarding working time.

For structural telework, the employer must provide the equipment necessary to perform the telework and must pay any Internet and communication costs linked to the telework. If the employee has to use his or her own equipment, then he or she is entitled to a reimbursement of the costs regarding the installation and the use of this equipment.

The employer is not obliged to refund any other costs, such as heating, electricity, small office equipment, etc., but employers who wish to do so can grant their employees a lump-sum compensation of €154.74 per month (the current figure as of 1 June 2024), which is accepted by the tax authorities and the National Social Security Office as being free from social security contributions and taxes.

In the case of occasional telework, there is no obligation for the employer to cover costs or provide equipment; the employer is only obliged to make the arrangements for occasional telework with the employees. In theory, it thus seems that the parties could agree that no such reimbursement is to be paid.

KEY CONTACTS AND CONTRIBUTORS

Paul Callegari

Practice Area Leader, Office Managing Partner
London
+44.20.7360.8194
paul.callegari@klgates.com

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Brazil

Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

In today's global economy, more companies than ever have employees in numerous countries, often relying on a mobile global workforce to expand into new markets and meet strategic and operational needs. Driven by the many questions we receive from our clients, in 2015 we released our first Global Employer Guide—your concise, easy-to-read guide to the basics of employment law across numerous countries.

Our updated release reflects the changes and requirements multiple countries may have gone through over the past year, focusing specifically on Brazil in this guide. Besides the recent changes, we also explain any preestablished visa processes, employee rights, contract requirements, transfer of business considerations, privacy standards, union involvement, and other issues all global employers may face.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

There are numerous types of visas and permits allowing foreigners to work in Brazil. Any foreigner wishing to work in Brazil must have either Brazilian residency or a work visa.

Foreign workers require a work permit (Autorização de Trabalho), and anyone applying for this document must also obtain the appropriate immigration visa (Vista) that is applicable to his or her individual case. Work visas are issued by the consulate of the applicant's country of legal residence under the authority of the Brazilian Ministry of Foreign Affairs (Ministério das Relações Exteriores).

In general, work visas and work permits will be issued only to employees of Brazilian-registered companies, subject to local tax and labor regulations. This means that a foreigner cannot work in Brazil while being paid by a company that is registered outside Brazil.

Reference/Background Checks

Although there is no specific local law on this matter, background checks are a sensitive topic in Brazil. As a general rule, background checks should concern only matters that are directly relevant to the future employment relationship. The employer must also avoid any unauthorized pre-employment investigation, and the applicant must be informed in advance of any background check that will be undertaken by the employer, including the information that will be queried and the parties from which it will be sought.

Police and Other Checks

There are no statutory or regulatory requirements for police and other checks. Employers have the discretion to require "criminal good-standing certificates" from the employee if the nature of the job requires this type of protective measure, and this practice is very usual and common across all sectors of the Brazilian employment market.

Medical Examinations

There is a pre-admittance medical exam that is mandatory under Brazilian law. It must be conducted before an employee commences work. The medical exam consists of a clinical evaluation of the patient (taking into account the patient's health history, any outstanding conditions present immediately prior to the beginning of his or her employment, and other evaluations), a physical and mental medical examination, and any necessary complementary exams.

Minimum Qualifications

Age Restrictions

As a general rule, it is strictly forbidden to hire children under the age of 14. Certain restrictions apply to the employment of children aged between 14 and 18 years old.

Nationality Restrictions

At least two-thirds of a Brazilian company's employees must be Brazilian, and at least two-thirds of a Brazilian company's payroll must be linked to payments to Brazilian employees. This provision applies to all employees, including managers and directors.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time, part-time, or casual basis for an indefinite or fixed-term period.

Independent Contractor

An individual will be considered an independent contractor if in his or her employment relationship:

- He or she has independence to perform the work.
- He or she is not subordinated to a company's directives and regulations.
- No exclusivity is provided for in the relationship between the parties.

Independent workers may also be professionals organized under a legal entity to render services under a contract. These professionals are not covered by labor legislation.

Labor Hire

Outsourcing is generally deemed legal for labor purposes only if the services are not directly related to the company's core business. There are exceptions established by law for telecommunication and other public services.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employers and employees are not required to execute written employment agreements. According to the Brazilian Labor Code, there is an employment agreement whenever an individual works personally for another individual or entity, on a regular basis with frequent payments, and is subject to the direct orders and supervision of the employing individual or entity. As a consequence, the employment conditions may be tacitly arranged, although the employer is required to register the predefined and agreed-upon arrangement on the employee's labor card. Employment conditions established by a written employment agreement signed by both the employee and the employer are enforceable, provided that they are consistent and in accordance with the Brazilian Labor Code, which governs most aspects of an employment relationship. An employment agreement subjects the parties to the applicable labor, social security, and tax laws. Finally, the employer is required to register the main work conditions with the registry systems kept by the social security system (Instituto Nacional do Seguro Social), the Ministry of Employment (Ministério do Trabalho), and the Federal Savings Bank (Caixa Econômica Federal), which handles the Employee's Severance Guarantee Fund (Fundo de Garantia do Tempo de Serviço).

Codes or Rules

Companies may have codes or rules that impose obligations in addition to those already provided for in Brazil's labor legislation.

Typical internal rules include:

- Clauses that establish the obligatory use of uniforms (in administrative areas or factory floors).
- Care in the handling of machinery and equipment.
- The correct use of computers and prudence when using company vehicles.
- General requirements for admission.
- Conditions for indemnity in case of damages caused to the employer by intent, fault, negligence, recklessness, or malpractice of the employee, which can affect third parties.
- Conduct towards superiors and co-workers.

- Rules regarding absence.
- Procedures and forms for requesting and granting holidays.
- Workplace transfers.
- Benefits.
- Dress code.
- Acting ethically, both inside and outside the company.
- Rules on handling confidential information of the company.

The codes and rules cannot violate rights already guaranteed by law. Codes and rules are deemed void when in conflict with any legal provision.

Registered Agreements

There are also collective labor agreements that are applied depending upon the business of the company and its location. They are mandatory regardless of union affiliation and valid for up to two years.

Policies

Please see the information above under “Codes or Rules” of this guide.

IV. ENTITLEMENTS

Minimum Employment Rights

The statutory labor rights include:

- A national minimum wage of R$1,518 per month (equivalent to approximately US$250 per month on January 2025).
- Thirty days of paid vacation per year (not affected by eventual contract suspension).
- A vacation bonus (one-third of the vacation payment).
- A “13th month” bonus.
- Guarantee Severance Fund (FGTS) at 8% of the monthly compensation.
- A minimum of 30 days’ notice for termination.
- Indemnity for unfair termination equal to 50% of the FGTS account balance.
- Overtime payment.
- Enrollment in social security.
- Shared payment of transportation costs.
- Weekly rest.
- Time off from work of at least 11 hours between eight-hour shifts.

Individual circumstances may also trigger other additional pay, mainly in the event of inherently hazardous or unhealthy work and night shifts or overtime.

Discretionary Benefits

Under Brazilian Labor Law, any awards or benefits routinely granted to employees in addition to their base salary may be considered fringe benefits. In such cases, the total amount of the employee’s earnings, including fringe benefits, must be included as income for payroll and tax purposes.

Generally, housing and car allowances granted to employees, as well as to foreign individuals working in Brazil, are fringe benefits and should be included as income for payroll purposes. However, there are exceptions to this (e.g., where such benefits are essential for the performance of the work).

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination Without Cause

Employees can be dismissed without cause at any time, subject to notice periods and severance pay, except in the case of protected and tenured employees. The employer is not required to formally justify the dismissal.

Termination With Just Cause

There are certain circumstances in which the employer has the right to dismiss the employee with cause, including, among other things, gross misconduct or material breach of contract.

Underperformance is not a cause for termination.

Constructive Dismissal

In certain circumstances, the employee is considered to be entitled to resign on the basis of constructive dismissal, for example, if the employee is assigned to tasks outside the scope of the services for which he or she was employed.

Termination by Mutual Consent

This is when both parties mutually agree to terminate the employment contract. This results in the payment of 50% of the prior notice (aviso prévio), FGTS, and full payment of other labor allowances due in a termination without cause.

Employee's Resignation

The employee has the right to receive his or her salary balance, proportional 13th month bonus, vacation plus one-third bonus, and proportional vacation plus one-third bonus.

II. MINIMUM ENTITLEMENTS

Payments/Notice

Employees can be dismissed without cause at any time, provided that they receive:

- Termination notice of at least 30 days plus three days for every year worked (the employer can pay in lieu of notice).
- Statutory severance pay.

Statutory Entitlements

Please see information above under "Minimum Employment Rights" of this guide. The referred section displays the statutory rights in the event of termination.

III. REDUNDANCY

There is no concept of redundancy in Brazil.

IV. REMEDIES

Dismissal Action

Written notification must be provided in cases of termination for cause. In the case of dismissal for any other reason (without cause), there is no prescribed procedure, but notice must be certain and is generally written.

Once notice is given, termination becomes effective upon expiration of the respective period of notice. If the employer reconsiders the dismissal before the end of the notice period, the worker may accept or reject that decision. If the worker accepts the reconsideration or continues to work after the notice period expires, the employment contract will remain valid as if no notice had been given.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Employees are transferred by law in the event of business transfers in the following circumstances:

- *Group company transfer* – Employees automatically transfer as part of a business transfer between two members of the same group of companies.
- *Employer transfer* – Employees automatically transfer in the context of an acquisition or transfer of business (all assets and employees are transferred and the same activities and core business are to be maintained). If the transferee replaces the transferor as the employer because the transferee has assumed ownership of the transferor's business, it employs the transferor's employees automatically without having to rehire them.

In these two cases, the transferee is the transferor's legal successor and is responsible for any employment-related liabilities and obligations.

II. RESTRUCTURING

Notification

Employers are not required to notify unions, works councils, or employees when completing a major transaction (such as an acquisition, merger, or joint venture).

Consultation

Employers are not required to consult unions, works councils, or employees when completing a major transaction (such as an acquisition, merger, or joint venture).

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Confidentiality and nondisclosure obligations are inherent to the employment relationship, and any breach of those obligations is viewed as a cause for dismissal.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

During the employment contract, an employee may be subject to noncompete obligations as a result of receiving salary from the employer. It is advisable to put those commitments in writing. This is commonly part of the employment contract in Brazil for senior employees, particularly those occupying managerial positions.

Post-Employment Restrictive Covenants

Under the right of freedom to work contained in the Constitution of the Federative Republic of Brazil (Federal Constitution), an employer cannot require an employee to refrain from working for a competitor or an entity that is in direct competition with the terminating company after termination of employment. Therefore, any noncompete clause will only have a moral effect and will not be legally enforceable unless the noncompete clause clearly sets out the following:

- The scope of restrictions on competition after employment termination.
- A specific payment (indemnity) in consideration for the noncompete obligation equivalent to at least 50% of the last month's salary per month of noncompetition according to caselaw interpretation.
- A specific period no longer than 24 months according to caselaw interpretation.
- A reasonable geographical area.
- A prohibition of disclosure of employer know-how.

III. PRIVACY OBLIGATIONS

The Federal Constitution protects the privacy of all citizens residing in Brazil. Breach of the right to privacy may entitle the employee to a claim for damages.

IV. WORKPLACE SURVEILLANCE

There is no specific legislation governing this matter in Brazil. Therefore, the labor courts tend to use common sense when determining whether limitations on employees' privacy are acceptable in light of employers' justifiable interest. The Brazilian Superior Labor Court (Tribunal Superior do Trabalho) has ruled that video surveillance in restrooms is a violation of employees' constitutional right to privacy. However, the same court has repeatedly confirmed the right of employers to monitor employees by video surveillance for safety reasons and even as a legitimate way to supervise and control certain activities.

V. WORKPLACE INVESTIGATIONS

The Federal Constitution grants citizens, including applicants and employees, the right to privacy. An employer may investigate any suspicious conduct of its employees, but it may not conduct an investigation in a way that unreasonably infringes upon an employee's privacy right. Brazilian courts consider whether the employer's right to conduct business outweighs the employee's right to privacy on a case-by-case basis. There is no clear line, and an investigation must be conducted in a reasonable manner using the least-invasive procedures available and avoiding methods that cause embarrassment or harm to the reputation of the employee.

The Brazilian Clean Company Act (Law No. 12,846) provides credits for companies that have implemented a compliance program.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

The main concerns for an employer managing behavior and performance are the following:

- Performance is not grounds for termination with cause.
- Employees are entitled to privacy at the workplace.
- The Federal Constitution forbids any kind of discrimination.

II. BULLYING AND HARASSMENT

Bullying

Brazilian employees are entitled to protection in case of bullying in the workplace. Examples of bullying include excessively harsh treatment by superiors, humiliation, constant threats, and the continuous questioning of an employee's capacity. In these instances, the employee may terminate his or her agreement with cause and file a claim against the company for damages.

Harassment

There are no specific employment laws protecting employees from harassment. Harassment, except for sexual harassment, is not a criminal offense. However, caselaw provides that the employer can be liable for moral and material damages caused by harassment under the rights provided by the Federal Constitution.

There is no minimum period of continuous employment an employee must serve before he or she can bring a claim for harassment.

Sexual Harassment Prevention and Workplace Violence

Since 2023, companies required to have a CIPA (Internal Committee for Prevention of Accidents and Harassment) must adopt measures to prevent workplace violence and sexual harassment. This includes incorporating policies for handling complaints, providing anonymity for complainants, and conducting annual training on workplace safety, diversity, and equality. Employers must implement procedures to manage complaints and monitor adherence to these policies.

III. DISCRIMINATION

The Federal Constitution forbids any kind of discrimination, including discrimination by race, religion, gender, and sexual orientation.

There is no minimum period of continuous employment an employee must serve in order to bring a claim for discrimination.

Equal Pay for Equal Work

As per Law No. 14.611/2023 and Decree No. 11,795/2023, companies with 100 or more employees are required to publish salary transparency reports biannually (March and September). These reports must include anonymized data comparing salaries of men and women, as well as across different ethnicities, nationalities, and ages. Employers must address any identified disparities with an action plan, including goals, deadlines, and training programs. Noncompliance can result in fines of up to 3% of company payroll, capped at 100 minimum monthly wages (approx. R$151,800 in 2024).

IV. UNIONS

Representation

Employees are free to organize professional and union associations, but they cannot organize more than one association representing the same professionals in the same municipality. No specific number of workers is required to form a union. In Brazil, unions are most common in industries such as commerce, metallurgy, and chemical manipulation. Currently, employees must pay annual contributions to their respective unions, equivalent to one day's salary, and this contribution is typically paid in March. Employers now also have this same obligation, but their annual contributions are calculated according to percentages of their share capital, and their contribution must be paid in January.

However, a labor reform extinguished these mandatory union dues as of 11 November 2017, and it is expected that the federal government will present bills to the National Congress of Brazil regarding rules for new types of union dues to be mandatory in case of collective bargaining.

Industrial Disputes

Unions are generally authorized to declare a strike after unsuccessful negotiations with employers, pursuant to the employees' decision to do so and provided that they observe certain legal conditions, including a minimum 48-hour notice period depending on the nature of the business.

During the strike, any of the parties, as well as the public attorney, may file a collective lawsuit for the Labor Court of Appeals to decide on the legal grounds of the strike and the merits of the claims brought by the declarant union. In practice, before that occurs, labor courts end up acting like mediators and seek to seal an agreement to end the strike. During the strike, employment agreements are suspended and, therefore, cannot be terminated. Days not worked cannot be deducted from the striking employees' salary, except if expressly negotiated with the Federal Union or if the strike is considered abusive by the Labor Court of Appeals. The employer cannot hire substitutes unless necessary for the conservation of goods, assets, and equipment. During the strike, the union should guarantee a sufficient number of employees to ensure essential activities listed by the law.

V. REMOTE/HYBRID WORK

Brazilian employment law allows hybrid and remote work regimes. The employer must provide hybrid and remote workers with all necessary equipment for work, including laptops and work phones. The employer is also required to cover all additional costs associated with working for the business, which could include higher energy bills and Internet as a result of working from home. However, there is no mandated amount to cover the costs, which creates a need for the company to review allowances on a case-by-case basis. The employer must follow ergonomic and health and safety (H&S) standards that apply equally to home and office workers.

It is necessary that the company and the employee enter into a specific type of employment contract under the Consolidation of Labor Laws (CLT), which is the Brazilian employment code. Within this contract, the employee must acknowledge that he or she has received specific training related to ergonomic standards and occupational H&S. In this contract, the parties agree to the regime and must define which party will be responsible for acquiring and providing the work tools, as well as the reimbursement of expenses incurred by the employee. Also, employees must sign a term of responsibility to acknowledge their own responsibility for their health at home and also to confirm they agree and understand the safety instructions and the risks for working remotely. Hybrid and remote work regimes can be changed to in-office, as determined by the company, with a minimum transition period of 15 days, with corresponding registration in an amendment of the employment agreement.

According to the CLT, remote and hybrid workers must be available for work during their assigned shifts. Time worked in excess of the shift will be treated as overtime. If the employee is available as scheduled, the entire shift will be considered work time regardless of whether work is available for the entire period.

Telework Regulations (Law No. 14.442/2022)

This 2022 federal law updates the rules regarding telework (remote work), specifying that it is not necessary to control working hours for employees engaged in telework. Additionally, the law ensures that meal vouchers (vale-alimentação) must only be used for food-related expenses, prohibiting their use for any other purchases.

AUTHORS AND CONTRIBUTORS

Felipe E. Creazzo

Partner
São Paulo
+55.11.3704.5706
felipe.creazzo@klgates.com

K&L GATES

China Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

In the People's Republic of China (PRC or China), the labor laws are in principle pro-employee and require the employer to undergo certain formalities to hire employees and undertake certain statutory obligations. The central government establishes the fundamental laws, e.g., the Labor Contract Law (amended in 2012) and the Labor Law (amended in 2018), while numerous regulations and rules are promulgated at the local government level, which may vary from city to city. Full-time employees in China are entitled to statutory social insurances and housing funds, overtime payments, paid public holidays, annual leave, etc., with the individual income tax withheld by the employer and deducted from each month's payment. It is important to note that an employer is required to have one of the statutory legal grounds to unilaterally terminate an employee; otherwise, wrongful termination may entitle the employee to receive double severance pay or request a reinstatement of the employment relationship.

Since late 2021, the PRC labor laws and the local regulations have strengthened the protection of the rights and interests of female employees, including an increase of maternity leave and parental leave, the prohibition of sexual harassment at the workplace, etc. The employer is also subject to the obligations under the data privacy law in the PRC with regard to the processing and handling of the personal information of the employees.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

As required by applicable laws of the PRC, employers must ensure their employees are lawfully allowed to work in China. Foreign nationals are prohibited from working in the PRC without obtaining a work visa, a work permit, and a residence permit. Otherwise, such foreign national may be subject to a fine of RMB5,000 to RMB20,000 (~US$703 to US$811), detention of five to 15 days in situations of serious violation, or deportation. In addition, the employer may be subject to a fine of RMB10,000 (~US$1,405) for each unlawful hiring, not to exceed an aggregate amount of RMB100,000 (~US$14,054) for all unlawful hirings.

Work permits are generally divided into three categories: Category A refers to individuals such as scientists, technology leaders, international entrepreneurs, and specialized talents; Category B is for talent meeting specific educational, professional, or work criteria; and Category C refers to individuals who align with the domestic labor market needs and are employed in temporary, seasonal, nontechnical, or service positions. Category A work permits usually have a term of two to five years, and the other two categories usually have a term of one year. If the employer intends to continue to employ a 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. Otherwise, the employer and the foreign employee may be fined by the authorities.

Foreign employees should obtain a work visa (known as a Z visa), a work permit, and a residence permit according to PRC laws.

Reference/Background Checks

PRC labor laws do not prohibit employers from contacting or engaging a third party to contact a prospective employee's references and previous employers to gather and verify necessary employment-related information. However, the candidate's prior express consent should be obtained by the employer or the third party before conducting reference or background checks. Furthermore, the employer and the third party must keep in strict confidence the personal information collected and should not divulge, distort, or damage such information or sell or illegally provide the same to others.

Police and Other Checks

PRC laws do not prohibit employers from requesting candidates to conduct criminal checks with the police authority.

In practice, prior to employment, the employer may ask the candidate to conduct criminal checks with the police authority and provide an official report issued by the police authority.

Medical Examinations

PRC labor laws do not prohibit employers from requesting medical examinations to determine a candidate's fitness for a particular job. However, PRC laws and regulations expressly prohibit employers from testing applicants for hepatitis B.

II. TYPES OF RELATIONSHIPS

Employee

There is no at-will employment in the PRC. Individuals can be employed on a full-time or part-time basis, on a fixed-term or open-ended contract, or on an individual project basis.

Independent Contractor

The concept of “independent contractor” is not recognized under PRC labor laws. An individual independent contractor relationship in China is viewed as an employment relationship, with a few exceptions, such as housekeepers and professional insurance agents. Thus, an independent contractor would be entitled to employee protection/benefit under PRC labor laws and cannot be terminated at will. An entity independent contractor relationship is considered as a contractual relationship between two legal entities, which is governed by the PRC Civil Code.

Labor Hire

The PRC Labor Contract Law allows employers to hire an employee on an individual project basis. The employment relationship terminates when the project is completed or reaches a certain milestone agreed upon by both employer and employee.

In addition, an employer can fill its temporary, auxiliary, or substitutional positions via a labor dispatching arrangement according to the PRC Labor Contract Law. Under the labor dispatching arrangement, the worker is employed by a human resources company and dispatched to work for a business on a temporary basis.

Where a foreign investor chooses to only establish a resident office rather than a subsidiary company in the PRC, such resident office should entrust local labor service providers to engage its employees and is not allowed to execute labor contracts with its employees directly.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employment contracts must be in writing as required by the PRC Labor Contract Law. The employer is required to sign a written employment contract with the employee within one month from the starting date of employment. An employer who fails to do so will owe double wages to the employee for each month of employment after one month without a written contract. If the employer fails to enter into a written contract with the employee for over a year, it is deemed that the employer and the employee have entered into an open-ended employment contract.

However, a part-time employee who works no more than 24 cumulative hours per week and an average of four hours per day is subject to different requirements and may be employed under an oral contract.

Codes or Rules

Codes or rules should be prepared and published by an employer in writing. For the codes or rules concerning the remuneration, working time, break, vacation, work safety and sanitation, insurance and welfare, training of employees, labor discipline, or management of production quota, which are directly related to the interests of the employees, an employer is required to go through consultation with the labor union or employee representatives.

In order to be enforceable under PRC labor laws, internal policies and rules must be acknowledged by each employee. Therefore, the best practice for the employer is to obtain a written acknowledgment, such as an employee’s signed copy of the internal policies and rules or an acknowledgment form from the employee.

Registered Agreements

Registered agreements are generally not applicable under PRC labor laws. However, a copy of an employment contract concluded with a foreign national will be submitted to the labor authority when applying for a work permit.

Policies

Policies should be prepared and published by an employer in writing, and an employer is required to go through consultation with the labor union or employee representatives.

In order to be enforceable under PRC labor law, internal policies and rules must be acknowledged by each employee. Therefore, the best practice for the employer is to obtain a written acknowledgment, such as an employee's signed copy of the internal policies and rules or an acknowledgment form from the employee.

IV. ENTITLEMENTS

Minimum Employment Rights

Hours of Work

Generally, under the standard working-hour system, employees will work for no more than eight hours per day and 44 hours per week, and employers should ensure that employees take at least one day off per week. Hours worked beyond this are generally considered overtime, which entitles an employee to overtime pay. Depending on the employee's job title, duty, and salary, and upon filing with the local labor bureau, employers can also implement a flexible working-hour system for eligible employees, under which employers are not obligated to pay overtime.

Annual Leave (Statutory Minimum Requirement)

- Five days for employees who have worked for one to 10 years.
- Ten days for employees who have worked for 10 to 20 years.
- Fifteen days for employees who have worked for 20 years or more.
- Annual leave is in addition to public holidays and weekends.

Public Holidays

Employees are entitled to paid leave for each day that is proclaimed a public holiday in the PRC. If an employer requests an employee to work on a public holiday, the employee is entitled to additional pay, which shall be no less than 300% of the employee's wages.

Maternity Leave

The maternity leave of female employees is generally 98 paid days under the national law, including 15 days of antenatal leave. Extra maternity leave of 15 days will be granted in cases of dystocia. Female employees who bear more than one baby in a single birth are granted extra maternity leave of 15 days for each additional baby born. Different provinces and cities also provide additional days according to local policies.

In accordance with the relevant local regulations of certain provinces and cities that were released from late 2021 to 2023, the additional maternity leave provided by the local government has been increased by 30 to 90 days. There are 28 such provinces and cities with additional maternity leave, including Beijing, Tianjin, Shanghai, Guangdong, Guangxi, Hubei, Hunan, Shaanxi, Gansu, Qinghai, Ningxia, Xinjiang, Yunnan, Guizhou, Fujian, Zhejiang, Chongqing, Hebei, Henan, Anhui, Heilongjiang, Liaoning, Jiangsu, Hainan, Shandong, Shanxi, Jiangxi, and Sichuan.

Male employees may be entitled to paid paternity leave of varying length, depending on the locality. In accordance with the relevant local regulations of certain provinces and cities that were released from late 2021 to 2023, the paid paternity leave provided by the local government has been increased by 10 to 30 days.

Female employees who have a miscarriage before the fourth month of pregnancy are granted 15 days of maternity leave, and female employees who have a miscarriage in or after the fourth month of pregnancy are granted 42 days of maternity leave.

In accordance with the new PRC national law on family planning of August 2021, a married couple can have up to three children, which is more than the two children under the old regulation in 2015.

Parental Leave (Applicable in Certain Provinces/Cities Only)

In accordance with the relevant local regulations of certain provinces and cities that were released from late 2021 to 2023, as mentioned above, both female and male employees who have a child of less than 3 years old or 6 years old, depending on the area, are entitled to five to 15 working days of paid parental leave for each year.

Nursing Leave (Applicable in Certain Provinces/Cities Only)

In accordance with the relevant local regulations of certain provinces and cities that were released from late 2021 to 2023, as mentioned above, employees are provided with five to 20 days of paid nursing leave on a cumulative basis to take care of their parents, if and when their parents need nursing care, under certain conditions.

Probation Period

The employer and employee must agree on only one probation period. If the term of an employment contract is:

- More than three months but less than one year, the probation period may not exceed one month.
- More than one year but less than three years, the probation period may not exceed two months.
- Fixed for three or more years or is open-ended, the probation period may not exceed six months.

Mandatory Social Insurance and House Fund

Employers are required by applicable PRC labor laws to contribute to the mandatory social insurance fund and housing fund in accordance with local standards.

Discretionary Benefits

Bonus or Stock Option

Employers may choose to incentivize employees by including bonus or stock option provisions in employment contracts. Bonus or stock option provisions are usually dependent on individual, department, or business performance and are usually paid at the employer's discretion. Otherwise, they will be considered part of the normal income in terms of calculation of severance.

House and Transportation Allowance

Some employers offer a house and transportation allowance for certain groups of employees, usually management employees.

Unpaid Administrative Leave

Some employers offer unpaid administrative leave schemes at the employer's discretion.

TERMINATION OF EMPLOYMENT

I. GROUNDS

In the PRC, it is relatively difficult to terminate an employee since PRC labor laws are designed to protect an employee's interests.

Termination must be based on justified causes specified by the PRC Labor Contract Law, including mutual agreement, unilateral termination by the employee, expiry of the employment contract, retirement, or termination by the employer with a legal ground/cause under the PRC Labor Contract Law.

II. MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates a full-time employee based on incompetence, non-work-related illness, or substantial change of employment, the employer is required to provide 30 days' written notice in advance or one month's salary in lieu of the 30 days' advance notice. The employer also is required to provide severance pay to the employee.

The employer can terminate an employee with immediate effect without giving notice in advance and paying severance if the employment contract is terminated based upon the employee's serious misconduct, serious violation of internal rules and policies, incompetency during the probation period, invalid employment due to the employee's fraud or coercion, criminal liability of the employee, or if the employee takes up a second job harming the first employer.

When an employee unilaterally resigns, the employee is required to give 30 days' written notice in advance or a three-day advance notice during the probation period. However, the employee may unilaterally resign without prior notice if the employer is at fault, for example, the employer fails to timely pay the remunerations in full or fails to pay social security premiums for the employee.

Statutory Entitlements

Under certain circumstances specified by the PRC Labor Contract Law (e.g., termination by an employee due to the fault of the employer, employee's incompetence for the job, termination by the employer with the consent of the employee, not renewing a contract (unless the employee refuses to renew upon maintained or raised provisions)), an employee is entitled to severance payment upon termination. Severance is based on the length of the employment period, which is one month's salary for each year of service with the employer. An employment period of less than six months entitles an employee to half a month's salary as severance pay. An employment period of between six and 12 months entitles an employee to one month's salary as severance pay. The salary, adopted on a severance-calculation basis, refers to the employee's 12-month average monthly salary prior to termination. However, where the monthly salary of the employee exceeds three times the average monthly salary in the city where the employer is located, severance pay is capped at three times the local average salary and the employment period for calculation of severance should be capped at 12 years.

Accrued but untaken annual leave at the total rate of 300% of the average daily wage for each unused leave day (100% has been included in the monthly salary, and therefore, only 200% needs to be additionally paid), overtime, and normal salary should be paid to an employee on termination, which can be offset by any amount an employee owes to the employer.

III. REDUNDANCY

Genuine Redundancy

If any of the following circumstances make it necessary to reduce the workforce by 20 persons or more, or less than 20 persons but accounting for 10% or more of the total number of employees of the employer, the employer may conduct economic layoffs under the following conditions:

- Restructuring pursuant to the enterprise bankruptcy law.
- Serious difficulties in production or business operation.
- The enterprise switches production, introduces significant technological innovation, or adjusts its business model and still needs to reduce its workforce after amending the labor contracts.
- A material change in the objective economic conditions relied upon at the time of conclusion of the labor contracts renders it impossible for the parties to perform.

Certain required procedures must be followed, including explaining the situation to the labor union or to all of its employees 30 days in advance, submitting its workforce layoff plan to the labor administrative department, and considering the opinions of the labor union or the employees.

Consultation

Consultation with the labor union or all employees is required.

Payment

Employees are entitled to severance pay based on the length of their employment with the employer.

IV. REMEDIES

Dismissal Action

An employee is required to first bring employment claims to the employer's local labor arbitration committee (where the employer is registered). After the labor arbitration decision, either the employer or the employee can appeal the case to the district court. Either party can then appeal the case to the municipal court for the final decision if not satisfied by the district court's decision.

An employer can bring counterclaims against an employee, including relating to the return of company property and reimbursement for damages caused by the employee.

In the case of wrongful termination, an employee can choose to request either reinstatement of the employment contract or double severance pay.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Share Transfer

- Where the original investors in the business transfer their shares to other investors, the employment relationship will not be affected since the legal entity of the employer does not change.
- Where the business is merged, divided, etc., the existing employment contract will remain valid and continue to be performed by the new employer.
- A business does not need to obtain an employee's consent to conduct a share transfer.

Asset Transfer

- Employees cannot be transferred from one employer to another without the employees' consent when the legal entity of the employer changes.
- If an employee agrees to transfer and the new employer agrees to hire, the initial employment contract with the original employer needs to be terminated and a new employment contract needs to be signed with the new employer. In such cases, the original employer is obligated to pay severance to the employee based on his or her service period with the original employer; alternatively, if agreed by the employee, the new employer should recognize the years of service of the employee for future severance purposes.
- An employer is not required to obtain its employees' consent to transfer an asset.

II. RESTRUCTURING

Notification

If the restructure does not involve any layoffs, notification to employees is not required. If the restructure will result in economic layoffs, the employer is required to notify all employees or their labor union 30 days in advance to collect the employees' or the labor union's opinions. Also, the plan for layoffs needs to be filed with the local labor bureau.

Consultation

If the restructure does not involve any layoffs, consultation with employees is not required. If the restructure will result in economic layoffs, the employer is required to consult all employees or their labor union 30 days in advance to collect the employees' or the labor union's opinions, but the employer has discretion to make the final decision.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Pursuant to the PRC Labor Contract Law, the employer and employee in the contracts of employment may include provisions protecting the confidentiality of an employer's information, including intellectual property, client information, and other confidential information. If the employee has divulged confidential information to any third party, the employer may claim any damage incurred thereof against the employee. However, pursuant to the PRC Labor Contract Law, the employer is not allowed to stipulate with the employee that the employee shall pay liquidated damages for breach of his or her confidentiality obligations. Therefore, liquidated damages agreed by the employee and employer in the employment contract are not recognized in breach of confidentiality obligations cases.

In legal proceedings where the employer claims the breach of a confidentiality obligation by the employee, the burden of proof lies with the employer. Among other things, the employer is required to provide preliminary evidence that the employer has taken proper measures to protect its confidential information and that its confidential information has been infringed by the employee. Then the burden of proof will shift to the employee, who is required to prove the information used or divulged is not confidential information as specified under PRC laws.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETITION

According to the PRC Labor Contract Law, an employer and an employee may add a post-termination noncompete clause in an employment contract or confidentiality agreement. Noncompete provisions can only be applied to senior management, senior technical, and other employees subject to confidentiality obligations. These provisions usually prevent employees from competing with their former employer for a period of up to 24 months within a certain business scope and geographic region.

In order to enforce noncompete provisions, an employer is obligated to pay an employee on a monthly basis after the termination of employment. The amount is based on an agreement between the parties. In practice, monthly compensation is typically set between 20%–50% of the average monthly salary of the employee. If the agreement is silent on the amount, normally 30% of the employee's average monthly salary for the prior 12 months will be viewed as reasonable. But such amount will not be less than the local minimum salary.

Under the PRC Labor Contract Law, the employee may be required to pay liquidated damages to the employer if he or she is in violation of a noncompete obligation. In practice, the employer and employee usually will agree on a liquidated damage amount in the employment agreement or confidentiality agreement.

If an employer has a noncompete agreement with an employee but does not want to enforce such agreement, the employer should expressly waive the noncompetition duties before the termination of employment. Otherwise, once the employment is terminated, the employer will be obliged to pay the noncompetition compensation on a monthly basis.

III. PRIVACY OBLIGATIONS

Relevant PRC laws, including the Cybersecurity Law, the Data Security Law, and the PRC Personal Information Protection Law, protect an individual's privacy rights and impose certain obligations with respect to an employer's collection, storage, transmission, use, and disclosure of an employee's personal information. The employer should inform and obtain written consent from the employee in advance of any collection, storage, transmission, use, or disclosure of an employee's sensitive personal information.

The PRC Personal Information Protection Law imposes certain obligations on the employer, including a transfer impact assessment, if it intends to transfer any employee's personal data overseas for human resources management purposes or other commercial purposes.

IV. WORKPLACE SURVEILLANCE

The PRC Personal Information Protection Law only permits surveillance if the relevant devices are installed in public places, with notable signs, and for public safety only, unless such surveillance has specific consent from the data subject.

According to the principles of PRC law, an employer is prohibited from monitoring employees in areas such as toilets, bathrooms, and changing rooms.

V. WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict resolution tool to determine policy breaches, misconduct, or misuse of confidential information. These investigations cannot violate an employee's legitimate rights, such as privacy rights and personal freedom. Outcomes of workplace investigations are often used to manage the performance of employees or to determine whether to terminate an employee's employment.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Internal policies and rules must be published by an employer in writing.

In order to be enforceable, PRC labor laws require internal policies and rules be acknowledged by each employee. Therefore, the best practice for the employer is to obtain a written acknowledgment, such as a signed copy of the internal policies and rules or an acknowledgment form from the employee.

Employee misconduct may lead to a warning, disciplinary action, or, if the conduct is serious, termination of employment. All rules and policies must be specified in detail in the internal policies and rules.

Employees terminated for serious violation of internal policies and rules are not entitled to any severance pay or notice in advance.

II. BULLYING AND HARASSMENT

Bullying

PRC labor laws do not have specific provisions regarding bullying. The relevant term is usually specified in the internal policies and rules as a form of misconduct.

Harassment

The PRC Law on the Protection of the Rights and Interests of Women (effective from 1 January 2023) prohibits sexual harassment of women/female employees against their will by way of word, text, image, physical behavior, or by any other means. A female employee who suffers from sexual harassment may lodge complaints with the employer, and the employer is required to take measures in a timely manner and inform the female employee of the results in writing.

PRC law also provides the general principle requiring employers to ensure workplace safety and provide protection to employees against workplace injury. The relevant term in relation to harassment is usually specified in the internal policies and rules as a form of misconduct.

III. DISCRIMINATION

PRC labor law prescribes that regardless of their ethnic group, race, sex, religious belief, or residence status, employees will not be discriminated against in employment.

Women will enjoy the equal right, with men, to employment. With the exception of special types of work or posts deemed unsuitable to women as prescribed by the law, no employer may, in employing staff and workers, refuse to employ women by reason of sex or raise employment standards for women that lead to unequal employment. Employers are not allowed to terminate a female employee during her pregnancy and breast-feeding period, and a female employee is entitled to maternity leave.

There are also special protections in respect to the employment of the disabled, people of minority ethnic groups, and veterans.

IV. UNIONS

Labor unions in the PRC do not have significant power compared to Western countries. In certain circumstances (e.g., employment termination), an employer is only required to notify and consult with

the labor union, which can offer suggestions; however, an employer has the right to make the final decision, despite any suggestions provided by a labor union.

Representation

Not applicable under PRC labor laws.

Right of Entry

Not applicable under PRC labor laws.

Industrial Disputation

Not applicable under PRC labor laws.

V. REMOTE/HYBRID WORK

Not applicable under PRC labor laws. If remote work is adopted as a company's policy, the change of policy should be documented by the company, with the best practice of obtaining acknowledgement from the employee. If remote work is set forth in an employment contract, the change would require consent from the employee.

AUTHORS AND CONTRIBUTORS

Yujing Shu

Partner
Beijing
+86.10.5817.6100
yujing.shu@klgates.com

Xiaotong Wang

Associate
Beijing
+86.10.5817.6119
xiaotong.wang@klgates.com

Xue Jiang

Associate
Beijing
+86.10.5817.6107
xue.jiang@klgates.com

K&L GATES

France

Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

When hiring an employee in France, an employer must comply with administrative and medical formalities, as well as legal obligations, before, at the time of recruitment and throughout the life of the contractual relationship between employer and employee.

Labor and employment laws are a particularly topical subject in France. Subjects such as paid leave, working time, pensions, and severance pay have undergone a number of changes in recent years.

In practice, French labor and employment laws mainly consist of the provisions of the French Labor Code, as well as numerous French and European legal texts (treaties, conventions, regulations, circulars, directives) and the applicable collective bargaining agreement (CBA), determined by the company's main activity in France. Caselaw of the French labor courts must also be taken into account in order to determine the scope of employers' obligations in practical terms.

This guide provides an overview of the main information and obligations to bear in mind for employers in France.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure that their employees are lawfully allowed to work in France.

In cases of noncompliance, there is the risk of a penalty of a maximum of €30,000 (updated in January 2024) if the foreign employee is not allowed to work in France.

Where an employee is seconded from a foreign country, a prior declaration must be completed on the labor authorities' website.

In cases of noncompliance, there is the risk of a penalty of €4,000 per seconded employee (€8,000 in case of a repeated offense within two years, up to a maximum of €500,000).

EU, European Economic Area (EEA), and Swiss citizens do not require visas or a work permit to live and work in France.

Other foreign workers must obtain a work permit from the labor authorities and a visa from the immigration authorities to live and work in France. Visas can be for a short duration (less than three months) or a long duration (more than three months).

Since the United Kingdom's exit from the European Union (known as Brexit), a French long-stay visa (equivalent to a work permit) is required for UK citizens to validly work in France. No visa or work permit is required for UK employees staying in France for less than 90 days.

Reference/Background Checks

An employer is permitted to contact a prospective employee's referees and previous employers to gather and verify information.

Indirect collection of personal data relating to an applicant from third-party sources constitutes a personal data processing operation requiring individuals to be informed (see "Privacy Obligations" section below), notably on the sources of such information. In addition, all references and background checks must be limited to what is proportional for the purpose of the recruitment (known as the concept of "data minimization").

Where there is a direct link with the applied-for position and such a check is necessary, employers may, in limited circumstances, also check an extract of the criminal record database. However, there is a general prohibition on processing of criminal records and infractions data (See "Privacy Obligations" and "Attention to Sensitive Data" sections below).

Police Checks

Police and other checks are allowed with the applicant's consent. Certain regulated positions (such as security agents, cash escorts, taxi drivers, or jobs undertaken at an airport) require the employer to obtain a copy of the employee's criminal record at the time of hiring.

Medical Examinations

French labor laws allow different types of medical examination, as follows:

- An initial consultation of “information and prevention,” which must take place within three months of hiring, except if the employee was employed in the same position in his or her previous employment contract. After this first consultation, a personal medical record is created for the employee. Failing this obligation carries a penalty risk of €1,500 per employee and a risk of legal action by the employee.
- A periodic examination (every five years).
- A reinstatement examination after maternity leave or occupational disease or in case of sick leave of more than 30 days.

Additional examinations may be prescribed, depending on the circumstances. Some employees are subject to increased health surveillance. These include employees under 18 years old, pregnant employees, disabled employees, night workers, and employees subject to certain risks, such as asbestos, vibration, and noise.

The employee’s medical examination results are protected by doctor-patient confidentiality and are deemed sensitive data as health-related data under the General Data Protection Regulation (GDPR). The occupational health doctors are the only authorized entities allowed to access it, with the exception of the employer.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis and on a fixed-term or permanent contract. Employees are entitled to different rights and obligations depending on the basis on which they are employed. However, generally, an employee qualifies for a wide range of legislative labor protections.

Nevertheless, independent contractors often claim for the reclassification of their contracts into employment contracts in order to obtain the associated protection.

Employers should be aware that this may create financial and criminal risks.

Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will usually take on the individual through a service agreement with the individual or with the individual’s business. An independent contractor does not have the benefit of an employee’s statutory social security system and protection.

The Job Act (Loi Travail of 8 August 2016) created social responsibility for independent contractors working with electronic platforms (the so-called “Uber structure”). Since 2018, and subject to a turnover threshold being met by the worker on the platform, they have new social rights protection from work-related accidents and right to professional training. They also have the right to go on strike and to create or be affiliated with trade unions.

Since the French Mobility Orientation Act 2019 (Loi d’Orientation des Mobilités), the social rights of independent contractors working with electronic platforms have been strengthened: Electronic platforms are encouraged to set a policy (Charte sociale) providing for rules fixing relationships to regulate their status, i.e., the right to refuse an assignment without being subject to a penalty and the right to choose their period of work and time off.

Furthermore, independent contractors working with electronic platforms are able to elect their representatives. In addition, on 18 January 2023, a collective agreement between trade unions and

electronic platforms of private drivers provides drivers with a minimum remuneration of €7.65 per journey.

On 7 May 2024, a collective agreement against discrimination was signed between representatives of electronic platform drivers and representatives of electronic platforms. This collective agreement aims to "prevent, raise awareness of and fight against all forms of discrimination on matchmaking platforms" and to "involve all platform users and their representatives in this issue."

Fixed Terms and Temporary Contracts

Fixed-term employees (contrat à durée déterminée) are often engaged for short periods. A fixed-term contract can be renewed only twice, except in the case of replacement of an employee. The maximum duration of a fixed-term contract, renewals included, is 18 months (except some specific cases not exceeding 36 months). The hiring of temporary workers (travailleurs intérimaires) and employees under fixed-term contracts and the terms of such contracts are strictly regulated by the French Labor Code.

The hiring of temporary workers and fixed-term workers is only allowed in certain cases listed in the French Labor Code, and temporary and fixed-term contracts must contain a number of mandatory provisions; otherwise, the contract reclassifies as a permanent contract, and the employer may face civil and criminal sanctions.

Temporary workers and fixed-term contracts are permitted for the replacement of an employee on leave, where there is a temporary increase of activity, or for a specific and temporary mission where the tasks are not related to the standard activity of the company.

There are certain industries where it is considered a customary practice to hire fixed-term workers, including building and construction, broadcasting, and seasonal activities, such as crop harvesting. The limitations imposed by the French Labor Code do not apply to these industries.

Temporary and fixed-term workers are entitled to an indemnity, paid by the employer, which amounts to 10% of the total aggregate gross remuneration paid during the whole contract. This indemnity is not payable when the employer proposes a permanent contract at the end of the temporary or fixed-term contract or in the case of termination for serious misconduct.

Temporary workers remain employees of the temporary employment agency or labor hire firm. However, noncompliance with provisions concerning the reasons, length, terms, and renewals may create liability for the end-user company, including the risk of a judicial declaration of a permanent employment relationship.

Seconded Employees

Since 30 July 2020, following the application of a EU directive on secondment (détachement), the general scheme of secondment applies for a limited period of 12 months, which can be extended (under exceptional circumstances) by six additional months with specific approval from the French labor authorities. Beyond 12 months, the seconded employee in France benefits from a new regime of "long-term secondment." The seconded employees are subject to the provisions of the French Labor Code, with the exception of the execution of an employment contract and termination of the employment contract. In such cases, the seconded employee should benefit from all the mandatory benefits provided for by the French Labor Code, in particular the collective health insurance plan (mutuelle), death and disability collective plan (prévoyance), mandatory and voluntary profit-sharing schemes (participation, intéressement), etc.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

French law does not always require a formal written employment contract, except in certain cases, including temporary and fixed-term contracts, part-time contracts, apprenticeship contracts, and all contracts with foreign workers. However, EU regulations require that the employer confirm in writing the main elements of the contract within two months from the starting date.

Most collective bargaining agreements (CBAs) provide that the employee must be provided with a written agreement regardless of the type of contract. The use of a formal written contract is strongly advised for evidentiary reasons.

Codes or Rules

The French Labor Code is an organized collection of most of the laws and regulations applicable to labor law and mainly concerns employees under private law labor contracts. Public employees are generally subject to specific statutes.

Collective Bargaining Agreements

CBAs are agreements concluded by employees, unions, and employers' organizations that provide additional mandatory rules but are still compliant with the French Labor Code. The CBAs are concluded by sector of activities.

CBAs apply to all employees covered by the scope of the CBA and cover a broad range of topics, especially employment conditions such as minimum remuneration, notice periods, and vacation, as well as termination indemnities.

A company falling within the scope of a CBA (on industry or geographical grounds) is required to abide by the CBA's provisions as soon as the CBA is extended by the Ministry of Labor and published in the *Official Journal*.

Since 2020, the number of national CBAs has been reduced as a result of a process of grouping together of professional branches. The structure of unions and the scope of application of CBAs has changed.

Company Collective Agreements

Company collective agreements (CCAs) are concluded by the employer and the union representative appointed (if any) in order to collectively govern the employees of a company.

CCAs are subject to strict rules of disclosure to the labor authorities in order to be valid and enforceable.

The reform of the French Labor Code of September 2017 has established a principle of superiority of the CCA that is now the prevailing agreement in collective negotiation. However, in relation to some specific topics, CBAs still prevail, including minimum wages, classifications, social protection, working time, and fixed-term contracts.

Companies are required to negotiate once every four years, when they have set up a trade union section, on certain specific matters of public order, including:

- Wages, working time, and distribution of added-value plans.
- Gender-equal pay, quality of working life, and, as of 31 March 2022, working conditions.
- Job management and a professional pathway for companies with over 300 employees.

Internal Rules and Regulations

The Internal Rules and Regulations (Règlement Intérieur) is a written document governing the duties and rights of employees within the company.

The Internal Rules and Regulations are mandatory for companies with at least 50 employees but optional for small businesses. They must be drafted in French and must specify the effective date.

The employer draws up this document unilaterally, although it must be subject to prior consultation with staff representatives, notified to employees, and filed with the labor authorities.

There are mandatory subjects that must be covered by the Internal Rules and Regulations, such as prohibition of moral or sexual harassment, acts of sexism, smoking, disciplinary procedures, the hierarchy of sanctions, the employee's right of defense, and health and safety rules.

French courts have accepted the possibility for the employer to provide for a "zero alcohol tolerance" for certain workstations. The internal regulations may prohibit not only the consumption of alcohol in the workplace but may also prevent an employee from attending work with alcohol in his or her system. This specific prohibition must be justified by the nature of the tasks to be performed and proportionate to the intended purpose of the prohibition.

IV. ENTITLEMENTS

Minimum Employment Rights

French legislation provides for rights that apply mandatorily to every employee working in France.

Working Time

The legal weekly working hours consist of 35 hours. Rules apply with respect to maximum daily and weekly rest hours.

For managerial employees with autonomy in their work organization, it is possible to consider a global remuneration for a maximum of 218 days worked per year (convention de forfait annuel en jours) within limits required by the CBA and the French Labor Code.

Annual Leave

Employees are entitled to paid holidays corresponding to two and one-half days per month of work, up to a total of five weeks' paid holidays per year. The period of reference for accruing and taking paid leave is not the calendar year but from 1 June to 31 May of the following year.

At the end of the employment contract, any accrued but untaken vacation days are to be paid out.

Maternity and Parental Leave

The length of maternity leave depends on the number of children, the minimum duration being a total of 16 weeks of leave for the first two children (at least six weeks prior and 10 weeks following the birth). Women with two or more children are entitled to 26 weeks' maternity leave (at least eight weeks prior and 18 weeks following the birth). Women are protected from dismissal and from changes to their duties during the whole pregnancy, the maternity leave, and during a period of 10 weeks after the end of the maternity leave, with the strongest protection during maternity leave. Effectively, until the end of the protection period, the only possible basis for dismissal is serious misconduct.

The father is protected under the same conditions against dismissal during a period of 10 weeks following the birth of his child.

Longer periods may apply due to medical reasons related to the pregnancy, such as cases of twin or multiple pregnancies or if the applicable CBA provides a longer period of maternity leave.

Paternity leave can be taken, subject to a prior notice of one month, after the birth of a child and lasts no more than 25 calendar days (Saturdays, Sundays, and public holidays included).

Paternity leave includes two periods:

- A first mandatory period of four consecutive calendar days following the birth.
- A second voluntary period of 21 calendar days (or 28 in case of multiple births), which must be taken following the first period of four calendar days or within six months. In addition, after maternity or paternity leave, an employee with at least one year of service may request a further period of parental leave. Employees have the option to not work during this period or return to work on a part-time basis (up to a maximum of 80% of their full-time hours) with a minimum of 16 hours per week.

Parental leave has an initial duration of one year and may be extended two more times but not beyond the third birthday of the child.

Sick Leave

The period in which an employee is paid sick leave varies according to the employee's length of service within the company and the duration of absence.

During a period of sick leave, the employment contract is suspended and the national health body (Caisse Primaire d'Assurance Maladie), which covers a certain percentage of the employee's salary (around 70%), pays the employee. A CBA may provide for a system of salary maintenance that is more generous to the employee.

An employee having at least one year of employment with the company who is on sick leave is entitled to additional payment by the employer and may also be entitled to a top-up payment by an insurer (Régime de Prévoyance).

An employee on sick leave must receive at least 90% of the remuneration he or she would have received if he or she had worked during the first 30 days of his or her sickness absence and then up to 66% thereafter.

In order to comply with EU legislation, since 24 April 2024, the French Labor Code (Loi portant adaptation du droit de l'Union Européenne, dated 22 April 2024) now guarantees the acquisition of paid leave during work stoppage whether it is work-related or not. In case of sickness absence, employees are entitled to:

- Two working days (i.e., from Monday to Saturday, excluding Sunday and bank holidays) of paid leave per month in case of non-work-related illness or accident.
- Two and one-half working days (i.e., from Monday to Saturday, excluding Sunday and bank holidays) of paid leave per month in case of work-related illness or accident.

Discretionary Benefits

Minimum Remuneration

Employees are often solely paid a fixed salary. However, many employers choose to additionally grant employees variable remuneration elements, which must be defined in a written document (drafted in French) signed by the employee.

Since 1 January 2024, the minimum wage for an adult worker is €11.65 gross per hour, which is €1,766.92 gross per month, on the basis of the legal standard of 35 working hours per week.

Employers in France must be equal opportunity employers, which includes equal remuneration for work of the same level regardless of gender.

The French Labor Code promotes gender pay equality in the workplace through an index (Index Égalité Homme-Femme). The index is calculated on the basis of five indicators, including the gender pay gap, out of a total score of 100 points.

Since 2022, companies with at least 50 employees must publish annually the index score and also the results for all indicators on the company's website.

The employer must provide the indicators and level of results to the labor inspector and the Social and Economic Committee (Comité Social et Économique (CSE)) (the new works council).

Penalties of up to 1% of the total payroll are provided if the minimum score of 75 points is not achieved after three years from the publication of the first score or if the company does not publish its index.

Pension

In France, employees are automatically eligible to participate in a national mandatory pension scheme. The basic pension of employees is calculated according to three parameters:

- The total duration of the career.
- The reference wage.
- The duration of activity as a salaried employee.

The pension reform was finalized during the summer of 2023 and provides for a universal system of calculating social security contributions for all categories of employee (a fixed system of points and the free choice for the employee to retire upon reaching the age of 62). The statutory retirement age is gradually being raised from 62 to 64. The age of 64 will apply to people born on or after 1 January 1968.

Public Holiday

Employees are entitled to paid leave for each day that is proclaimed a public holiday in the country, except in certain industries, such as restaurants and bars. If an employer requests an employee to work on a public holiday, he or she is usually entitled to additional pay, as well as compensatory rest for work on 1 May (Labor Day).

Value Sharing Bonus

Employers can pay their employees an exceptional bonus to support their purchasing power. This bonus is free of income tax and social security contributions, up to a limit of €3,000 per beneficiary. This amount is increased up to €6,000 within companies having implemented a voluntary profit-sharing agreement (accord d'intéressement).

Since 1 December 2023, a company can now pay two value-sharing bonuses per year (prime de partage de la valeur), according to a law dated 29 November 2023 (loi portant transposition de l'accord national interprofessionnel relatif au partage de la valeur au sein de l'entreprise).

On an experimental basis, from 1 January 2025, companies with between 11 and 49 employees will be required to set up a profit-sharing scheme, an employee savings plan (plan d'épargne salariale), or

pay a value-sharing bonus if they achieve a net profit for tax purposes of at least 1% of sales during the last three consecutive financial years.

Moreover, in order to foster the development of voluntary profit-sharing scheme in companies, companies with fewer than 50 employees (not required to implement a profit-sharing scheme) are able to negotiate through a company-wide agreement a profit-sharing formula other than that provided for in the French Labor Code.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination can be by mutual agreement, upon expiry of a fixed-term contract, at the employer's initiative, by resignation of the employee, or by judicial resolution as follows:

- If it is based on real grounds that are serious enough to justify the employee's dismissal, such grounds are either "personal" or "economic."
- After following the proper dismissal procedure (in particular, a preliminary meeting and minimum waiting periods).

II. MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than gross or willful misconduct, it must comply with a minimum notice period.

The same notice period must be complied with by the employee in case of resignation.

The minimum duration of the notice period is one month for employees having between six months' and two years' seniority and two months for employees with more than two years' seniority. CBAs usually provide for longer notice periods, especially for white-collar workers who usually benefit from a three-month notice period.

Notice does not need to be provided when an employer terminates an employee for gross or willful misconduct.

If an employee resigns, he or she must comply with the notice period provided in the contract or CBA. The employer can exempt the employee from working out the notice period, which should nevertheless be paid.

Entitlements

As a general principle, severance payment includes:

- Outstanding wages for hours already worked.
- Indemnity in lieu of an accrued but untaken paid holiday (indemnité de congés payés).
- Indemnity in lieu of notice (if applicable) (indemnité de préavis).
- Dismissal indemnity in case of dismissal and termination through a mutual termination agreement (indemnité de licenciement).

By law, the statutory minimum dismissal indemnity is based on the employee's length of service, as follows:

- For service of less than 10 years, indemnity cannot be less than one-fourth of monthly gross salary per year of seniority.
- For service of more than 10 years, the additional indemnity cannot be lower than the following amounts:
    - One-fourth of monthly gross salary per year of service for the first 10 years.
    - One-third of monthly gross salary per year of service from the 11th year.

Most CBAs provide for higher dismissal indemnities, particularly for white-collar workers.

III. REDUNDANCY

Genuine Redundancy

In the case of redundancy, there are external circumstances (e.g., economic, financial, evolution of information technology, or equipment) that can result in a position no longer being needed. Note that economic grounds for dismissals have changed and cover additional grounds that were already retained by caselaw: The company's reorganization is necessary to safeguard its competitiveness and the termination of the company's activities. These grounds have been added in the new definition of "redundancy" in the French Labor Code.

Since these reforms, parameters for economic dismissals are more precise. Termination by way of redundancy is subject to very specific rules. The procedure is complex and varies according to whether the company has more than 50 employees and if the dismissal concerns at least 10 employees.

Consultation

Informing and consulting staff representatives is mandatory. Staff representatives must give their opinion on the contemplated redundancy before it can be decided and implemented by the company.

The opinion of the staff representatives is not binding.

The labor authorities must be informed when a redundancy is implemented.

In a case where at least 10 employees are dismissed in a company having at least 50 employees, an Employment Protection Plan (PSE) must be negotiated with the union representative, and the PSE must be subject to the staff representatives' opinion and approved by the labor authorities.

Payment

Usually, a severance payment in case of redundancy includes:

- Outstanding wages for hours already worked.
- Indemnity in lieu of an accrued but untaken holiday.
- Redundancy indemnity (generally higher than the mere dismissal indemnity).
- Indemnity in lieu of notice (if applicable).
- A one-year specific state training program (Contrat de Sécurisation Professionnelle) or redeployment leave if the group has at least 1,000 employees in Europe, by which the French company must pay for a retraining and redeployment leave (Congé de Reclassement) that triggers important financial costs, notably because the dismissed employees do not receive state unemployment benefits but keep being paid by the company during a period (between four and 12 months) and benefit from training programs.

In addition, where a PSE applies, companies will also pay additional amounts, such as costs associated with training measures, outplacement counseling, indemnity to help employees setting up a new company, relocation assistance, or a reindustrialization indemnity to the local administration.

IV. REMEDIES

Dismissal Action

Employees may challenge any dismissals in court on the grounds or the procedure of the dismissal, as well as the amount of severance payment provided or overtime hours.

According to the specific procedural labor rules, conciliation is always possible and encouraged before and during the labor court action.

The grounds stated in the dismissal letter should be sufficiently specific to be verifiable.

In order to secure and minimize the risks associated with a labor dispute, since the labor reform of 2017, the amount of damages that can be awarded to an employee by a court are predetermined by the so-called “Macron scale” (barème Macron) on the basis of length of service.

Indeed, a specific amount of indemnity, based on a monthly gross salary, is fixed for each year of service.

The French Labor Code specifies minimum and maximum amounts for each year of service as follows:

- For companies with 11 or fewer employees, the damages are calculated as follows:
  - From a minimum of 0.5 months to a maximum of 20 months.
- For companies with more than 11 employees, the damages are calculated as follows:
  - From a minimum of one month to a maximum of 20 months.

Many labor courts had rejected the legitimacy of the Macron scale. However, on 11 May 2022, the French Supreme Court (Cour de Cassation) stated that the scale was valid and in accordance with Article 10 of Convention No. 158 of the International Labor Organization (Organisation Internationale du Travail).

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

In case of transfer of an ongoing business that is economically autonomous, all employment contracts in progress are automatically transferred to the new employer, who must maintain all employment contracts with the same terms and conditions. Suspended contracts (e.g., maternity leave, sick leave for injury or occupational illness, training) are also transferred.

In case of a partial transfer of ongoing business or activity, only the contracts assigned to the transferred activity are transferred with it. If staff representatives are concerned by the potential transfer, a prior authorization from the labor inspector is required.

This transfer is automatic. That means it is binding on the employer and to employees, who do not have to agree or comment on the transfer.

All collective agreements remain applicable for a period of 15 months, except where new collective agreements are signed with union representatives in order to replace them.

However, dismissals can be carried out before the transfer under specific conditions when a PSE has been adopted.

II. RESTRUCTURING

Notification

Information can be provided to employees after consultation with staff representatives.

Consultation

Informing and consulting staff representatives regarding the contemplated restructure and the likely effects of the restructure on the personnel is required. The staff representatives must give their opinion before the company is entitled to any definitive decision.

The opinion of the staff representatives is not binding.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and trade secrets as defined in articles L.151-1 to L.151-9 of the French Commercial Code.

If those provisions are breached, an employee might face penalties, along with damages to the legitimate holder of the trade secret. However, these obligations should not restrict the employees' rights to earn a living.

II. CONFIDENTIAL RESTRAINTS AND NONCOMPETES

As a general principle, an employer can potentially enforce clauses preventing the employee from working for a competitor or from soliciting the employer's employees and customers. Such a clause must be in the employment contract.

A noncompete duty arising for the period the employee is employed must be included in the contract.

Any noncompete duty after termination of the employment contract must meet the following conditions in order to be valid:

- Be limited in time and space.
- Be limited as to the nature of the prohibited activities.
- Be required to protect the interests of the company.
- Provide for financial compensation to be paid to the employee (no statutory minimum, but caselaw generally considers 33% of the average remuneration as a minimum), which is a salary item (subject as such to both employee's approximatively 23% and employer's approximatively 45% social security contributions).

All of the above conditions must be met. In case of noncompliance with any of the above conditions, the noncompete clause is void, and the employee can claim damages from the employer. An employee who does not comply with the noncompete may be ordered to pay damages to the employer, subject to evidence of such a breach and related prejudice.

An employer may waive a noncompete clause if a waiver is provided in an employment contract clause or with the employee's consent. The CBAs can provide noncompete regulations.

III. PRIVACY OBLIGATIONS

The GDPR is a comprehensive data protection regulation that was introduced by the European Union to strengthen the rights of individuals regarding the collection and processing of their personal data.

In France, the GDPR was implemented into national law through the preexisting Information Technology and Liberties Law (Loi Informatique et Libertés) of 6 January 1978.

Both statutes are enforced through the French data protection authority (Commission Nationale de l'Informatique et des Libertés (CNIL)), which is responsible for overseeing data protection and enforcing compliance with the GDPR within France.

Establishment of Legal Basis

Under the GDPR, the most relevant legal basis for processing must be selected from the following six options:

- Consent of the individual.
- Necessity for the performance of a contract to which the data subject is party.
- Necessity for compliance with a legal obligation.
- Protection of the vital interests of the data subject or another natural person.
- Public interest.
- Legitimate interest pursued by the controller or by a third party.

Attention to Consent

Although an employee's consent may seem a viable option, the hierarchical imbalance between employees and employers could challenge the "freely given" requirement for consent to be valid in human resources relations.

Moreover, consent may be freely revoked, which can also prove challenging for business process continuity.

Attention to Sensitive Data

The processing of sensitive personal data (i.e., ethnic origin, political opinions, religious beliefs, union membership, genetic or (certain) biometric data, or data relating to health or sexual orientation) is prohibited in principle, but there are some limited exceptions under the GDPR (e.g., processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or the data subject in the field of employment and social security and social protection law, or data processing necessary to protect the vital interests of the employee, or if the information is manifestly made public by the person concerned).

Records of Personal Data Processing Activities

Employers are required to maintain records of their personal data processing activities (ROPA). In the context of labor law, this includes documenting what, how, why, for how long, and by whom employee data is collected and processed; details of transfers to third countries (if any); and information about technical and organizational security measures.

The ROPA must be provided to the CNIL upon request, and failure to establish or maintain an up-to-date ROPA would in and of itself be a breach of the GDPR's accountability requirement.

Data Protection Impact Assessment

When processing operations are likely to result in high risks to data subjects (e.g., when involving new technologies such as artificial intelligence), employers will need to conduct a specific Data Protection Impact Assessment (DPIA), detailing, in addition to the information required under the ROPA, the risks and ways to remedy such risks, prior to implementing the relevant processing operations.

The CNIL published a nonexhaustive list of types of processing that mandate a DPIA, including processing pertaining to (a) the permanent monitoring of employees' activities, (b) the management of professional whistleblowing reporting, or (c) the profiling of individuals for the purpose of human resources.

Information of Employees

An employer is obliged to inform individuals in detail about the collection and processing of their personal data, including data sharing and international transfers, and legal rights in this regard. Such information should generally be provided through various privacy notices for each category of individuals (e.g., employees, applicants), in order to only convey the information relevant to that category.

The individuals should be notified of any substantial changes to the privacy notice.

Training of Employees on Data Protection Policies

As part of the accountability tenet of the GDPR, the employer is responsible for ensuring that its employees comply with GDPR requirements and for providing evidence for compliance with the GDPR, which can be achieved through staff training.

Data Sharing Group-Wide Consolidation

Data sharing with third parties (including service providers such as payroll providers and marketing partners) must be thoroughly assessed and framed within a data sharing agreement to ensure that GDPR requirements are complied with all through the data life cycle. Additionally, both disclosure of data to and receipt of data from third parties must be indicated in the ROPA.

There are no intragroup exemptions, so group companies have to be treated as third parties and any data flows among group companies need to be carefully assessed.

Data Transfers

There are limited ways in which data can be transferred to third parties outside the EEA. Where the recipient is not located in a country benefiting from an “adequacy decision” or all involved parties have implemented binding corporate rules, a data transfer agreement will generally need to be implemented to ensure that GDPR requirements are complied with all through the data life cycle.

Data Subjects Rights and Data Subject Access Requests

Employees also have several statutory rights under the GDPR with regard to their personal data, namely:

- Right to access, rectify, or delete their data.
- Right to restrict the processing.
- Right to data portability.
- Right to object.
- Right to freely withdraw consent.

Upon receiving such data subject access request, the employer will need to address the request within one month of its receipt, but an additional two months’ time extension may be applied to complex requests.

Data Protection Officers

Employers, especially larger organizations, may be required to designate a data protection officer (DPO) responsible for monitoring GDPR compliance and engaging with data subjects and supervisory authorities.

Among the requirements to properly perform his or her activities, the DPO must have expert knowledge of data protection, a good understanding of the organization’s operations, independence,

material and organizational means, resources, and appropriate positioning when performing his or her tasks.

The DPO is a protected employee who may not be dismissed for performing his or her tasks.

Fines

Noncompliance with the GDPR might result in fines of up to €20 million or up to 4% of the global annual turnover, whichever is higher.

Notable Recent Developments

The CNIL published a frame of reference for recruitment on 30 January 2023. The frame of reference is a nonbinding framework dedicated to the hiring of new employees. It is a comprehensive guide that provides employers with clear and concise information on the data protection requirements they must comply with when recruiting new personnel. This detailed document is structured as a series of guidance sheets, each addressing a specific aspect of the hiring process and addressing frequently asked questions from employers.

IV. WORKPLACE SURVEILLANCE

An employer has the right to monitor an employee's activity during work time if the monitoring meets the following obligations:

- It is not permanent.
- It demonstrates a legitimate interest for the company.
- It is strictly related to a specific task.
- The employer consults the works council prior to the implementation of a monitoring system.
- The employer individually informs each employee before the implementation of the monitoring system (see "Privacy Obligations" section above).

Information obtained in violation of these rules is null and void, will not constitute evidence, and cannot justify either sanction or dismissal.

French law prohibits employee monitoring in areas such as toilets, bathrooms, and changing rooms or on a permanent and continuous basis, such as for workstations (except in specific circumstances, e.g., an employee handling money).

Since 2016, noncompliance with protective rules applicable to the collection of personal data is sanctioned by the French Penal Code and may lead to a maximum of five years' imprisonment and a fine of €300,000 for legal representatives and €1,500,000 for the company (as provided by the Digital Republic Act), and there is also a risk of a GDPR fine of up to €20 million or 4% of annual global turnover.

V. WORKPLACE INVESTIGATIONS

Employers may conduct a workplace investigation to determine policy breaches, misconduct, or misuse of confidential information. However, the investigation has to be open, and evidence must be shared with the employee in question to allow him or her to defend himself or herself. The searching of personal belongings is allowed only by complying with the conditions and methods specified by internal regulations.

The employer is entitled to inspect the employee's professional computers, emails, and telephone and to copy the data. However, files, folders, and emails identified by the employee as "personal" may only be accessed where the employee has been invited to be present during such access.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, rules and regulations, and agreements provide procedures for the management of employees' performance and conduct.

Unfair dismissal provisions require an employer to warn an employee before terminating his or her employment due to poor performance.

Misconduct may also lead to a warning, disciplinary action, or, if the conduct is serious, termination of employment. Employees terminated for serious misconduct do not receive all of their usual entitlements on termination of employment.

II. BULLYING AND HARASSMENT

Bullying

Bullying is prohibited by law.

Harassment

Sexual and moral harassment and sexist acts are prohibited by French legislation and subject to civil and criminal sanctions.

Companies who have at least 50 employees must appoint a special supervisor for cases of sexual harassment. The supervisor's report can be used in case of any legal dispute.

Whistleblowing Policy

French legislation has recently evolved with regard to internal whistleblowing procedures. Under French labor law, a "whistleblower" is "an employee who discloses or reports, in a disinterested manner and in good faith, a serious risk to public health or the environment in the company." An employee who complies with the reporting procedure is protected against any sanction, dismissal, or discrimination. Since 1 September 2022, the implementation of a written internal reporting policy is mandatory for companies with more than 50 employees.

In addition, the law of 21 March 2022 (loi visant à améliorer la protection des lanceurs d'alerte) expressly allows for the possibility of anonymous reporting. However, if the identity of the whistleblower is revealed, he or she must benefit from the same protection as any other whistleblower.

Finally, the implementation of a whistleblowing hotline would include the processing of personal data that may also be potentially sensitive. Information on the processing and rights of the data subjects should be provided to employees. Where the service is provided by a third party, a data processing agreement must be implemented to guarantee GDPR compliance and, where such provider is located outside of the EEA, a data transfer mechanism must be implemented. A DPIA will need to be conducted prior to such implementation as well.

III. DISCRIMINATION

France has very strict regulations prohibiting certain types of employment discrimination.

The French Labor Code provides that no candidate may be turned down from a recruitment process, nor may any employee be punished, dismissed, or subjected to a discriminatory measure (directly or

indirectly) with regard to remuneration, training, relocation, appointment, classification, qualification, or promotion on the grounds of his or her origin, gender, morals, sexual orientation, age (unless the difference of treatment based on age can be justified by a legal purpose), marital status, ethnicity, nationality, race, political or religious beliefs, union involvement, physical appearance, surname, state of health, disability, pregnancy, maternity, or negative discrimination due to the economic situation of a poor person.

Indirect discrimination is also prohibited.

However, some discrimination can be justified either by the need to protect the economic interests of the company or by the desire to protect certain categories of people.

IV. UNIONS

Representation

Within a business, the interests of employees are represented by staff representatives, including works councils, employee delegates, health and safety committees, and union representatives. This has been completely changed by the labor reform in 2017, creating the CSE, a unique employee representative body, mandatory since January 2020.

The general duties of these representatives include:

- Ensuring that laws are complied with.
- Working together with the employer in good faith.
- Ensuring that men and women are treated equally.

In addition, representatives are entitled to be involved in many of the employer's decisions, such as employee issues, dismissals, economic matters, and operational changes. They are also the interlocutors of the labor inspector and can inform them of any problem with law enforcement.

Trade and labor unions are employee representation coalitions that are not bound to a single employer or business. The main purpose of unions is the conclusion of CBAs, either with employer associations or with individual employers.

Intended to unify the various representative bodies (staff representatives, CSE, Health and Safety Committee), the CSE entails reduced or extended functions, depending on the size of the company.

The role of the CSE with reduced functions (for companies with less than 50 employees) is to present individual or collective claims relating to wages and social protection. The CSE is also competent in matters of health and safety and working conditions, investigations following work accidents, or occupational illnesses.

The role of the CSE with extended functions (for companies with at least 50 employees) is to primarily provide a mandatory consultation on matters relating to the organization, management, and general operations of the undertaking in general on every measure able to affect the volume or structure of the workforce and for every change affecting economic or legal organization.

The CSE is also competent to deal with a health and safety analysis of professional risks, wage equality, and right of alert in case of infringement of individual rights, physical and mental health, or individual freedoms in the company.

The CSE also has the right to participate in the company's board meetings twice per year.

Industrial Disputes

It is lawful to take industrial action (e.g., strikes) as long as, collectively, employees' claims are of a professional nature. In the public sector, employees must give notice of at least five days before going on strike.

V. REMOTE/HYBRID WORK

Remote Work

The use of remote work is no longer mandatory but remains recommended and is carried out under the provisions of the French Labor Code. In principle, remote work can be implemented within companies by collective agreement. Specific provisions in the employment contract are required.

VI. PARTIAL ACTIVITY SCHEMES

"Classic" Partial Activity Regime

Partial activity (activité partielle) is a tool for preventing economic redundancies for a limited period of time.

The purpose of partial activity is to avoid economic redundancies by reducing the working time of employees. During the period of partial activity:

- The employer receives an allowance from the state equivalent to part of the hourly pay of the employee impacted by partial activity.
- The employee receives a partial activity indemnity from the employer in lieu of pay for the period during the partial activity period.

The hours covered by the state allowance are usually limited to 1,000 hours per year.

In principle, the company must apply for partial activity before the French Labor Administration after informing and consulting with the CSE.

This scheme can be set up for a maximum period of 12 months.

Long-Term Partial Activity Regime

The long-term partial activity regime (Activité Partielle De Longue Durée (APLD)) is an economic support mechanism for companies facing long-term economic difficulties. This was a temporary scheme set up either by collective agreement or by employers unilaterally up to 31 December 2022. However, from 1 January 2023, existing collective agreements or documents continue to apply until they expire (maximum to 31 December 2026), and they may be modified by addendum.

With APLD, companies can reduce their employees' working hours, maintain the employees' remuneration at 84%, and receive from the state an allowance for hours not worked but paid.

The collective agreement or the unilateral document must contain specific information, such as the economic situation diagnosis, activities and employees affected, training, and the maximum reduction of working hours below the legal working time.

When the APLD is implemented:

- Employees' working time can be reduced by up to 40%.
- For hours not worked, employees receive an indemnity from the employer corresponding to 84% of their net hourly pay.
- The company receives an allowance from the French government, the amount of which varies.

The APLD may be implemented for a maximum of 36 months (consecutive or cumulative) over a period of 48 consecutive months.

AUTHORS AND CONTRIBUTORS

Christine Artus

Partner
Paris
+33.1.58.44.15.38
chistine.artus@klgates.com

Anne Ragu

Associate
Paris
+33.1.58.44.15.39
anne.ragu@klgates.com

K&L GATES

Germany

Employer Guide

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INTRODUCTION

Germany remains one of the most employee-protective employment law regimes in the world. Apart from strict material requirements, formalities such as certain strict wet-ink signature requirements and consultation obligations remain very important, as they can heavily impact the legal validity of measures an employer takes in Germany.

Moreover, the employment law landscape in Germany continues to change rapidly. German employment law comes with an ever-increasing complexity, making it challenging for employers to navigate compliance obligations. For example, arrangements with professional employer organizations (each, a PEO) increasingly result in legal challenges. Further, caselaw developments around employers' obligations to introduce a system to record their employees' daily working hours has raised uncertainties in recent years. Legislation clarifying the exact obligations has been expected numerous times over the last years, and also in 2024; however, it is still pending.

Finally, remote work and cross-border employment work arrangements remain a hot topic with increased consultation needs in the cross-junctions of employment, immigration, social security, and tax laws.

EMPLOYMENT RELATIONSHIPS

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure that their employees are lawfully allowed to work in Germany.

In principle, employees are required to apply for a visa allowing them to work in Germany before entering the country. Visa requirements vary depending on the country of origin.

Employees from EU member states generally do not need visas.

Reference/Background Checks

An employer may ask employees to provide and verify information that is relevant for a particular job and task. However, comprehensive background checks without the employee's consent are generally not permissible. Employee consent alone is generally not a suitable tool to justify background checks in the hiring process, as it is not considered to have been given voluntarily.

Police and Other Checks

Permitted in limited circumstances with the applicant's consent, if necessary to determine suitability for a particular job.

Medical Examinations

Permitted in limited circumstances with the applicant's consent, if necessary to determine fitness for a particular job.

Minimum Qualifications

Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Employment relationships may be full time or part time, as well as unlimited in term or fixed term. Fixed-term contracts are permissible only in certain circumstances and often require an objective reason. In principle, employees must be treated equally and enjoy the same rights regardless of the form of employment.

Independent Contractors, Freelancers, or Consultants

Individuals engaged as independent contractors, freelancers, or consultants do not qualify for a wide range of legislative protections. These individuals do not fall within the scope of the statutory social security system and different tax obligations apply. Misclassification can result in additional liabilities and risks for the employer, especially (a) individuals claiming employment resulting in the applicability of statutory employee protective rights and benefits, and (b) liability for back pay of social security contributions plus interest and wage tax as of the commencement of the engagement. Moreover, misclassification can also constitute an administrative offense punishable by a fine or even result in criminal charges.

Labor Hire (Agency Work)

Labor hire (agency work) is highly regulated and permissible only for a temporary period. The labor hire firm generally requires an official permit and remains the employer of the labor hire workers. Violations of the labor hire regulation may, for example, result in employees being able to claim employment with the hiring entity as well as fines or even criminal charges for the companies.

PEO and employer-of-record arrangements will often fall within the scope of this regulation. As a consequence, they will generally be permitted only on a temporary basis.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

A written contract of employment is not legally required but is strongly advised in order to minimize the risk of disputes. On the first day of employment (at least for certain key terms), the employer must provide the employee with a written summary of certain fundamental employment conditions, such as details of pay, overtime, notice periods and termination procedures, duties, holidays, and hours of work. Employers can comply with this obligation by entering into a written contract of employment at the start of the relationship.

Collective Agreements

Collective bargaining agreements with trade unions and works agreements with works councils cover a broad range of topics relating to employment conditions, such as remuneration, notice periods, and leave entitlements. A collective bargaining agreement applies by law to every individual contract of employment between an employer (that is bound by the agreement) and any employee who is a member of the union. Employers may further choose to make reference to collective bargaining agreements and thereby implement them voluntarily by contract. A works agreement applies with very limited exceptions to all employees of the business that are subject to such works council (i.e., regardless of any specific membership of the individual employees or contract reference).

Registered Agreements

Collective bargaining agreements may be declared generally binding by public order for all employers in a business sector.

Policies

Policies are not required but are often introduced to achieve consistent standards throughout a company or group of companies. In many cases, such policies touch upon mandatory codetermination rights of the works council and, therefore, cannot be introduced unilaterally if a works council has been established.

IV. ENTITLEMENTS

Minimum Employment Rights

Employment conditions set out in German labor law can be divided into two main categories:

- Mandatory provisions.
- Provisions that allow deviations only to the benefit of the employee.

In some cases, deviations are permissible only by way of collective agreements (i.e., collective bargaining agreements with trade unions or works agreements with works councils). For the majority of provisions protecting employees' rights, no deviations or only limited deviations from the law may be agreed on.

Important minimum employment rights include:

Hours of Work

The statutory maximum limit for the working time of an employee generally is eight hours per day. Breaks are not taken into account for this. A work day may be extended to a maximum of 10 hours. However, such extensions must be balanced by ensuring that the working time (including overtime) does not exceed an average of 48 hours per week over a reference period of either six calendar months or 24 weeks.

Employees are entitled to at least 11 hours of uninterrupted rest time after each work day. In principle, employees are not allowed to work on Sundays and public holidays.

Annual Leave

All employees are entitled to four weeks' paid annual leave a year, which is calculated on a pro rata basis for part-time employees. Public holidays must be granted in addition to this.

Severely disabled employees receive an additional entitlement of one week's leave.

Maternity and Parental Leave

Women are entitled to at least six weeks' paid maternity leave prior to, and eight weeks following, the birth of their child and generally do not work during this period.

Women may be entitled to longer periods of maternity leave for medical reasons.

A parent may request parental leave in order to care for and educate his or her child for up to three years. During parental leave, the employer generally has no obligation to continue to remunerate the employee (unless the employee works part time during the parental leave). The employee will be able to apply for statutory parental leave benefits for a period of up to 14 months during the parental leave period.

Flexible Working Arrangements

Employees may request a reduction of their working time, i.e., work part time. Furthermore, employees on parental leave may request to work part time during their parental leave instead of being fully released from their working duties.

Protection Against Unfair Dismissal

Protection against unfair dismissal rules, as outlined in the "Dismissal Action" section of this Germany guide, are binding and may not be agreed otherwise between the parties.

Continued Pay (Illness, Public Holidays, and Other)

During public holidays and in the case of sick leave, employees are generally entitled to continuous pay of their regular remuneration. Employees are entitled to up to six weeks' full pay for each period of illness, except employees who have been employed for less than four weeks, who receive no pay when absent. Employees can also be entitled to continuous pay in the case of other short-term leave, i.e., when taking care of sick children or attending a close family member's wedding.

Public Holiday

The number of public holidays varies among the different German federal states and ranges from 10 to 13 days per year. In principle, employees must not work on a public holiday.

Minimum Wage

A general statutory minimum wage of €12.41 gross per hour applies since 1 January 2024. It is generally reviewed every two years. The next increase of the minimum wage is scheduled for 1 January 2025 (€12.82 gross per hour). There are only very limited exceptions from the minimum wage.

Higher minimum wages can apply for certain sectors based on collective bargaining agreements that have been declared generally binding by public order.

Notice of Termination

When an employer terminates a full-time or part-time employee's employment, it must observe the following notice periods:

- Less than two years of service – four weeks.
- Two but less than five years of service – one month.
- Five but less than eight years of service – two months.
- Eight but less than 10 years of service – three months.
- 10 but less than 12 years of service – four months.
- 12 but less than 15 years of service – five months.
- 15 but less than 20 years of service – six months.
- 20 years of service and more – seven months.

For employees who are in a probationary period (up to six months), a notice period of two weeks may be agreed on.

There are no legal obligations regarding severance or redundancy payments when terminating employees.

Wage Taxes and Social Security Contributions

Employers must pay social security contributions toward the employee's statutory health insurance and wage taxes to the appropriate tax authority. The German statutory social security systems include pension insurance, unemployment insurance, health insurance, nursing care insurance, and accident insurance.

Social security contributions currently amount to a total of 40% of the employee's monthly gross remuneration, but they are capped at a maximum of €2,620.08 per employee for Western Germany and €2,598.88 for Eastern Germany. The employer's contribution represents approximately 50% of the social security contributions and is capped at €1,310.04 and €1,299.44, respectively.

Discretionary Benefits

Bonuses

Employers may choose to incentivize employees by including bonus provisions in employment contracts. Bonuses are usually subject to individual, department, or business performance. Once bonus payments have been agreed upon, there are only limited ways in which they can be revoked or kept fully discretionary.

Additional Annual Leave

Additional annual leave can be granted in addition to the statutory minimum of four weeks.

Other Benefits

There is a wide variety of further benefits, such as a company car, company housing, and travel allowances, that may be provided. These discretionary benefits may be calculated as taxable income and are also considered when calculating the social security contributions.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, by the employer with or without notice, or by the employee.

Employees may enjoy statutory dismissal protection under the Dismissal Protection Act if the employer regularly employs more than 10 employees in Germany (in certain rare circumstances, this threshold may be reduced to five employees). Employees gain protection against dismissal from the Dismissal Protection Act only after they have worked for the employer for at least six months.

Generally, the employer can validly dismiss an employee under the Dismissal Protection Act only if there is a sufficient reason relating to:

- The employee, such as inability to perform contractual duties (for example, because of long-term illness).
- A breach of contract, such as misconduct.
- A restructuring of the business resulting in redundancy.

Special additional rules on the dismissal procedure apply if the employees have established a works council. Furthermore, certain employees enjoy special dismissal protection. This includes, *inter alia*, employees who are pregnant, on maternity or parental leave, or family or caretaker leave; employees who are severely disabled; or employees who are members of the works council or who are appointed as a data protection officer (DPO). In such cases, termination might be permissible only for cause or with prior approval by a state authority.

In case the Dismissal Protection Act does not apply, dismissing employees is, in principle, possible without reason, provided that the termination is not for a discriminatory, arbitrary, or retaliatory reason.

II. MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates an employee's employment for reasons other than for good cause, it must provide the notice as described under the "Entitlements" section of this Germany guide.

An employer can dismiss without notice for good cause. However, where a termination is based on breach of contract, a prior written warning is almost always required before the employment relationship may be terminated. Short and strict deadlines apply for such a termination without notice.

Employees must observe a notice period of at least four weeks (two weeks during a probationary period). However, in practice, it is generally agreed that the employee has to observe the same notice periods as the employer, as described under the "Entitlements" section of this Germany guide.

Statutory Entitlements

Payment on termination includes:

- Outstanding wages for hours already worked, including hours accrued on working time accounts.
- Outstanding bonus amounts or other variable remuneration (prorated, if applicable).
- Continued remuneration until the end of the notice period.
- Accrued annual leave.

III. REDUNDANCY

Genuine Redundancy

A redundancy will justify a dismissal pursuant to the Dismissal Protection Act only if the employer can prove that the job reduction is a result of the implementation of an entrepreneurial decision (such as restructure) and the following preconditions are met:

- There is a lack of positions available in the company to transfer the employee to.
- The affected employee has to be chosen under observation of the social selection criteria (e.g., length of service, age, family obligations, and whether the employee is handicapped).

For the social selection process, the general rule is that if there are (company-wide) employees comparable to those whose positions have ceased to exist, employees with the lower "social data" must be made redundant first.

IV. FORMAL REQUIREMENTS

Consultation

If a works council has been established at the business, it must be consulted before every termination. Furthermore, approval by a state authority must be granted in cases where the employee is pregnant, severely disabled, or on parental leave.

Notice of termination must be in writing (with an original wet-ink signature of authorized person(s) included).

V. REMEDIES

Dismissal Action

Unfair Dismissal

Employees may bring an unfair dismissal claim against their former employer.

If the employer has sufficient reasons, the dismissal is valid and the employer will not be obliged to pay severance. If the employer does not have sufficient reasons, the dismissal will be found to be invalid and the employment relationship must be continued. Again, no severance needs to be paid. Reinstatement is the only remedy. There are no other alternatives, such as granting compensatory awards.

In spite of the rules in the Dismissal Protection Act, most claims for dismissal protection end with a settlement providing for the termination of the employment relationship and severance for the employee.

As there are no rules on severance, it is a matter of negotiation. A "typical" severance would be one-half of the employee's monthly salary per year of employment with the employer.

Adverse Action

Employers are prohibited from taking "adverse action" (including termination) against employees who exercise their rights (e.g., joining a trade union or demanding minimum working entitlements) or because of a protected attribute (see the "Discrimination" section in this Germany guide below).

Such adverse action is null and void. It may further result in affected employees being able to claim damages.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

German legislation prescribes a number of rules that apply if there has been a “transfer of business” (often referred to as a “transfer of undertakings”).

Generally speaking, these rules apply when:

- A business, or a part of a business, is transferred from one company to another while keeping its identity (i.e., transfer of an economic unit).
- The new company continues the business.

The main effects of the rules are that:

- All employees transfer to the new company.
- Existing employment conditions, in principle, continue to apply after the transfer.
- Terminating employees due to the transfer is not permitted.

The particulars of a “transfer of business” are highly regulated and subject to ever-changing caselaw.

II. RESTRUCTURING

Notification

Restructuring can trigger a variety of notification obligations (e.g., in relation to the employment agency, a works council, or an economic council).

Consultation

If a works council has been established at the affected business and the restructure constitutes a change of business (e.g., breakup of a business or a merger), a reconciliation of interests and a social compensation plan may have to be negotiated and agreed on with the works council before carrying out the restructure. Such negotiations will, among other things, typically result in severance payments for the affected employees. The process can be very time-consuming and can take several months or more.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the employer's confidential information, including intellectual property and client information. Trade and business secrets of the employer are also protected by law.

II. CONFIDENTIAL RESTRAINTS AND NONCOMPETES

Confidentiality provisions may restrict employees from using confidential information for anything other than the performance of their work duties. However, there are limited ways to prevent employees from using the knowledge they acquired during the term of their employment after termination.

Many employment contracts (especially with executives and key knowledge carriers) contain noncompete provisions that protect an employer's legitimate business interests and can be enforced and protected by contractual penalty clauses. These provisions usually prevent an employee from competing with his or her former employer for a period of up to 24 months after the termination date. However, noncompetes are binding on the employee only if they provide for a noncompete allowance in the sum of at least 50% of the compensation last received by the employee, including any variable remuneration and other benefits, such as car allowances. A shortfall of this commitment makes the entire post-contractual noncompetition covenant unbinding.

III. PRIVACY OBLIGATIONS

The General Data Protection Regulation (GDPR) is a comprehensive data protection regulation that was introduced by the European Union to strengthen the rights of individuals regarding the collection and processing of their personal data. In Germany, the GDPR was implemented in the Federal German Data Protection Act (BDSG). The GDPR and BDSG also apply in employment relationships where employees maintain their general constitutional right to privacy. As a result, any act of collecting/processing personal data of employees requires a legal basis.

Processing Employees' Personal Data

Under the GDPR, the most relevant legal basis for each processing must be selected among the following six possibilities:

- Consent of the individual.
- Necessity for the performance of a contract to which the data subject is party.
- Necessity for compliance with a legal obligation.
- Protection of the vital interests of the data subject or another natural person.
- Public interest.
- Legitimate interest pursued by the controller or by a third party.

Although an employee's consent may seem a viable option, the hierarchical imbalance between employees and employers could challenge the "freely given" requirement for consent to be valid in human resources relations. Moreover, consent may be freely revoked, which can also prove challenging in business process continuity.

The processing of sensitive personal data (i.e., ethnic origin, political opinions, religious beliefs, union membership, genetic or (certain) biometric data, or data relating to health or sexual orientation) is, in principle, prohibited. There are some limited exceptions under the GDPR only (e.g., data processing necessary to protect the vital interests of the employee or where required expressly by law).

Record-Keeping Obligations

Employers are required to maintain records of their personal data processing activities (ROPA). In the context of employment law, this includes documenting what, how, why, for how long, and by whom employee data is collected and processed. The ROPA must be provided to the competent supervisory authority upon request, and failure to establish or maintain an up-to-date ROPA would in and of itself be a breach of the GDPR's accountability tenet.

When processing operations are likely to result in high risks to data subjects (e.g., when involving new technologies such as artificial intelligence), employers will need to conduct a specific Data Protection Impact Assessment detailing, in addition to the information required under the ROPA, the risks and ways to remediate such risks, prior to implementing such processing operations. For example, this can relate to processing pertaining to (a) automated evaluation of video or audio recordings to evaluate the personality of those affected, or (b) large-scale processing of personal data on the conduct of employees, which can be used to evaluate their work activities with legal or similar significant effect.

Notification Obligations

The employer is obliged to inform individuals in detail about the collection and processing of their personal data, including data sharing and international transfers, and legal rights in this regard. Such information generally should be provided through various privacy notices for each category of individuals (e.g., employees, applicants) in order to convey only the information relevant to that category. Upon substantial update to the privacy notice, individuals should be notified of such changes. As the employer is responsible for ensuring and providing evidence for compliance with the GDPR by its personnel, proper training and documentation is recommended.

As part of the accountability tenet of the GDPR, the employer is responsible for ensuring that its personnel comply with GDPR requirements and for providing evidence for compliance with the GDPR by its personnel. One such way to demonstrate compliance may be achieved by proper training of the personnel.

Data Sharing

Data sharing with third parties (including service providers such as payroll providers and marketing partners) must be thoroughly assessed and framed within a data sharing agreement to ensure that GDPR requirements are complied with all through the data life cycle. Additionally, both disclosure to and acquisition from third parties must be indicated in the ROPA. There are no intragroup exemptions, so group companies have to be treated as third parties and any data flows among group companies need to be carefully assessed.

There are limited ways in which data can be transferred to third parties outside the European Economic Area. Where the recipient is not located in a country benefiting from an "adequacy decision" or all involved parties have implemented binding corporate rules, a data transfer agreement will generally need to be implemented to ensure that GDPR requirements are complied with all through the data life cycle.

Other Rights and Obligations

Employees also have several statutory rights under the GDPR with regard to their personal data, namely:

- Right to access, rectify, or delete their data.
- Right to restrict the processing.
- Right to data portability.
- Right to object.

- Right to freely withdraw consent.

Upon receiving such data subject access request, the employer will need to address the request within 30 days of its receipt.

Employers, especially larger organizations, may be required to designate a DPO responsible for monitoring GDPR compliance and engaging with data subjects and supervisory authorities. Among the requirements to properly perform his or her activities, the DPO must have expert knowledge of data protection, a good understanding of the organization's operations, and independence when performing his or her tasks. The DPO is a protected employee who may not be dismissed for performing his or her tasks.

Noncompliance with the GDPR might result in fines up to €20 million or up to 4% of the global annual turnover, whichever is higher.

IV. WORKPLACE SURVEILLANCE

Surveillance of employees with cameras or other technical means is strictly regulated and permitted only in limited scenarios. The constitutional right to privacy also applies at the workplace, and ongoing/permanent monitoring of employees would interfere with this right. Involvement of the works council (if one exists) may be necessary.

Allowing employees to use the employer's information technology infrastructure for private purposes (e.g., sending and receiving personal emails, visiting non-work-related websites) or tolerating such usage can vastly restrict the options of the employer to record, monitor, or investigate respective data.

V. WORKPLACE INVESTIGATIONS

Investigations may be permissible in the case of suspected crime or substantial contract violations. They may be required before a dismissal for conduct-related reasons is lawful.

Investigations may violate the BDSG and the GDPR and constitute criminal offenses if carried out incorrectly.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies, and agreements may set out the employer's expectations regarding employees' performance and conduct.

The ability to terminate an employee due to poor performance is very limited.

A prior written warning is almost always required before an employment relationship may be terminated due to misconduct.

II. BULLYING AND HARASSMENT

Workplace bullying and harassment are not covered by any special legislation in Germany. Depending on the circumstances, bullying may be covered by anti-discrimination law (see the "Discrimination" section in the Germany guide below).

Bullying and harassment by an employee may constitute a form of misconduct that justifies termination of employment.

III. DISCRIMINATION

Discrimination in employment (including during the recruitment process) is prohibited by anti-discrimination legislation. It is unlawful to discriminate on the basis of race, ethnicity, sex, religion, ideology, disability, age, or sexual identity.

Limited objective reasons may justify discrimination in certain cases. Also, positive action in order to prevent or compensate for existing disadvantages may be seen as lawful.

Furthermore, all employees are entitled to equal treatment where different treatment cannot be justified by objective reasons (regardless of the grounds on which the different treatment is based).

IV. UNIONS

Representation

Trade unions are employee representation coalitions for multiple employers or businesses. The main purpose of unions is to agree to collective bargaining agreements, either with employers' associations or with individual employers. However, not all industries or employers are bound by collective bargaining agreements.

At the business-unit level, the interests of the employees are represented by the works council. A works council may be established in a business with at least five permanent employees who are over 16 years of age. Employers can agree to "works agreements" relating to certain mandatory codetermination rights with the works council, such as questions relating to the behavior of the employees or the organization of remuneration systems. Employers are also free to agree to voluntary works agreements to regulate other work-related areas that are not covered by collective bargaining agreements.

Employees' personal data relating to their union activities is considered to be sensitive data under the GDPR and may be processed only in limited scenarios.

Right of Entry

If a works council has been established at the business, representatives of trade unions may be allowed to enter the workplace in order to exercise specific rights in connection with the Works Constitution Act.

External representatives of trade unions are generally not permitted to enter the workplace, except in the above circumstances.

Works council members are allowed to enter the workplace, as they are employees of the business.

Industrial Disputes

It is lawful for trade unions to undertake industrial action (i.e., strikes) under certain circumstances. Currently, no legislation regulating industrial action exists; rather, the framework for, and limitations of, industrial action has been developed by caselaw and remains in a state of flux.

A works council may not undertake industrial action. Disputes between a works council and the employer may be resolved by reconciliation committee proceedings.

V. REMOTE/HYBRID WORK

Remote Work of Locally Employed Employees Within Germany (Germany-Internal Scenario)

In Germany, there currently is no legal entitlement for employees to work (fully) remotely. Employees are therefore allowed to work from home or remotely only if this is expressly permitted by the employer (for example, based on the employment agreement, a company policy, or a works agreement).

If no company office workplace is provided by the employer and the employee will therefore be working fully remotely in Germany, there will be a need to reimburse the employee for reasonable home office expenses (including partial rent, heating, electricity, etc.). Employers are also responsible for ensuring proper working conditions from a health and safety perspective for employees who work remotely in Germany. Employers must carry out risk assessments and inform employees of risks they might be exposed to when working remotely, both physically and mentally. Employers also remain responsible for complying with other regulations, such as the provisions of the German Working Time Act or data protection laws.

Remote Work of Locally Employed Employees Outside of Germany (Germany-Outbound Scenario)

Depending on the country, employees may require a residence permit providing the right to work abroad. Employees who are EU citizens working remotely in the European Union will not need to obtain a residence permit.

Moreover, remote work abroad can have an impact on the applicable employment law, social security law, and wage entitlements, as well as corporate tax law. It should therefore be examined on a case-by-case basis which regulations under foreign law will apply in the case of remote work abroad by employees who are usually employed in Germany.

Remote Work of Foreign-Employed Employees Within Germany (Germany-Inbound Scenario)

Depending on the citizenship of the individual employee, employees may be required to hold a residence permit providing the right to work in Germany. Employees who are EU citizens will not require a residence permit or work permit for Germany.

Employees will generally remain employees of the foreign-employing entity while working remotely in Germany. For permanent arrangements, a local German employment relationship should be put in place. For temporary arrangements, a temporary posting agreement should be concluded. The terms and conditions of the employee's current employment would generally remain in place. However, during the term of the temporary posting, certain mandatory minimum German employment standards will apply from the first day of the posting (such as minimum wage and other mandatory remuneration provisions, maximum working hours and rest periods, vacation entitlements, reimbursement of certain employment-related costs, mandatory health and safety regulations, maternity protection, and anti-discrimination regulations).

For a posting that extends over a period of more than 12 months, generally all German employment laws will become applicable as of such time with the exception of rules on termination of employment, post-contractual noncompete covenants, and company pensions. More favorable employment laws of the sending country that have been agreed upon with the posted employee may nevertheless continue to apply.

Employees working (remotely) in Germany are generally subject to the German social security system. Exceptions to this may apply if, for example, a social security treaty is in place between Germany and the country of regular employment or if the regular employment is within another EU member state.

Furthermore, wage as well as corporate tax law implications should be examined on a case-by-case basis.

AUTHORS AND CONTRIBUTORS

Nils Neumann

Partner
Berlin
+49.30.220.029.309
nils.neumann@klgates.com

Judith Hirnstein

Associate
Berlin
+49.30.220.029.302
judith.hirnstein@klgates.com

Dr. Thomas Nietsch

Partner
Berlin
+49.30.220.029.408
thomas.nietsch@klgates.com

Lara Wengenmayr

Associate
Berlin
+49.30.220.029.308
lara.wengenmayr@klgates.com

Leonie Abendroth

Senior Associate
Berlin
+49.30.220.029.305
leonie.abendroth@klgates.com

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Hong Kong Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

Situated at the southeastern tip of China and known for its towering skyscrapers and dramatic skyline, Hong Kong is often referred to as the Manhattan of the East. Hong Kong is one of the leading international financial centers in the world and a key location for financial institutions. It is a pro-business jurisdiction, has been ranked first in terms of economic freedom, and is the only common law jurisdiction within China. For many multinational companies operating in Asia, Hong Kong is viewed as the gateway into China and North Asia.

In the employment space, Hong Kong has an abundance of professionals with international experience, as evidenced by the presence of leading international law firms, accounting firms, consulting firms, financial institutions, and multinational companies. Yet, like other jurisdictions, the challenges resulting from the pandemic have changed the workforce in Hong Kong. Generally, employees are increasingly adopting a more transactional approach to work with salary remaining the top motivator for job changes. Yet, considerations such as flexible work arrangements are gaining importance. Employers who understand and respond to these shifts by offering a compelling employee value proposition that goes beyond salary and flexibility will have a competitive edge in attracting and retaining talent.

EMPLOYMENT RELATIONSHIPS

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure their employees are lawfully allowed to work in Hong Kong. Foreign workers must possess the necessary work permit.

Visas to live and work in Hong Kong can be either temporary or permanent. There are a number of different types of visas administered by the Hong Kong Immigration Department depending on whether the worker is a professional (university graduate or above), imported worker (technician level or lower), domestic helper, or from mainland China.

The Employment Ordinance requires that, prior to employing a person, employers must inspect the person's Hong Kong identity card or, if the person does not have one, his or her passport.

Reference/Background Checks

An employer requires consent from the applicant before it may contact a prospective employee's references and previous employers to gather and verify information.

Police and Other Checks

Police checks on a prospective employee are not permitted.

Employers of persons undertaking child-related work and work relating to mentally incapacitated persons can ask prospective employees to undergo a sexual convictions record check to determine the suitability of the prospective employee for that employment.

Medical Examinations

Medical examinations are permitted with the applicant's consent if it is necessary to determine his or her fitness for a particular job. Obligations exist regarding obtaining and handling personal data by employers (or prospective employers).

Minimum Qualifications

Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis. Employees garner different entitlements depending on the basis on which they are employed.

Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will usually engage the independent contractor by means of a service agreement with the individual or with the individual's business.

Labor Hire

Labor hire workers are often engaged for short periods and are common in certain industries, such as building and construction and information technology. Such workers may be employees or contractors of the labor hire firm.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employment contracts can be oral or in writing. However, if the contract is not of the type that renews from month to month, then under Section 5(2) of the Employment Ordinance, it must be in writing and signed by both parties.

While it is customary for the terms of employment to be expressly set out in a formal contract or offer letter and agreed on between the parties, they may also be implied by law and by application of the Employment Ordinance.

Codes of Rules

Not applicable in Hong Kong.

Registered Agreements

Not applicable in Hong Kong.

Policies

Policies are not mandatory, but they are strongly advised. Policies that should exist include those relating to discrimination, harassment, victimization, and work health and safety.

IV. ENTITLEMENTS

Minimum Employment Rights

Wages

Effective from 1 May 2023, the statutory minimum wage is HK$40 per hour.

Unless otherwise agreed, there is a presumption in the Employment Ordinance that the wage period is one month. Wages must be paid as soon as practicable, but not later than seven days after that time.

If the employee's contract contains a contractual right to an end-of-year bonus payment but the employee has only completed part of the year, the employee is entitled to a pro rata payment provided the period of employment during the relevant year has been at least three months.

Leave Entitlements

Employees in Hong Kong are entitled to a minimum of 14 statutory holidays (to be progressively increased to 17 by 2030) per year or public holidays (which consist of every Sunday, statutory holidays, plus three extra public holidays). Employers may require employees to work on a statutory/public holiday if an alternative or substituted day is granted in lieu.

All employees who are continuously employed (i.e., at least 18 hours per week for four consecutive weeks) are entitled to one rest day in every seven-day period.

All employees who are continuously employed (see above) are entitled to be paid a statutory sickness allowance. Under the Employment Ordinance, the employee accumulates a certain number of leave

days per month of service up to a maximum allowance. Employers are prohibited from terminating employees while they are on paid sick leave.

Under the Employment Ordinance, an employee who has completed 12 months of continuous service is entitled to seven days' paid annual leave (up to a maximum of 14 days for nine years or more of service). However, in practice, employers frequently agree to a contractual annual leave entitlement in excess of the statutory minimum.

Maternity Protection and Benefits

Female employees who are employed under a continuous contract (see above) are entitled to 14 weeks of statutory maternity leave. The amount of maternity leave pay is calculated at four-fifths of the employee's daily average wage, although in practice many employers choose to make no deduction as a benefit to the employee. The Hong Kong government will reimburse employers in respect to four weeks of maternity leave, but subject to a cap of HK$80,000. Once a pregnant employee has given notice of pregnancy, the employer is prohibited from terminating her employment until the date of her return from maternity leave. A female employee, whose child is incapable of survival after being born at or after 24 weeks of pregnancy is entitled to maternity leave if other conditions are met.

In addition to the protections under the Employment Ordinance, Hong Kong's anti-discrimination legislation prohibits discrimination against employees on the grounds of sex, race, pregnancy, and family status.

Paternity Leave

Male employees are entitled to five days' paid paternity leave. To qualify, the male employee must (a) have been employed under a continuous contract for not less than 40 weeks immediately prior to the intended commencement of the leave, (b) have given the required notification of the intention to take leave to his employer, and (c) provide evidence that he is the father of the child. Paternity leave can be taken separately or consecutively, but it must be taken within the period of four weeks prior to the expected date of delivery and 14 weeks following the birth of the child.

Discretionary Benefits (Bonuses)

It is common for employers in Hong Kong to pay employees an end-of-year payment. It is sometimes referred to as "double pay," "13th month bonus," or "end-of-year payment" and is usually paid prior to the Chinese New Year holiday. The amount is typically equal to a full month's wages.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice, or termination (or resignation) by the employee. There is no concept of “unfair dismissal” in Hong Kong. The contract may also come to an end by operation of the law (e.g., in the case of frustration, death, dissolution, or winding up of the business).

II. MINIMUM ENTITLEMENTS

Payments and Notice

The length of notice required to terminate a contract will depend on the type of contract involved. Where the contract is deemed to renew from month to month but does not specify the length of notice, the notice period is not less than one month. Where the contract specifies a notice period, then the length of notice will be the agreed period, but it cannot be less than seven days.

Both the employer and employee may terminate the employment by making payment in lieu of notice. It is also permissible to have a combination of part notice and part payment.

In the case of serious misconduct, disobedience, or incompetence warranting summary dismissal, the employer may terminate the contract immediately without notice to the employee.

The following payments may be payable to the employee upon termination:

- Payment in lieu of notice.
- Accrued wages.
- Accrued annual leave.
- Outstanding holiday pay.
- Accrued end-of-year payment (and pro rata portion).
- Severance pay, if applicable.
- Long service pay, if applicable.
- Any other contractual entitlements.

Employers are required to pay the employee’s final entitlement as soon as practicable, but not later than seven days after the date of termination.

III. REDUNDANCY

Genuine Redundancy

Eligible employees who have been made redundant or subjected to a layoff are entitled to a statutory severance payment. To be eligible, the employee must have been employed under a continuous contract for not less than two years.

Consultation

Not applicable in Hong Kong.

Payment

The payment is calculated on the basis of either two-thirds of the employee’s monthly average wage or HK$15,000, whichever is the lesser, for each year of service (pro rata for an incomplete year). The amount is subject to a maximum cap of HK$390,000.

Currently, an employer is entitled to offset its liability to the employee for severance payment and long service payment against the contributions made by the employer into the Mandatory Provident Fund scheme. However, on 9 June 2022, the Legislative Council passed the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022, which will abolish the use of this offsetting arrangement. The change will take effect from 1 May 2025.

IV. REMEDIES

Dismissal Action

Constructive Dismissal

A constructive dismissal occurs when an employer has acted or engaged in conduct that amounts to a significant breach of the employment contract or shows that the employer no longer intends to be bound by the contract. In such situations, the employer is said to have repudiated the contract. The employee ceases to have any further obligations under the contract (including any post-employment restraints) and is entitled to leave the employment with or without notice.

As noted above, there is no concept of unfair dismissal in Hong Kong. However, the employee may be able to bring a claim against the employer on the basis of breach of the implied duties of good faith, mutual trust, and confidence.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

There is no law providing for an automatic transfer of the employment relationship upon a transfer of business. The employment relationship with the former employer must be lawfully terminated and a new contract entered into with the new employer. An employer may avoid the obligation to make severance payments if it reemploys or reengages an employee on equal terms or the employee unreasonably refuses the offer.

II. RESTRUCTURING

Notification

There is no requirement of notification in Hong Kong unless the restructuring involves the termination of employees. Notification to employees must be made in accordance with the terms of their employment contracts.

Consultation

Not applicable in Hong Kong.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and the business' employees.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than their work duties. These provisions restrain employees from using confidential information during and for a reasonable period of time after termination of employment.

Most executive employment contracts contain noncompete provisions that protect an employer's legitimate business interests, which can be enforced if reasonable under the circumstances. These provisions usually prevent an employee from competing with his or her former employer for a period of up to 12 months.

III. PRIVACY OBLIGATIONS

In Hong Kong, the collection and use of personal data is governed by the Personal Data (Privacy) Ordinance. Personal data is information about a living person that would allow the individual to be identified. This ordinance sets out requirements relating to the collection, use, storage, and handling of personal data.

IV. WORKPLACE SURVEILLANCE

Under Hong Kong law, there is no general prohibition against an employer undertaking surveillance of its employees. The Monitoring Guidelines issued by the Privacy Commissioner set out various factors for employers to consider when assessing the appropriateness of implementing employee monitoring and its potential impact on the collection of personal data and privacy issues.

V. WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict-resolution tool to determine policy breaches, misconduct, or misuse of confidential information. The conduct of these investigations is determined by policy.

Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies, and agreements provide for management of employee performance and conduct.

While the concept of unfair dismissal does not exist in Hong Kong, it is generally considered to be good practice for an employer to warn an employee and document grounds for dismissal before terminating for poor performance. This may help to protect the employer against claims made by employees and to avoid payments, such as statutory severance.

II. BULLYING AND HARASSMENT

Bullying

There is no law against bullying in Hong Kong. However, an employee may be able to rely on breaches of the relevant anti-discrimination ordinances or the common law duty of the employer to provide a safe place and a safe system of work to the employee.

Harassment

Harassment is unwanted behavior that is aimed at offending, humiliating, or intimidating another person. Harassment in employment for an unlawful reason, such as sexual harassment, is prohibited under the Sex Discrimination Ordinance.

III. DISCRIMINATION

Hong Kong's anti-discrimination legislation prohibits discrimination in the workplace and elsewhere based on sex, race, disability, or marital status. The legislation comprises:

- The Sex Discrimination Ordinance.
- The Race Discrimination Ordinance.
- The Disability Discrimination Ordinance.
- The Family Status Discrimination Ordinance.

At present, the law does not prohibit discriminatory behavior based on age, religion, or sexual preference.

IV. UNIONS

Representation

Individuals in Hong Kong have the right and freedom to form and join trade unions. However, the level of participation is relatively low compared to many other jurisdictions. These rights are set out in Hong Kong's Basic Law.

The Employment Ordinance also provides protection against anti-union discrimination. Other relevant legislation includes the Trade Unions Ordinance, the Trade Union Registration Regulations, and the Labour Relations Ordinance. Employers should also be familiar with the Code of Labour Relations Practice issued by the Labour Department.

Right of Entry

No person is permitted to be a member of a registered trade union unless they ordinarily reside in Hong Kong and are engaged or employed in a trade, industry, or occupation with which the trade union is directly concerned.

The trade union is not allowed to refuse membership on the basis that an individual is only casually or seasonally engaged or employed in the trade, industry, or occupation.

Industrial Disputation

A union officer has a right of audience before an arbitration tribunal between an employee and employer.

V. REMOTE/HYBRID WORK

Work From Home

Employees do not have a statutory right to work from home, unless such right is provided for in the employment contract. The employer and the employee are free to agree on the arrangement and policies applicable to any work-from-home arrangement.

Employers are required to take out an insurance policy to cover employers' liabilities for an employee's death or injuries from work under the Employees' Compensation Ordinance, and employers shall ensure the coverage of such policy extends to the remote working arrangement.

Employees will access the employer's data through their own network and devices during the work-from-home arrangement. Employers should adopt appropriate measures to maintain data security, especially where personal data is involved, to safeguard against any data loss or unauthorized disclosure.

AUTHORS AND CONTRIBUTORS

Sacha M. Cheong

Partner
Hong Kong
+852.2230.3590
sacha.cheong@klgates.com

Elsa Mak

Counsel
Hong Kong
+852.2230.3587
elsa.mak@klgates.com

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INTRODUCTION

In Italy, employment laws and regulations have always been employee-friendly, granting employees extensive rights. However, the trend in the last decade is to provide more flexibility to the employment relationship through various measures, such as: (a) softening compensation for wrongful dismissals, (b) expanding the use of fixed-term contracts, and (c) granting the employer the right to demote employees in certain cases.

Basic rules regarding rights and obligations of the Italian employment relationship are set forth in the Constitution of the Italian Republic (Italian Constitution) (*Costituzione*); the Italian Civil Code, which includes a special section on employment matters; and the Statute of Workers, i.e., Law No. 300/1970 as amended by subsequent legislation.

Terms and conditions of employment are also provided by national collective bargaining agreements (each, an NCBA), periodically executed and renewed by and between the trade unions and the employers' associations operating in each specific market sector.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure that their employees are lawfully permitted to work in Italy.

Foreign workers must have visas to live and work in Italy. An employer who wishes to hire a foreign worker residing abroad can submit an application by following the required procedure as soon as work entry quotas have been decided.

Extra quotas of work permits are available for intracompany assignments (highly skilled workers posted within the same group for a maximum of five years), international service contracts, and for the so-called “Blue Card” permits (direct hiring of specialized workers who hold at least a three-year university diploma).

Such quotas are set by means of an ad hoc decree adopted by the president of the Council of Ministers (DPCM), which allows it to set subjective and income requirements necessary to grant applications on a case-by-case basis. The DPCM decree also sets the maximum quotas for non-European nationals allowed to work in Italy. These quotas are then distributed among provinces and regions.

Immigration help desks are in charge of issuing the *nulla osta* (an official declaration not to be against something or someone) for work as an employee and for seasonal employment, as well as for other instances.

Reference/Background Checks

An employer is permitted to contact previous employers to gather and verify information made available by the employee, provided that such information is strictly relevant to the employment and the data protection regulation is complied with.

Police and Other Checks

To ensure fairness and impartiality, an employer is only allowed to rely upon checks performed by relevant inspection and social security public entities to determine an applicant’s suitability for a particular job.

Medical Examinations

Medical examinations are permitted, if necessary, to determine fitness for the required job when requested by the employer and performed by relevant inspection and social security public entities. An employer is not allowed to perform a medical examination.

Minimum Qualifications

Businesses may ask for minimum qualifications to ascertain an applicant’s suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis, on an open-ended or fixed-term basis up to 24 months in the aggregate, or for apprenticeships.

Independent Contractor

Independent contractors may be engaged on a fee-for-service basis through a service or cooperation agreement.

Manpower

Workers may be engaged through labor agencies owning a special authorization granted by the Italian Ministry of Labour and Social Policies. Supply of manpower is common in certain sectors, such as construction and information technology. Workers supplied through labor agencies remain employees of the labor agencies themselves.

As of March 2024, the Italian regulatory landscape underwent important changes in this area, following the introduction of Law Decree no.19/2024, pursuant to which entities and their clients carrying out supply of manpower in the absence of authorization may be subject to criminal sanctions (i.e., imprisonment up to one month or a criminal fine equal to €60 per each temporary worker per day, and in case of recidivism, the fine will be raised to €72). Where the unauthorized labor agencies and their clients are found to circumvent statutory provisions of law and regulations, they may also be subject to additional criminal fines (i.e., imprisonment up to three months or a criminal fine equal to €100 per each temporary worker per day). In addition, both unauthorized labor agencies and their clients are jointly liable for payment of outstanding salaries and social security contributions due to the employees and the Italian National Institute for Social Security (*Istituto Nazionale della Previdenza Sociale*).

Last, in case of unlawful supply of manpower, workers may be entitled to claim to be acknowledged as employees belonging to the user company and to be paid an indemnity ranging from two and one-half to 12 times the global monthly salary.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employers must give all new employees a written document providing full information on:

- Identity of the parties.
- Place of work.
- Starting date of employment.
- Term of employment, indicating whether the same will be an open-ended relationship or not.
- Job qualifications.
- Salary and payment terms.
- Duration of paid annual leave and vacation.
- Working hours.
- Terms and conditions of notice of termination.
- Probationary period, if any.

Moreover, a new piece of legislation (Legislative Decree no. 104, dated 27 June 2022 (Transparency Decree)) came into force in Italy on 13 August 2022.

Pursuant to the Transparency Decree, employers and principals must now provide their employees and workers with the following additional information:

- Employees' and workers' right to be given training, if any.
- Duration of any paid leaves that the employee/worker is entitled to in accordance with the law and the applicable NCBA.

- Procedure, form, and terms of the contractual notice period, both in case of termination by the employer and termination by the employee/worker.
- The amount of the initial salary and of the elements the salary is composed of, as well as the payroll period and ways of payment.
- The schedule of working hours and terms and conditions of overtime (if any), including the relevant supplementary pay for overtime.
- In cases where the employment agreement sets forth a predictable organization of working hours and shifts, the schedule of work in shifts and the circumstances in which shifts may be amended
- Where working hours and shifts are, in whole or in part, not predictable in advance, the employer shall inform the employee/worker that the schedule of working hours and shifts may change from time to time. In those circumstances, the employee/worker shall be informed of (a) the minimum number of paid hours to be worked, (b) the additional salary that will be paid for hours worked in addition to the minimum, and (c) the advance notice period the employee/worker will be provided before starting work and the term by which the task can be canceled.
- The NCBA and the collective agreement at a company level (if any) applied to the employment relationship, including the specification of the collective parties that have entered into it.
- Entities and institutes enabled to receive social security and insurance contributions due by the employer, as well as any information regarding social security and insurance tools/benefits made available by the employer.
- In case of employees/workers provided by manpower agencies, details of the company/employer to which such employees/workers are provided.

The above information may be either incorporated into the employment agreement or supplied through a separate document. According to the latest note issued by the National Labour Inspectorate, no. 4/2022, most of the aforementioned additional details may be provided by reference to the NCBA applied, which shall be duly provided in full to the employees as well, either on paper or electronically.

As a general rule, in relation to new hires, the information required by the Transparency Decree shall be delivered to each employee/worker either on paper or in digital format no later than seven days after the start date of the employment relationship (although a longer period of 30 days applies to certain details).

For those employees/workers already in service before 13 August 2022, employers/principals shall update the information as per the Transparency Decree within 60 days of receiving a written request from the employee/worker.

Employers are also required to properly retain and store the employment agreements (along with any other documents containing the aforementioned information), the applicable NCBA, and relevant proof of their transmission and receipt by the employees for a period of five years following the termination of the employment relationship.

Employers/principals who fail to comply with the obligations set forth by the Transparency Decree may incur fines of between €250 up to a maximum of €1,500 for each employee affected, following a report by an employee/worker and an audit to be conducted by the competent district labor office.

Trial Period

Under the Italian labor law, the parties are entitled to agree upon a probationary period to be incorporated into the employment contract. The length of such period is set forth by the applicable NCBA and varies depending on the level to which the employee is assigned.

Over the course of the probationary period, both parties are entitled to terminate the employment relationship for any reason whatsoever and without any notice period.

Codes of Rules

Employees are covered by the Statute of Workers (*Statuto dei Lavoratori*), setting out the applicable legislation in terms of freedom and dignity of employees and obligations of the employer.

Certified Agreements

At the request of contractual parties, particular contracts (e.g., with independent contractors) may be certified by qualified public entities that will issue a certificate assessing that the contract is enforceable. For example, if a contract with an independent contractor is formally qualified as a "self-employment agreement," this means that both parties acknowledge that the contractor is actually a self-employee and that he or she is no longer entitled to claim to be qualified as an employee. This certification procedure is aimed at avoiding any dispute over the enforceability of the agreement. However, a party is always entitled to challenge the agreement, even if certified, if the way in which the relationship is de facto conducted is not consistent with the written agreement certified by the qualified public entities.

Policies

Policies are not mandatory under Italian labor law. Nonetheless, policies relating to work health and safety, use of working tools, and emergency procedures are strongly advised.

IV. ENTITLEMENTS

Minimum Employment Rights

Italian legislation prescribes several employment standards that cover the majority of employees. Reference standards are provided by the Statute of Workers but may also be found in the Italian Constitution and in other laws.

Salary

Employees are entitled to a fixed salary. As a general rule, the NCBAs provide for the mandatory minimum wage.

Hours of Work

Employees generally are not required to work more than 40 ordinary hours a week. The average weekly working time cannot exceed 48 hours, including overtime. In cases where the employer has not adopted any NCBA, overtime work can be agreed upon between the parties. Overtime work cannot exceed 250 hours per year.

Holiday Leave

Employees generally are entitled to four weeks' paid holiday leave per year. Holiday leave cannot be replaced by any indemnity/payment in lieu.

Maternity, Paternity, and Parental Leaves

Eligible female employees (and, under very specific circumstances, male employees, e.g., in the event of death of the mother) are entitled to "maternity leave": a two-month leave before the expected birth date and a three-month leave after the birth of a child. Under specific circumstances, the maternity leave can be enjoyed even as of the birth date. During the maternity leave, the eligible employee will receive 80% of daily salary, calculated on the basis of the salary received at the end of the last month prior to the parental leave.

Male employees are entitled to 10 days of leave during the first five months of a child's life.

Parents are entitled to take up to 11 months' leave in the aggregate to take care of the child until he or she turns 12 years old. In this event, indemnity will be reduced according to applicable provisions.

Leave for Assistance

Disabled employees and relatives of disabled individuals are entitled to up to two hours per day or, alternatively, up to three days per month of paid leave. Under certain circumstances, an extraordinary paid leave period of up to two years may be granted for employees who need to assist disabled parents or relatives.

Sickness Leave

In case of sickness, employees are entitled to keep their job position for a certain period of time set forth by the applicable NCBA. During the sick leave, the employer is not entitled to dismiss the employee, except for just cause.

Public Holidays

Employees are entitled to paid leave for each day that is proclaimed a public holiday in Italy. Additional public holidays may apply in the specific territory in which an employee works.

Severance Payment

In any case of termination of employment, employees are entitled to a severance payment (TFR) (*Trattamento di Fine Rapporto*). TFR is calculated by the amount of annual gross salary divided by 13.5 (per each year of service). TFR is increased on a compound basis by the increase in the index of retail prices as determined by the National Institute for Statistics, applying from December of the preceding year.

TFR must be apportioned yearly by the employer within its financial statement. Therefore, it does not constitute an actual disbursement for the employer when it is paid out upon termination of the employment agreement.

Mandatory Hiring

Depending on the number of employees hired by the company, there are certain variable quotas of disabled persons who must be compulsorily employed. While companies with less than 15 employees have no obligation to employ disabled individuals, companies employing from 15 to 35 employees are required to hire one disabled individual and companies employing from 36 to 50 employees are required to employ two disabled individuals. Companies with more than 50 employees must hire disabled employees to reach at least 7% of their population.

Failure to comply with the mandatory hiring obligations may entail an administrative sanction of €196.05 per day per each disabled worker not hired.

Also, pursuant to Article 9 of Law no. 68/1999, public and private employers employing at least 15 employees at a national level must send an annual statement on their employment situation to the competent offices by 31 January of each year. Failure to fulfill the abovementioned communication obligations may result in a penalty equal to €702.43, plus an additional €34.02 sanction for each additional day of delay.

Discretionary Benefits

Bonuses

Employers may choose to incentivize employees by including bonus provisions in employment contracts. The measure of a bonus usually depends on individual and company goals.

TERMINATION OF EMPLOYMENT

I. GROUNDS

The employer may dismiss employees due to disciplinary reasons or for redundancy. Employers can terminate employees with or without notice. Different provisions apply to dismissals depending on whether there are more or less than 15 employees employed within the same local unit and on whether it is a single termination or the termination of five or more employees within a period of 120 days.

Employees can terminate the employment relationship through resignation.

The employment relationship also may cease upon mutual agreement or upon expiration of the term of a fixed-term contract.

II. MINIMUM ENTITLEMENTS

Payments/Notice

Where the employer terminates an employee for reasons other than just cause (i.e., very serious misconduct by the employee warranting an immediate termination), a notice period must be given or the relevant severance in lieu of the notice period must be paid.

Where an employee resigns, the employer must be given the relevant notice period unless the employee resigns due to just cause attributable to the employer. If the employee fails to comply with the notice period, the employer will deduct the relevant severance in lieu of the notice period from the employee's final pay slip.

The relevant notice period or severance in lieu of notice is established by the applicable NCBA, according to the employee's contractual qualification and length of service.

Statutory Entitlements

In any case of termination of the employment relationship, the employee is entitled to TFR, as per the "Entitlements" section above.

Holidays and Leaves Accrued and Not Enjoyed

In any case of termination of the employment relationship, the employee is entitled to be paid for holidays and leaves accrued and not enjoyed.

III. REDUNDANCY

Genuine Redundancy

The employer is entitled to lawfully dismiss an employee due to redundancy where there are no alternatives to the employee's job elimination, as determined by productivity and organizational reasons, and the redundant employee cannot otherwise be reemployed within the employer's organization.

If the employer needs to dismiss due to redundancy five or more employees within a 120-day period, a special procedure for collective dismissal must be started.

Consultation

In the event that a procedure for collective dismissal must be initiated, a number of information and consultation sessions with trade unions are required.

Payment

The employee dismissed due to redundancy is entitled to receive severance in lieu of the notice period, the TFR, and other mandatory sums to be paid out upon termination of the employment relationship (such as holidays accrued but not taken, supplementary monthly installments accrued pro rata, and temporary leaves not enjoyed).

IV. REMEDIES

Dismissal Action

Unlawful Dismissal

Where a dismissal is declared unlawful by the competent labor court, remedies and sanctions vary depending upon the company's size, on the hiring date, and on the grounds for dismissal.

Where the company employs more than 15 employees, and the employees have been hired before 7 March 2015, under certain and very serious circumstances the competent labor court may order reinstatement of the employee unlawfully dismissed due to disciplinary reasons or for discrimination/retaliation; in such an event, the employee may opt for a payment in lieu of reinstatement equal to 15 times his or her monthly salary. In addition, the employer will also be required to make a payment to the wrongfully terminated employee of not less than five months' salary. In other cases, the employer may instead be required to pay to the affected employee an indemnity ranging from 12 to 24 months' salary.

In light of a reformation of Italian labor law, where the company employs more than 15 employees, and the employees have been hired after 7 March 2015, reinstatement is basically excluded, unless dismissal is based on discrimination or retaliation. Under the circumstances, the company may be ordered to pay the affected employee between six and 36 months' salary.

Where the company employs up to 15 employees, regardless of the employee's hiring date, reinstatement is excluded, unless dismissal is based on discrimination or retaliation. In that circumstance, the company may be required to pay the affected employee an indemnity ranging from two and one-half to six months' salary.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Article 2112, paragraph 5, of the Italian Civil Code, implementing the principles set forth by EC Directive 98/50, expressly defines the "transfer of a going concern" as "any transaction that, as a result of a legal transfer or merger, has the effect of transferring the ownership of an organized economic activity existing before the transfer and maintaining its identity after the transfer…regardless of the nature of the agreement or decision providing the transfer."

The same paragraph 5 of Article 2112 further specifies that the above discipline also applies to the transfer of a branch of a wider business if such branch is "intended as a functionally autonomous part of an organized economic activity, identified as such by the transferor and the transferee at the moment of the transfer."

Based on these definitions, it is worth evaluating, case by case, if a part of a wider business can be construed as a "functionally autonomous part of an organized economic activity" and, consequently, whether its transfer can be construed as a transfer of a going concern pursuant to Article 2112.

In this respect, the part of the business, whether identified prior to or at the moment of the transfer, must include the "essential" means necessary to enable the transferee to carry out the business activity concerned, although such means may need to be integrated with the transferee's assets and staff in order to continue in full operation with the transferee itself.

Where a business is being transferred, the employees working therein are automatically transferred with their existing terms and conditions of employment, i.e., the consent of such employees is not required for their transfer, provided that their terms and conditions of employment remain the same. However, there is always a risk that the employees being transferred and the employees remaining with the transferor may seek to object to their respective allocations to the transferred or former business.

If the transferor employs in aggregate more than 15 employees and employees are included in the business to be transferred, the transferor and the transferee are required to carry out a special trade union information and consultation procedure, to be opened by notifying in writing to the relevant trade unions at least 25 days before execution of the relevant transfer agreement or of a binding understanding between the parties. The purpose of this provision is to impose a trade union consultation process before any legally binding decision is taken and to give the trade unions the power to effectively exercise an influence on the transfer process in the best interests of the transferring employees.

II. RESTRUCTURING

Notification

Employers with more than 15 employees are required by law to notify unions, employees, and relevant labor district authorities of the likely effects of any downsizing or restructuring that will result in dismissal of five or more employees in a period of 120 days.

Companies employing at least 250 employees and planning to make at least 50 employees redundant are required to trigger a special dismissal procedure 90 days in advance. If the employer fails to

comply with this obligation, the so-called “dismissal ticket” (i.e., the dismissal fee to be paid to the Italian National Institute for Social Security) will be doubled and the dismissals carried out may be held to be null and void.

Consultation

Unions may ask to discuss the matter jointly with the employer and the competent labor district authorities in order to evaluate any alternative solutions to collective dismissals.

Within the context of such information and consultation procedure, the employer and the trade unions may reach an agreement (a) to enable the affected employees to have access to special public redundancy funds (*Cassa Integrazione Guadagni*) before dismissal, or (b) to reduce the employees’ working time for a given period as a measure in lieu of dismissal (*Contratti di Solidarietà*).

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Article 2105 of the Italian Civil Code prevents employees from divulging or making use of any information relating to the organization or production techniques of the employer in such a way that may compromise the employer or its activity.

Individual employment agreements may include provisions protecting the confidentiality of an employer's confidential information, including information relating to intellectual property, clients, and employees.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than their duties. These provisions restrain employees from using confidential information during employment and for a period of time after employment.

Article 2105 of the Italian Civil Code provides a specific "duty of loyalty" preventing an employee from engaging in any business, either in the employee's name or on somebody else's behalf, in competition with the employer.

Provisions preventing an employee from competing with his or her former employer for a given period after termination of the employment relationship may be agreed upon in writing by the parties at the same time as execution of the employment agreement, provided that the noncompete obligation does not exceed "reasonable limits" in terms of subject matter, time, and space. In such cases, according to Article 2125 of the Italian Civil Code, the noncompete clause must include fair compensation and specific zone, activity, and time limits.

III. PRIVACY OBLIGATIONS

Legislative Decree no. 196/2003, also known as the Personal Data Protection Code (PDPC), as amended by Legislative Decree no. 101/2018 in accordance with the provisions of the EU General Data Protection Regulation, imposes onerous obligations on the employer with respect to the collection, treatment, and disclosure of employees' personal information.

The Italian Data Protection Authority (*Autorità Garante per la protezione dei dati personali*) is empowered by law to monitor and ensure substantial compliance with provisions of the PDPC by any intended recipient and, in case of any breach, to determine applicable remedies.

IV. WORKPLACE SURVEILLANCE

There are limitations on the manner in which employers may monitor employees. The law generally prohibits monitoring of employees for work surveillance purposes. Audio or video surveillance is allowed only with prior notice to company unions, if any, and to the labor inspector's office, and only if the surveillance is justified by organizational or workplace security reasons.

Previous agreement with unions and the labor inspector's office is required only in certain circumstances where the investigation involves exclusively the working tools assigned to the employee to perform his or her daily working activity. However, in those cases, the employee must be provided with a detailed policy specifying both the terms and conditions of use of working tools and the checks that will be carried out by the employer.

V. WORKPLACE INVESTIGATIONS

An employer cannot carry out an investigation, even via a third party, on the political, religious, or trade union opinions of an employee or investigate any fact that is not strictly relevant to the employee's working activity. Under very specific circumstances, the employer is permitted to conduct an investigation on a given employee (even through a specialized investigation company) where there are grounds to believe that such employee has seriously infringed his or her obligations under the employment agreement or has committed an offense.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Disciplinary rules relating to sanctions, breach of duties, and grievance procedures need to be disclosed to employees and published within the company in locations that are easily accessible to all employees.

An employer cannot adopt any disciplinary sanction without first providing the written charge to the interested employee and subsequent consultation with the same, who has the right to render his or her justifications in writing within a given time frame (usually, within five days of receipt of the letter of charge).

An employee may also request to be heard by the employer with the assistance of a trade union representative.

II. BULLYING AND HARASSMENT

Bullying

Bullying is not a crime but may be prosecuted in connection with several types of criminal offenses provided by the Italian Penal Code, such as beating and procured injury (Articles 581 and 582), threatening (Article 612), revilement and defamation (Articles 594 and 595), damage to property (Article 635), harassment (Article 660), and stalking (Article 612-bis).

Harassment

Under Italian caselaw, harassment constitutes behavior aimed at offending, humiliating, or intimidating another person (including sexual harassment) and is considered to be a serious criminal offense when carried out in the workplace.

III. DISCRIMINATION

General discrimination is widely prohibited by Article 3 of the Italian Constitution and, with specific regard to employment, by Articles 8, 15, and 16 of the Statute of Workers.

In particular, the following covenants are considered by law as null and void:

- Those intending to subordinate hiring to joining or not joining any trade union organization.
- Those providing for dismissal or other sanctions in the event of affiliation with unions or attendance at strikes.
- Those discriminating against employees on the basis of political opinions, religious views, language, sex, disability, age, sexual orientation, or personal beliefs.

Different economic treatment for discriminatory purposes is also prohibited by law.

In addition, companies employing more than 50 employees are required biannually to submit a formal report on their workplace demographics and gender equality to the competent administrative authority. Failure to comply with such obligation may expose the company to an administrative sanction ranging from €103 to €516.

IV. WHISTLEBLOWING

Mandatory Channel

EU Directive no. 1937/2019 on the "protection of persons who report breaches of Union law" required EU member states to adopt specific internal law on whistleblowing.

In March 2023, Italy implemented the directive through the approval of Legislative Decree no. 24/2023 (Whistleblowing Decree).

Employers that are staffed with 50 or more employees or that adopted the organizational and management model required by Legislative Decree no.231/2001, or which operate in markets expressly mentioned by the law (e.g., financial services, products and markets, transport safety, environmental protection, prevention of money laundering and terrorism), must establish internal channels and procedures for reporting violations of regulatory provisions that could affect the interest or integrity of the public administration or of a company.

Whistleblowers' Protection

The Whistleblowing Decree includes measures to protect whistleblowers from employers' "retaliatory" acts caused by their report. Any dismissal or other adverse action (e.g., suspension or similar measures, demotion or failed promotion, change of duties, change of place of work, reduction of salary, change of working hours) taken toward the whistleblower for retaliatory reasons is null and void.

V. UNIONS

Representation

Employees and independent contractors can choose to be represented by a union. Any union validly appointed to represent an employee or group of employees must be acknowledged and dealt with according to the law.

Unions in the Workplace

In companies employing more than 15 employees, workers are entitled to establish a works council (known as the RSU/RSA) and to call trade union meetings. In companies employing more than 50 employees, works councils are entitled to be informed of the course of business and of the main resolutions taken by the company.

Within the context of companies employing more than 200 employees, the employer must provide a permanent, suitable venue for unions to have meetings and carry out other union activities. In businesses with fewer than 200 employees, unions may request to be provided with suitable venues to have meetings.

Industrial Disputes

It is lawful to take industrial action (e.g., strikes, lockouts, slowdowns) only under certain circumstances prescribed by both law (as to public employment) and caselaw.

VI. REMOTE/HYBRID WORK

As a general rule, employees are not entitled to hybrid work. Hybrid work should instead be agreed upon with the employer.

Any arrangements relating to hybrid work should be incorporated into a proper individual smart-working agreement to be made in writing, and a formal communication to the competent labor office

should be submitted. Failure to notify or delay in complying with the deadlines (i.e., within five days after the beginning of the employment relationship) may result in an administrative penalty ranging from €100 to €500 for each employee concerned. Moreover, employers are required to properly inform employees of the health and safety risks connected to hybrid work. As a general rule, the parties are entitled to withdraw the smart-working agreement due to serious reasons or upon a 30-day notice in the event of an open-ended smart-working agreement.

Article 4, paragraph 1, of Legislative Decree No. 105/2022 provides that employers must give priority to hybrid work requests submitted by employees for any of the following reasons:

- Employees who have a serious disability.
- Employees who have children up to 12 years old.
- Employees who have children with a disability, irrespective of their age.
- Employees who act as family caregivers assisting individuals with a serious disability.

AUTHORS AND CONTRIBUTORS

Roberto Podda

Partner
Milan
+39.02.3030.2923
roberto.podda@klgates.com

Ludovica Morgia

Senior Associate
Milan
+39.02.3030.2952
ludovica.morgia@klgates.com

Claude-Étienne Armingaud

Partner
Paris
+33.1.58.44.15.16
claude.armingaud@klgates.com

Maria Giulia Lombardi

Associate
Milan
+39.02.3030.2916
mariagiulia.lombardi@klgates.com

Ottavia Colnago

Senior Associate
Milan
+39.02.3030.2969
ottavia.colnago@klgates.com

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Japan

Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

In Japan, the declining birthrate and aging society are well-known problems that have been rapidly progressing, and the labor force population has declined significantly. Against this backdrop, the government has taken various labor measures aimed at achieving sustainable economic development. These measures include: (a) improving the workplace environment and labor productivity, and (b) creating new opportunities for human resources that have not been fully utilized in the past to play an active role in the workforce.

For example, regarding workplace environment and productivity issues, it was common in Japan for workers to be forced by their employers to work long hours, as typified by the term “death from overwork.” In response, various measures have been taken by the government to reduce long working hours and improve work-life balance, such as implementing an employer’s duty to manage working hours, promoting remote work, and increasing the rate of overtime. As to increasing the pool of available human resources, the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers was revised to make it easier for people who had not previously actively participated in the labor market to do so for the first time.

Going forward, the government is expected to continue to take additional measures to further improve the work environment and address the various labor issues facing Japan.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure their employees are lawfully allowed to work in Japan by checking their visa status. This status can be confirmed by reviewing their passport or residence card.

Foreign workers must have visas to live and work in Japan on either a temporary or a permanent basis. There are different types of visas (e.g., skilled worker, engineer, instructor) administered by the Immigration Bureau of Japan.

The permitted working period for foreign temporary workers varies depending on visa status, but it generally ranges from three months to five years.

Reference/Background Checks

So long as employers obtain consent from prospective employees, employers may contact a prospective employee's referrals and previous employers to gather and verify information.

Police and Other Checks

Police do not disclose any information requested by employers on prospective employees.

Medical Examinations

In principle, when hiring an employee, employers must have the new employee undergo a predetermined medical examination before hiring him or her.

Minimum Qualifications

Employers may ask for relevant qualifications to ascertain an applicant's suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Employees in Japan can be classified into four categories.

Regular Employee

A regular employee is an employee who is hired directly by his or her employer without a predetermined period of employment up to the prescribed retirement age.

Fixed-Term Employee

A fixed-term employee is an employee who is hired directly by his or her employer with a fixed-term contract of employment. In most cases, the contract term is up to three years. The employee is protected by the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers.

There is a growing trend toward enhancement of protections for fixed-term employees in Japan. In response to this, the Labor Contracts Act and relevant regulations have been amended to improve fixed-term employee rights. For example, a fixed-term employee who has worked more than five years by renewal of the term has the right to change his or her status from a fixed-term employee to a non-fixed-term employee.

Part-Time Worker

A part-time worker is an employee who is hired directly by his or her employer and works fewer hours in a day or week than a full-time employee. The employee is protected by the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers.

Dispatched Worker

A dispatched worker is a worker who is employed by third-party dispatching agencies and supplied to companies under a worker dispatch contract. The worker is protected by the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatching Workers.

Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will engage the independent contractor by means of a service agreement.

Unlike employees, independent contractors are not protected by labor laws. Independent contractors are determined by their actual conditions more than their "agreement." A major criterion is whether the independent contractor has discretionary power in performing assignments and in deciding working hours and place of work. Employers should carefully avoid "misclassification risk," the same as in other jurisdictions.

Note that the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators came into effect in November 2024. This law requires fulfilling certain obligations when engaging independent contractors, including the obligations to clearly state the terms and conditions of the engagement, to establish a system to prevent harassment, and to provide 30 days' advance written notice before terminating such independent contractors.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Under the Labor Standards Act, employers must provide a written notice to the employee setting out basic employment conditions, such as wages, working hours, holidays, and the nature of the work. To satisfy this legal requirement, it is common practice in Japan that an employer and an employee execute a written employment agreement.

Any company that employs 10 or more workers on a continuous basis must establish rules of employment (Rules of Employment) and submit them to the Labor Standards Inspection Office together with a written opinion from the representative of the employees. The Rules of Employment stipulate working conditions in detail.

The main working conditions covered in the Rules of Employment are as follows:

- Matters relating to the time work begins and work ends, breaks, days off, and leave.
- Matters relating to calculation and payment of wages (including overtime work salary), the date of payment, and pay raises.
- Matters relating to termination, dismissal, disciplinary actions, retirement, etc.

Policies

Policies are not mandatory, but they are desirable. Policies that should exist include those relating to details of discrimination, harassment, bullying, work health and safety, anti-corruption, and confidentiality.

IV. ENTITLEMENTS

Minimum Employment Rights

Minimum employment rights in Japan are provided in the Labor Standards Act as detailed below.

Hours of Work

An employer must not require an employee to work more than 40 hours a week or more than eight hours a day, unless a written agreement about overtime work and work on holidays is executed between the employer and the representative of the employees and submitted to the Labor Standards Inspection Office. As a general rule, the upper limit of overtime work is 45 hours per month or 360 hours per year. However, there are exceptional rules to allow further overtime work.

The employer shall pay increased wages for overtime work or holiday work. As a general rule, the rate of premium for overtime work is 25% (50% for overtime exceeding 60 hours per month), and the rate for work on a statutory holiday is 35%.

Annual Leave

An employer is required to grant annual paid leave of 10 working days to all employees continuously employed for six months or more and who have worked not less than 80% of the total working days, in principle. Thereafter, the employer shall grant the following annual paid leave in addition to the 10 days' paid leave above:

- One year of service – additional one day of leave.
- Two years of service – additional two days of leave.
- Three years of service – additional four days of leave.
- Four years of service – additional six days of leave.
- Five years of service – additional eight days of leave.
- Six years of service or more – additional 10 days of leave.

Wages

Principles applied to payment of wages:

- Wages must be paid in cash (employee consent is required for payment by wire transfer to employee's bank account).
- Wages must be paid directly to the employee.
- Wages must be paid in full.
- Wages must be paid at least once a month on a definite date.

Guarantee of wages and minimum wages:

- The minimum hourly wage is set by region. For Tokyo, that is ¥1,163 per hour as from 1 October 2024.

Child Care-Related Leave

Maternity leave and child care hours:

- Expectant female employees may take six weeks of maternity leave before childbirth and eight weeks after giving birth in principle.
- Female employees nursing an infant aged up to 12 months are also entitled to take nursing breaks twice a day, each for at least 30 minutes, in addition to legally allowed break times. This nursing time can be taken by arriving at work 30 minutes late or leaving work 30 minutes early or taking 60 minutes off at one time.

Child care leave:

- Child care leave allows an employee, either male or female, to take up to one year off work to look after a child under 1 year old. If both parents decide to take a leave, each parent may take off up to one year until the child reaches the age of 14 months. If certain conditions are met, an employee is further entitled to child care leave until his or her child is 2 years old.

Short working-hour system:

- An employer is required to take measures to shorten scheduled working hours that make it easier for the worker to take care of the child for those employees with a child below 3 years of age.

Family Care-Related Leave

An employee with one or more family members in need of nursing care may take nursing leave of up to five days per year for one such family member and 10 days per year for two or more such family members, upon request to the employer.

Employees who look after a family member requiring full-time care are entitled to family care leave. This includes up to 93 days' leave per family member, per year.

Community Service Leave

Employers may grant community service leave, although it is not mandatory. Japan introduced a quasi-jury system in 2009, and such community service leave typically covers leave to serve on a jury.

Long Service Leave

Employers may grant long service leave, although it is not mandatory and the majority of Japanese companies do not grant it.

Notice of Termination

An employer must provide at least 30 days' advance notice if the employer wishes to dismiss an employee or pay 30 days' average salary in lieu of such advance notice for immediate dismissal. In order to dismiss an employee, there must be substantive and reasonable reasons, as discussed in the "Termination of Employment" section below.

Discretionary Benefits

Bonuses

Bonuses may be paid to employees at the discretion of the employer unless otherwise set out in the employment agreement or the Rules of Employment.

It is customary in Japan that employees working for traditional Japanese companies are paid seasonal bonuses twice a year (in summer and winter).

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination can be effected (a) by mutual agreement, (b) upon expiry of a fixed-term contract, (c) by termination by the employer with or without notice (i.e., dismissal), and (d) by termination by the employee (i.e., resignation).

Dismissal

Under Japanese law, Japanese employers generally have the right to dismiss employees. However, there are numerous restrictions on this right, as set out below. Additionally, there are substantive and procedural requirements for certain types of dismissals.

Below are the basic rules in relation to dismissal.

Explicit Reasons for Dismissal

The employer must specify the situation or grounds that allow the employer to dismiss its employees and should specify the details of the procedure for dismissal in the employment agreement or the Rules of Employment.

Legal Grounds for Dismissal

Even if an employer finds that an employee falls under the situation or grounds for dismissal, this is not sufficient to justify dismissal. Article 16 of the Labor Contracts Act states that any dismissal that lacks reasonable grounds and is against good social "appropriateness" is regarded as an abuse of the employer's right and is accordingly null and void. Consequently, it is difficult for employers in Japan to dismiss an employee without careful precaution and consideration. Court precedents demonstrate that the following instances constitute "an objectively reasonable and socially appropriate reason":

- Significant physical or mental disability.
- Material infringement of the internal disciplinary rules in the workplace.
- Redundancy due to economic circumstances, provided that four established criteria are satisfied (see "Redundancy" below).

Lack of ability or poor performance is difficult to prove in court unless it has been well documented that the dismissed employee's performance was substantially substandard.

Practical Approach

Given the substantive and procedural difficulties involved in dismissing an employee and the difficulty of convincing a Japanese court of legitimate grounds for dismissal, it is typical in Japan for an employer to try to obtain an employee's voluntary resignation.

II. MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates or dismisses an employee, the employer is required to provide at least 30 days' notice of the termination date. Employers may dismiss an employee with immediate effect if the employee is paid an amount equal to 30 days' average salary.

Restrictions on the Dismissal of Employees

Employers may not dismiss an employee during either of the following periods:

- Absence from work for medical treatment for injuries or illnesses suffered during the course of employment or within 30 days thereafter.
- Before and after childbirth for female employees or within 30 days thereafter.

An employee may resign at any time by serving 14 days' notice.

Statutory Entitlements

Payment on termination includes:

- Outstanding wages for days and hours already worked.
- (If applicable) 30 days' average salary in lieu of 30 days' notice.

Employers are not required to pay out any accrued but not taken annual paid leave.

III. REDUNDANCY

Genuine Redundancy

Redundancy is available only if the following four criteria are met:

- There is a strong necessity to decrease the number of employees, and no other alternatives are available but for decreasing the head count.
- Reasonable measures in order to avoid dismissal have been fully explored.
- Employees whose employment contracts are to be terminated have been selected pursuant to reasonable criteria.
- Due process has been ensured, including genuine dialogue with employees or labor unions.

As it is often difficult to meet the abovementioned criteria for redundancy, employers in Japan often solicit a resignation from employees by offering a severance package (including payment of a severance amount and other benefits).

Consultation

See above under "Genuine Redundancy" of this Japan guide.

Payment

An employee is only entitled to receive retirement wages in accordance with the retirement wage rules or the Rules of Employment (if any).

IV. REMEDIES

Dismissal Action

Unfair Dismissal

Employees may bring an unfair dismissal claim against a former employer and seek reinstatement as well as back pay plus interest. The claim may be by formal lawsuit or labor tribunal process.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

There is a guideline issued by the government that sets out the details of an employment transfer process (including consultation procedure) in the event of a business transfer.

II. RESTRUCTURING

Notification

There are no particular laws or regulations regarding the protection of employees upon restructuring of a corporate organization, provided that the termination process is made in compliance with the Labor Standards Act and established court precedents (please see the above “Termination of Employment – Grounds” and “Genuine Redundancy”).

Consultation

See above.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

At the commencement of employment, employees are generally required by the employment agreement and the Rules of Employment to acknowledge confidentiality obligations in writing, which should include provisions to protect the employer's confidential information, including intellectual property, clients, and the business's employees.

II. CONFIDENTIAL RESTRAINTS AND NONCOMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than their duties.

In general practice, employment contracts, separate noncompetition agreements, and the Rules of Employment impose noncompete provisions on employees during employment.

A retired or former employee does not have any noncompete obligations to a past employer unless there is an agreement to that effect or an obligation is contained in the Rules of Employment.

III. PRIVACY OBLIGATIONS

According to the Act of the Protection of Personal Information, employers may not disclose any personal information of an employee to a third party without consent of the employee.

IV. WORKPLACE SURVEILLANCE

There is no law that regulates workplace surveillance. However, it is prohibited to conduct surveillance that leads to a violation of privacy, such as employee monitoring in toilets, bathrooms, and changing rooms.

V. WORKPLACE INVESTIGATIONS

There is no law that regulates workplace investigations.

WORKPLACE BEHAVIORS

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, the Rules of Employment, policies, and agreements provide for management of employee performance and conduct.

Poor Performance

When employers intend to dismiss an employee due to poor performance, Japanese courts require that employers shall take reasonable measures to avoid dismissal. This includes considering alternatives, such as providing training, reducing salary, transferring to another job, secondment, and encouraging voluntary retirement. Dismissal is considered a last resort for employers.

Employee Misconduct

An employer may take disciplinary action against employees who violate policies as long as the consequences are clearly stipulated in the Rules of Employment.

II. BULLYING AND HARASSMENT

Bullying

Bullying is prohibited by the amended Act on Comprehensively Advancing Labor Measures, and Stabilizing the Employment of Workers, and Enriching Workers' Vocational Lives and guidelines issued by the Ministry of Health, Labour and Welfare. A worker is bullied at work if they are:

- Assaulted (physical abuse).
- Intimidated, defamed, insulted, or slandered (mental abuse).
- Isolated, ostracized, or neglected (cut off from human relationships).
- Forced to perform certain tasks that are clearly unnecessary for the business of the company, impossible to be performed, or interfere with and interrupt his or her normal duties (excessive work demands).
- Ordered to perform menial tasks that are unreasonable in relation to the company's business or tasks that are far below the employee's ability or experience. This also includes not providing any work at all for the employee (insufficient work demands).
- Recipient of excessive inquiry into his or her private affairs (invasion of privacy).

Reasonable management action carried out in a reasonable way is not bullying.

Harassment

With regard to sexual harassment, the Act on Equal Opportunity and Treatment between Men and Women in Employment mentions that an employer is under an obligation to take "necessary steps" to prevent:

- Quid pro quo or retaliatory sexual harassment (defined as a worker suffering any disadvantage, such as dismissal, demotion, or a decrease in wages, as a result of the worker's response to sexual harassment that occurs against his or her will in the workplace).
- Hostile work environment sexual harassment (defined as a worker suffering a serious adverse effect on the exercise of his or her abilities because the working environment has become unpleasant due to sexual harassment that occurs against his or her will in the workplace).

The administrative ordinance refers to guidelines detailing necessary steps for employers to take to prevent such conduct.

III. DISCRIMINATION

Gender discrimination in employment is prohibited by the Act on Equal Opportunity and Treatment between Men and Women in Employment. The obligation imposed on employers to ensure equal treatment on the basis of race, nationality, creed, or social status is in accordance with the Labor Standards Act.

IV. UNIONS

Representation

A minimum of two employees are required to form a labor union. A labor union is entitled to request the employer to hold collective bargaining sessions or to act in a collective manner in relation to an employment issue.

The Labor Union Act contains the rights granted to labor unions and prohibits employers from engaging in unfair labor practices.

Right of Entry

Union officials (beyond employee union members) are not entitled to enter workplaces.

Industrial Disputation

It is only lawful to take industrial action (e.g., strikes, lockouts, slowdowns) under certain circumstances prescribed by the Labor Relations Adjustment Act.

V. REMOTE/HYBRID WORK

It is general interpretation that employers shall be responsible to take necessary measures for protecting employees' health in the workplace. In this regard, as one of the applicable measures for suspending infection of the COVID-19 virus, though no specific laws are enacted, employers have tended to amend their business practices by adapting remote working, partial or entire closure of business places, etc. The Japanese government has not mandated work-from-home, business shutdowns, or avoidance of face-to-face meetings, but it has issued various requests or recommendations for the implementation of the foregoing measures. Due to these efforts, remote working or hybrid working has become popular among relatively large or major business enterprises in Japan. However, it should be noted that employees do not have a right to demand remote working or hybrid working accommodations from their employers.

AUTHORS AND CONTRIBUTORS

J. Ryan Dwyer, III

Managing Partner, Asia and Tokyo Offices
Tokyo
+81.3.6205.3601
ryan.dwyer@klgates.com

Yuki Okada

Partner
Tokyo
+81.3.6205.3634
yuki.okada@klgates.com

Nobuki Wada

Partner
Tokyo
+81.3.6205.3632
nobuki.wada@klgates.com

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Korea

Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

In the labor and employment area, the low birth rate and aging population in Korea is a continuing issue. In an effort to address the concern, the Korean National Assembly passed a number of amendments to the Equal Employment Opportunity and Work-Family Balance Assistance Act, which will go into effect on 23 February 2025. Among the changes, the parental leave period has been extended from one year to one year and six months and the age of the child for whom parental leave may be used has been raised from 8 years old or younger to 12 years old or younger. In addition, paternity leave has been increased from 10 days to 20 days, and the leave can be used in three installments instead of just two. Also, an employee on a work-hour reduction program during the child care period may now extend the work-hour reduction program period by 200% of the amount of any remaining parental leave.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Korea offers long-term and short-term general work visas for business-related purposes. The appropriate visa depends on the nature of the employment and type of entity with which the employee seeks work. Some of the work visas available in Korea include:

- C-4: Short-Term Employment – designed for temporary work that lasts 90 days or less.
- E-1: Professorship – required under the Higher Education Act to provide lectures or conduct research in the visa holder's field of study at educational institutions at or beyond the college level.
- E-2: Foreign Language Instructor – allows a visa holder to teach foreign languages at schools, companies, broadcast organizations, and similar facilities. Candidates can teach only their native language and must be educated to a bachelor's degree level at a four-year university.
- E-3: Research – for research and development in advanced technology, natural and social sciences, humanities, arts, music, and physical education.
- E-4: Technology Transfer – for individuals who are invited to Korea to provide technical expertise in the natural sciences or advanced technology fields.
- E-5: Professional Employment – for individuals who hold an international qualification for their profession that is recognized by the Korean government. Examples include law and medicine.
- E-6: Arts and Performances – for sports, music, literary, art, or fashion performances for profit.
- E-7: Special Occupations – designed for specific types of work. Common examples are as follows:
    - Management and Professional Work:
        - Management Work: corporate executives, insurance and finance managers, sales managers, transportation service managers, food service managers.
        - Professional Work: nurses, architects, metal or materials science engineers, finance and insurance specialists, mechanical engineers, college lecturers, data experts, designers, translators or interpreters, legal experts in laws of non-Korean jurisdictions.
    - Semi-Professional Work: sales personnel at duty-free stores, medical service coordinators for non-Korean patients, tour guides that provide interpreter services.
    - General Technician Work: animal trainers, zookeepers, musical instrument makers or tuners, aircraft mechanics.
    - Skilled Work: skilled agricultural and fisheries workers, persons with skills essential to manufacturing or construction companies and who can supervise personnel.
- E-8: Seasonal Worker – for individuals who are invited to Korea to work in farming and fishing villages.
- H-1: Working Holiday – for citizens of countries that have entered into a memorandum of understanding or an agreement on working holidays with Korea. It is a short-term visa allowing the visa holder to earn money to cover traveling expenses. Visa holders are allowed to live in Korea for the period of stay prescribed in the foregoing memorandum of understanding or agreement on working holidays.

Reference/Background Checks

Background screening is allowed in Korea.

Under the Personal Information Protection Act, consent must be obtained from the applicant for background checks that go beyond the scope generally required to enter into an employment agreement.

Police and Other Checks

An employee's consent is required for an employer to obtain an employee's criminal records.

Medical Examinations

An employee's consent is required for an employer to obtain an employee's health information.

Minimum Qualifications

Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Under the Labor Standards Act, employees can be categorized as permanent employees, fixed-term employees, and part-time employees.

Under the Act on the Protection of Fixed-Term and Part-Time Employees, fixed-term employees are employed for a maximum period of two years. A fixed-term employee is deemed to be a permanent employee if employed for longer than two years.

Part-time employees are entitled to the same working rights as full-time employees in accordance with the proportion of hours worked.

Employees are entitled to statutory employment rights, such as statutory severance pay and paid annual leave.

Independent Contractor

Independent contractors may be engaged. The primary factor that distinguishes employees from independent contractors is the degree of supervision and control exerted over the individual.

Independent contractors are not entitled to statutory employment rights.

Labor Hire (Agency Worker)

Under the Act on the Protection of Temporary Agency Workers, agency workers are employed by a temporary work agency, which provides services for a user company. While the employment relationship is with a temporary work agency, the agency workers are employed in accordance with the terms and conditions of a contract executed between the temporary work agency and the user company.

The user company can employ agency workers for a maximum period of two years. After this time, the user company is required to employ the agency worker as a permanent or fixed-term employee.

Agency workers are entitled to statutory employment rights, such as statutory severance pay and paid annual leave.

III. ENTITLEMENTS

Minimum Employment Rights

Working Hours and Recess

Under Article 50 of the Labor Standards Act, working hours are not to exceed 40 hours per week, and daily working hours are not to exceed eight hours per day.

Employees in managerial or supervisory positions, as well as those employees handing confidential information, are not subject to the statutory limitation on working hours.

A flexible working-hour system has been implemented in the Labor Standards Act to allow an employer to have an employee work in excess of the statutory working hours, provided the company obtains the consent of the affected employee.

An employee is eligible for a 30-minute recess period for a four-hour shift and an hour for a standard working day of eight hours.

Wages

The minimum wage is determined by the Ministry of Employment and Labor based on recommendations from the Minimum Wage Council each year. The minimum wage can be fixed on an hourly, daily, weekly, or monthly basis. The minimum wage for all workers is KRW9,860 per hour as of 1 January 2024.

The minimum wage incorporates fixed allowances to basic pay but does not include discretionary bonuses, overtime, or other fringe benefits.

Overtime

Overtime is limited to 12 hours per week paid at 150% or more of the employee's ordinary wage. A seven-day week is counted inclusive of holidays.

Overtime includes extended work, night work (between the hours of 10:00 PM and 6:00 AM), or holiday work.

Paid Time Off for Work-Related Injuries

Under the Labor Standards Act, employers are required to provide paid leave for work-related injuries and illnesses.

Employers are required to compensate an employee for any work-related injury, disease, or death by compensating for medical expenses, survivor's compensation, and funeral expenses.

Annual Leave

Under the Labor Standards Act, an employee is entitled to one paid day off per week. Of the two days each weekend (i.e., Saturday and Sunday), one of the days is legally considered to be a paid day off, while the other is considered to be an unpaid day off.

Fifteen days of paid annual leave must be provided to an employee who has been employed with the company for one year and has at least 80% attendance during the year.

An additional day is provided for every two years of service thereafter, which is capped at 25 days.

Public Holidays

Labor Day (1 May) and holidays under the Regulations on Public Holidays of Government Offices are mandatory paid holidays for employees under the establishment of the Labor Standards Act.

Maternity/Paternity Leave and Pay

Under Article 74 of the Labor Standards Act, an employer must grant a pregnant female employee a total of 90 days, or 120 days if pregnant with two or more babies, of paid maternity leave to be used before or after childbirth. Forty-five days, or 60 days if pregnant with two or more babies, of maternity leave must be allocated after childbirth. The first 60 days, or 75 days if pregnant with two or more

babies, of leave are to be paid by the employer, and the remaining 30 days, or 45 days if pregnant with two or more babies, are to be paid from the Employment Insurance Fund.

Maternity leave must be allowed for premature births, miscarriages, and stillbirths.

Under the amended Equal Employment Opportunity and Work-Family Balance Assistance Act, which will go into effect on 23 February 2025, male employees are entitled to 20 days of paid leave within 120 days of a child's birth. The leave can be used in three installments.

Caregiver's Leave

Employers are required to provide a minimum of 30 days' and a maximum of 90 days' family care leave per year for an employee with sick, injured, or elderly family members who require the employee's care.

Parental Leave

The amended Equal Employment Opportunity and Work-Family Balance Assistance Act entitles employees to an 18-month leave of absence for maternity protection for a pregnant female employee or for child care for any male or female employee with a child 12 years old or younger.

An employee with a child 12 years old or younger is also allowed to use the "work-hour reduction system" for up to one year, subject to exceptions, and an employee who chooses to use the "work-hour reduction system" in lieu of parental leave may use the system for up to two years. This system allows the employee to work 15–35 hours per week without the employer being able to dismiss or take any adverse action measures against the employee as a result of these reduced working hours for child care. Employees on a work-hour reduction program during the child care period may extend the work-hour reduction program period by 200% of the amount of any remaining parental leave. Following the period of reduced working hours, the employer is obligated to restore the employee back to the same level job at the same pay level.

An employee can choose from a variety of methods when utilizing his or her child care leave. This includes a one-time or multiple-time use of leave, a one-time or multiple-time use of work-hour reductions, or a combination of child care leave and work-hour reductions.

Discretionary Benefits

Sick Leave and Pay

There is no legal requirement for employers to provide paid leave to employees for non-work-related illnesses or injuries. While employees generally use their annual leave payment for personal sick days, it is not uncommon for companies to provide paid sick leave for non-work-related injuries and illnesses.

Overtime

An employer may grant leave to the employee in lieu of paying additional wages for extended, night, and holiday work if a written agreement is entered into with the employee.

Bonuses

There are no restrictions or guidelines that govern the payment of bonuses apart from any that may be contained in the company's rules of employment (Rules of Employment), the applicable collective bargaining agreement, or the individual employee's employment contract. However, it is common practice in Korea for employers to grant employees some form of bonus, whether it is a fixed bonus or a discretionary bonus, based on an employee's individual performance.

Rest Facilities

The employer of (a) a place of business that employs 20 or more employees on a regular basis (for construction, a place of business with total construction cost (including those of related parties) for the relevant construction project of KRW2 billion or more), or (b) a place of business that employs at least 10 employees but less than 20 employees on a regular basis and employs at least two employees that perform certain specified duties (e.g., telemarketer, delivery personnel, janitor, security guard) is required to install rest facilities.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Terminations are often implemented through mutual agreements.

Under Article 23 of the Labor Standards Act, an employee cannot be dismissed without justifiable reasons. However, while justifiable reasons are not defined in the act, the courts have generally held that such reasons exist only in limited circumstances and can include continuous unsatisfactory performance on the part of the employee, criminal acts, and grave misconduct, as well as improper relationships with other employees. Employees on sick leave due to employment-related illnesses or injuries or employees on maternity leave cannot be dismissed during their period of absence or within 30 days after their return to work.

II. MINIMUM ENTITLEMENTS

Payments/Notice

An employer must give 30 days' advance notice of dismissal to an employee or provide the employee with 30 days' ordinary wages in lieu of notice in specific instances.

Notice of termination of employment must be given in writing and specify the reason for the termination and the effective date.

A termination will be invalid if the employee has not been given the opportunity to defend himself or herself, no matter how serious the employee's conduct has been.

Under Article 26 of the Labor Standards Act, advance notice of dismissal is not required in specific circumstances, such as a worker employed for less than three consecutive months; an employer being unable to continue with its business operations due to natural disaster, war, or other unavoidable circumstances; or certain cases in which a worker has intentionally caused a substantial interference with, or loss of, the employer's business or assets.

Statutory Entitlements

The statutory severance pay system entitles employees who have been employed for at least one year a severance payment of 30 days' average wages for each year of continuous service. This applies to those employees who are terminated for any reason, including an employee's decision to resign.

III. REDUNDANCY

Genuine Redundancy

Redundancies are permitted under Article 24 of the Labor Standards Act. Redundancies are permitted during times of urgent managerial necessity subject to certain procedural requirements.

An employer must make every effort to avoid redundancies. The Korean courts have interpreted this requirement to include the exhaustion of other options, such as early retirement packages, a hiring or wage freeze, the reduction of work hours, transferring employees to other departments, and any other reasonable measures according to the circumstances. An employer must establish rational and fair criteria for dismissing employees.

An employer must file a report with the Minister of Employment and Labor at least 30 days before the effective date of redundancy where (a) the employer has less than 100 full-time employees and will

dismiss 10 or more employees; (b) the employer has between 100 and 999 full-time employees and will dismiss 10% or more of the total number of employees, or (c) the employer has 1,000 or more full-time employees and will dismiss 100 or more employees. If the employer decides to reinstate the same job from which an employee was dismissed within three years of the dismissal, the employer must first offer the job to the previously dismissed employee before hiring a new employee for the role.

Payment

The employer must pay statutory separation pay to departing employees who have worked in the company for at least a year, irrespective of whether their departure was voluntary or involuntary. The employer is obligated to pay the employee 30 days' "average wage" for each consecutive year of service. "Average wage" includes all wages paid by the employer to the employee for the three-month period before the redundancy divided by the total number of working days in the three-month period.

The statutory separation pay must be paid to the employee within 14 days of the employee's redundancy.

No other benefits are required to be provided an employee who is made redundant; however, as a matter of practice, additional payments are often made in exchange for the employee's resignation.

IV. REMEDIES

Dismissal Action

If an employer dismisses an employee unfairly, the worker may apply for remedy to the Regional Labor Relations Commission. The commission will conduct the necessary investigations and is governed by the Labor Relations Commission Act. The commission may offer reinstatement with back pay, or a lump-sum payment may be granted where the employee does not wish to be reinstated.

When an employee is dismissed without cause, he or she may initiate civil proceedings in the district court.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

In the event of a business transfer, employees automatically adopt the working terms, conditions, and liabilities of the transferor, unless the employees agree otherwise.

Employees will be protected against dismissal in the event of a business transfer, unless there is just cause to dismiss an employee.

II. RESTRUCTURING

Notification

Where an employment agreement contemplates that the employer can change an employee's work duties or place of work, a notice to the employee about the change becomes effective upon the employee's receipt of the notice, regardless of the timing or method of such notice.

In order to change the terms and conditions of employment, the employer must notify the employee of such changes.

When an employer makes any changes to the components of payroll, how wages are calculated, how payment will be made, work hours, holidays, or annual paid leave, employees must be clearly notified of the changes in writing.

Consultation

A change of work duties or the place of work does not require consultation with an employee (i.e., a unilateral decision by the employer is permitted). However, if such a change is substantially unfavorable to the employee, it could be considered an abuse of the employer's power and invalidated.

Under Article 657, paragraph 1 of the Civil Act, the transfer of an employee (from the original employer to another employer) requires the employee's consent.

Such transfer may be permitted without the employee's consent if:

- There was an implied consent given by the employee.
- The transfer is to certain entities that were previously identified in an employment agreement and there was a comprehensive consent provision agreeing to the transfer of employees to those entities contained within the employment agreement.
- Such transfer is a customary practice.

Under Article 94 of the Labor Standards Act, in order for an employer to change the Rules of Employment, the employer must first solicit the opinions of a labor union comprised of a majority of the employees, or, if there is no labor union comprised of a majority of the employees, the employer must first solicit the opinions of a majority of the employees. If the Rules of Employment are to be amended in such a way that results in a disadvantage to the employees, the employer must first obtain consent of the employees.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

The company owns all intellectual property rights that are created by an employee in the course of his or her employment, provided that proper notification is provided and reasonable compensation is provided to the employee.

Confidential information and trade secrets are protected either by the contract of employment or under the Unfair Competition Prevention and Trade Secret Protection Act.

While confidentiality provisions are generally included in employment contracts or work rules, there also is an implied duty of loyalty and confidentiality between employer and employee.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

Noncompetes are binding and enforceable in Korea if they are reasonable for the type of employment concerned. Generally, Korean courts tend to limit the period of a noncompete to between six and 12 months.

III. PRIVACY OBLIGATIONS

Under the Personal Information Protection Act, an employee is entitled to request access to his or her own personal information in the employer's personnel files for the purpose of updating or deleting that personal information.

Under the Labor Standards Act, an employer should preserve important documents regarding a specific employment contract for a period of three years.

The Personal Information Protection Act also restrains an employer from providing an employee's personal information to a third party without the consent of the employee.

Internal policies and plans to manage all employees' personal information must be implemented.

IV. WORKPLACE SURVEILLANCE

An employer must obtain express consent from employees to monitor emails. Notice of monitoring is insufficient.

According to the Act on the Promotion of Workers' Participation and Cooperation, any business having 30 or more employees should establish a labor management council to consult on labor matters, such as installation of surveillance equipment in the workplace.

Article 93 of the Labor Standards Act requires an employer of 10 or more employees to prepare Rules of Employment, including a code of conduct and working conditions that are applicable to all employees. If there is a provision relating to workplace investigations in the Rules of Employment, the employer should comply with it.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCTS

If employee performance and conduct are covered under the company's Rules of Employment, the management of employees' performance and conduct is governed by those rules. In practice, companies generally establish personnel management guidelines and follow the guidelines.

II. BULLYING AND HARASSMENT

Bullying

Under Article 76-2 of the Labor Standards Act, workplace bullying is prohibited. An employer that becomes aware of workplace bullying or receives a complaint about workplace bullying is required to conduct an investigation into the matter. If workplace bullying is confirmed, the employer is required, at the request of the victim, to take appropriate steps, such as reassignment of the victim, change of the victim's work location, or paid leave, and the employer should also take appropriate steps against the wrongdoer, such as disciplinary action or change of work location.

Harassment

The Equal Employment Opportunity and Work-Family Balance Assistance Act strictly prohibits sexual harassment in the workplace.

III. DISCRIMINATION

Under Article 6 of the Labor Standards Act, an employer is prohibited from discriminating against an employee on the basis of gender, nationality, religion, or social status. Age discrimination is also prohibited.

Discrimination is also prohibited against disabled employees, female employees, foreign workers, and nonregular workers.

An employee who has been discriminated against can bring a claim before the National Human Rights Commission. The commission can make a recommendation for the discriminatory behavior to cease or award damages.

IV. UNIONS

Representation

Under Article 33 of the Constitution of the Republic of Korea, employees have the right to freedom of association, collective bargaining, and collective action.

An employee has a right to establish, operate, or join a trade union. Collective bargaining will have a binding effect.

The Trade Union and Labor Relations Adjustment Act regulates the formation of trade unions and collective bargaining.

Industrial Disputation

Labor unions retain the right to bargain with and take industrial action against the employer under certain circumstances.

Under Article 45 of the Trade Union and Labor Relations Adjustment Act, mediation must be conducted before industrial action is taken.

V. REMOTE/HYBRID WORK

Korea does not have statutory regulations on remote/hybrid work, but the Korean Ministry of Employment and Labor has announced a guideline on the arrangement. A high-level summary of the guideline is as follows:

- An employer that intends to instruct its employees to work from home should in principle obtain the consent of each employee. However, no such consent would be necessary if the collective bargaining agreement, employment rules, employment agreement, or other polices of the employer include the basis for the employer's authority to give such instruction.
- The cost of office supplies and other costs arising from the work-from-home arrangement should in principle be borne by the employer. However, the employer can instead pay a fixed allowance each month through consultation with the employee.
- The rules on working hours and recess under the Labor Standards Act and the collective bargaining agreement, employment rules, and other policies and rules of the employer would continue to apply without a change to employees working from home. However, to prevent unnecessary disputes over overtime work, it would be advisable for the employer to adopt a policy on deemed working hours, under which employees working from home would be deemed to have worked a certain predetermined number of working hours.
- Any work-related illness or injury suffered by an employee while working from home would qualify as a work-related accident. However, the employee would have the burden of proving that the illness or injury was work-related.

AUTHORS AND CONTRIBUTORS

Andrew L. Chung

Partner
Seoul
+82.2.2198.8710
andrew.chung@klgates.com

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New Zealand Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

Following the COVID-19 pandemic, and a change in government at the 2023 national election, 2024 has seen a return to more typical “business as usual” employment law trends in New Zealand.

Many employers have embarked on ambitious workforce restructures and are tackling difficult issues relating to generative artificial intelligence, working from home and hybrid work arrangements. Employers seeking to encourage employees to “return to office” are in some cases facing opposition, from employees and unions alike.

New Zealand employers also continue to face a shortage of talent, particularly in sectors such as tourism, hospitality and technology. While some immigration law restrictions have eased since the pandemic, attracting talented workers to New Zealand continues to be a contentious and political issue.

The new government has established various consultation processes for reforming certain areas of employment law, including in relation to holidays and leave, the classification of independent contractors and the personal grievance regime. It remains to be seen whether these processes result in substantive changes to the existing employment law framework.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure their employees are lawfully allowed to work in New Zealand.

Foreign workers must have visas to live and work in New Zealand on either a temporary or permanent basis. There are a number of different types of visas, all of which are administered by Immigration New Zealand.

There are two commonly used work visas: the Specific Purpose Visa (SPV) and the Accredited Employer Work Visa (AEWV).

The SPV includes senior or specialist employees who are seconded to work for a New Zealand entity. This visa can usually be granted for up to 36 months; it is temporary, and no local advertising of the role is required before it is granted. To provide relief to employers in industries with upcoming seasonal peaks, a subcategory of the SPV has also been introduced for hiring foreign workers for the 2024/2025 “seasonal peak.” These applications must be received by 31 March 2025.

To secure an AEWV, the employer should ideally be a New Zealand entity, and it must be accredited by Immigration New Zealand. Once accredited, employers must take reasonable steps to ensure the foreign worker is suitably skilled before formally offering him or her the role and must ensure he or she meets specific criteria before asking him or her to apply for an AEWV. Depending on the role and its remuneration, the employer may need to show that the role was advertised locally and no suitable New Zealanders were available for the job.

The Worker Protection (Migrant and Other Employees) Act 2023 sets out an offence and penalty regime to deter employers of foreign workers from breaching their legal obligations.

Reference/Background Checks

An employer is permitted to contact a prospective employee’s referees and previous employers to gather and verify information (with the authorisation of the applicant). Offers of employment can be conditional on receiving this information (if not yet obtained when the offer is made).

Police and Other Checks

Criminal history checks may be undertaken with the authorisation of the applicant. Offers of employment can be conditional on receiving this information (if not yet obtained when the offer is made).

Medical Examinations

Medical examinations or alcohol and drug tests are permitted, with the applicant’s consent, if reasonably necessary to determine fitness for a particular job. Offers of employment can be conditional on receiving this information (if not yet obtained when the offer is made).

Minimum Qualifications

Employers may ask for minimum qualifications to ascertain an applicant’s suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis. Fixed-term and casual employees can only be employed in certain circumstances pursuant to the Employment Relations Act 2000. Termination obligations of the employer and other employee entitlements may be different depending on the basis on which employees are employed.

Independent Contractor

Businesses often engage "self-employed" independent contractors on a fee-for-service basis. A business will usually engage the contractor by means of an independent contractor or consultancy agreement with the individual or with the individual's business. Recent caselaw involving "Uber" has indicated that the courts are increasingly willing to find that "gig workers" are in an employer/employee relationship, and this is likely to be subject to future legislative reform.

Labour Hire

Employers use labour hire workers most commonly for short-term periods of work and in industries such as construction. A business (the client) will usually engage a labour hire company by means of a service provider agreement with the labour hire company. Labour hire workers are employed by the labour hire company, not the client. However, the client can be joined to personal grievance claims against the labour hire company in some circumstances, where the client is determined to be a "controlling third party."

III. INSTRUMENTS OF EMPLOYMENT

Agreements

Every employee must have a written employment agreement that has been negotiated in good faith and signed before the commencement of employment. Employment agreements can be either individual (i.e., agreed to between the employer and employee) or collective (i.e., agreed to between unions, employers and employees).

Employment agreements cannot be unilaterally varied by an employer, and good faith bargaining obligations apply to bargaining for any variation.

The Employment Relations Act 2000 provides for certain mandatory provisions in employment agreements, such as detailed provisions that address the process for resolution of disputes and grievances and which outline the required process that an employer will follow to protect employees in relation to any possible sale, transfer or the contracting out of a business.

Codes or Rules

There are currently no centralised industrial instruments setting out industry-specific minimum pay and employment conditions. Since the repeal of the Fair Pay Agreements Act 2022 in late 2023, there is also no avenue for industry-wide bargaining for these conditions.

Collective Agreements

Collective agreements are agreements that are binding on one or more unions, one or more employers, and two or more employees. The Employment Relations Act 2000 sets out mandatory requirements in relation to the content of collective employment agreements and the process for bargaining for such agreements.

Policies

Policies are not mandatory, but they are strongly advised. Policies that should be in place include those relating to discrimination, harassment, bullying, privacy, and work health and safety.

IV. ENTITLEMENTS

Minimum Employment Rights

New Zealand legislation prescribes various minimum employment rights that apply to employers and employees. Employees cannot be asked to agree to less than these minimum rights.

Minimum Wage

The Minimum Wage Act 1983 provides for the setting of minimum wage rates. The applicable minimum wage rate will generally depend on the age and experience of the employee, and it is typically increased yearly by way of a minimum wage order.

Annual Holidays

The Holidays Act 2003 provides for annual holidays for all employees.

Depending on their circumstances, employees are entitled to either:

- Four weeks' paid annual leave per year (which is calculated on a pro rata basis for part-time employees).
- An additional payment of 8% of their gross earnings to compensate them for not being able to take paid annual holidays (i.e., for casual employees or fixed-term employees whose term is for less than 12 months).

Parental Leave

The Parental Leave and Employment Protection Act 1987 provides for eligible employees to receive up to 26 weeks' government-funded paid primary carer leave and 52 weeks of unpaid extended leave (less any primary carer leave taken) when a child is born or adopted. Other entitlements include partner leave, special maternity leave and a presumption that the employee's position can be kept open whilst on parental leave (other than certain limited exceptions).

Flexible Working Arrangements

Employees have the right under the Employment Relations Act 2000 to request flexible working arrangements. Employers have a duty to consider seriously any requests from their employees (see also below regarding hybrid/remote working arrangements).

Other Types of Leave

Under the Holidays Act 2003, eligible employees are entitled to:

- Bereavement leave: three days' paid bereavement leave on the death of specified persons or in the event of a miscarriage or stillbirth, and one day's paid bereavement leave on the death of any other person that the employer accepts that the employee suffered bereavement as a result of the death.
- Sick leave: 10 days' paid sick leave per 12 months of continuous service, after completion of the first six months of service.

There is no statutory entitlement to long service leave in New Zealand; however, long service leave may be agreed to as a matter of contract.

Public Holidays

Under the Holidays Act 2003, if an employee is required to work on a public holiday, the employee must be paid time and a half of the hours worked on the public holiday. In addition, employees are entitled to one day's paid leave (an alternative holiday) if the public holiday on which the employee worked was otherwise a working day for the employee.

Notice of Termination and Redundancy Pay

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, it must provide contractual notice or payment in lieu of that notice. "Reasonable" notice must be given where the contract is silent regarding notice.

There is no statutory entitlement to redundancy pay; however, redundancy pay may be agreed to as a matter of contract.

KiwiSaver

There is no compulsory superannuation scheme in New Zealand. However, all employers are required to enrol new employees automatically in KiwiSaver (a government-implemented long-term savings initiative). There are certain exceptions to the automatic enrolment requirement, including where the employee is not a New Zealand resident, is under a temporary contract for less than 28 days or is on a secondment. Employers are also required to provide eligible employees with an information pack prepared by the Inland Revenue Department.

Employers are required to contribute 3% of the gross salary or wage of eligible employees who have opted into the KiwiSaver scheme and are not on a period of savings suspension.

Family Violence Leave

Under the Holidays Act 2003, eligible employees affected by family violence are entitled to up to 10 days of paid family violence leave per year in order to deal with the effects of family violence. They can also request short-term flexible working arrangements under the Employment Relations Act 2000.

Discretionary Benefits

Bonuses

Employers may choose to incentivise employees by including bonus provisions in employment agreements or in a company policy. Discretionary bonuses can also be offered without any formal documentation. Bonuses are usually dependent on individual, department or business performance and are usually paid at the employer's discretion.

Paid Parental Leave

Some employers offer paid parental leave schemes that either supplement the income provided by the legislated paid parental leave scheme (paid for by the government) or offer additional periods of paid parental leave.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Employers considering termination of ongoing employment are required to undertake a fair process prior to making a decision and must establish that they had a valid substantive reason for reaching that decision.

Termination can be brought about by mutual agreement or when a fixed-term contract expires, provided that statutory requirements have been met.

Termination may be initiated by the employer, with or without notice, or by the employee (resignation).

II. MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, they must provide the contractual notice or payment in lieu of notice.

When an employee resigns, he or she must provide the notice specified in the relevant employment contract.

"Reasonable" notice must be given where the contract is silent regarding notice.

Statutory Entitlements

Payment on termination includes:

- Outstanding wages/salary for hours already worked.
- Accrued annual holidays and any alternative holidays not taken.

Employers are not required by statute to pay out accrued sick leave.

III. REDUNDANCY

Genuine Redundancy

An employer may only terminate an employee's employment for redundancy in circumstances where an employer no longer needs a full-time or part-time employee's job to be done by anyone.

Consultation

Statutory good faith obligations regarding consultation must be followed prior to the decision being made that an employee's position is redundant. In addition, if the employee's employment agreement prescribes a required process, the employer must ensure that each aspect of that process is undertaken before any redundancy decision is made.

Payment

An employee is entitled to redundancy pay or compensation only if it is provided for in his or her employment agreement or an applicable employer policy.

IV. REMEDIES

Personal Grievances

Time Frames for Raising Personal Grievances

Personal grievances are the primary claim raised by employees in relation to workplace disputes (although a range of other claims can be raised under legislation and common law).

There are a number of different types of personal grievances, which are listed in section 103 of the Employment Relations Act 2000.

Other than in relation to a personal grievance relating to sexual harassment, personal grievances must be raised within 90 days of the date that the alleged action occurred or came to the employee's attention, whichever is later. A personal grievance in the nature of sexual harassment must be raised within 12 months of the date that the alleged harassment occurred or came to the employee's attention, whichever is later.

The relevant limitation period may be varied if the employer consents to the employee pursuing a personal grievance outside of time or the Employment Relations Authority grants leave to the employee.

Unjustified Dismissal

Unless an employee is employed under an employment agreement which contains a 90-day trial period, and they are dismissed during that trial period, he or she is eligible to bring a personal grievance claim against a former employer alleging unjustified dismissal.

Remedies can vary and may include reinstatement, payment for lost wages and an award for compensation for injury to feelings. There is no maximum amount for these financial remedies in the Employment Relations Act 2000. A successful party will usually also receive a contribution to their legal costs.

Unjustifiable Action

Employers are prohibited from subjecting an employee to an "unjustified disadvantage." This occurs where an employee's employment or conditions of employment are affected to the employee's disadvantage due to an unjustified action of the employer. As noted above, a personal grievance must be raised within the statutory time frame, subject to exceptions.

Remedies for unjustifiable action can vary and may include an award for compensation (with no maximum amount) and a contribution to legal costs.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

When restructuring occurs, New Zealand legislation prescribes rights to certain categories of employees (such as cleaners, food caterers, laundry workers, caretakers, orderlies and security guards) whose work is to be performed by another entity.

Should they elect to do so, protected categories of employees have a right to transfer to the new employer on the same terms and conditions they have under their current employment agreement.

II. RESTRUCTURING

Notification

Every collective agreement and every individual employment agreement must contain an "employee protection provision" that outlines the process the employer will follow in restructuring situations (including the sale, transfer or contracting out of a business).

Consultation

The Employment Relations Act 2000 includes a statutory obligation of good faith, which imposes minimum consultation requirements where the employer is considering a decision which could impact the continuation of an employee's employment. This includes the possible sale, transfer or contracting out of its business, where there may be commercial sensitivity regarding informing employees of a possible sale or transfer of business whilst negotiations continue.

At a minimum, the employer is required to provide employees with access to all information relevant to the proposal and an opportunity to comment on the information (and the proposal more generally). The employer should consider all feedback before making a decision as to whether to proceed with the proposal. If the employer decides to proceed, it must also consult with employees about the implementation of that decision, including consideration of any applicable alternatives to redundancy.

Although the Employment Relations Act 2000 provides that certain "confidential information" may be withheld from disclosure to employees during consultation, in practice, it is rare for the courts to accept that this exception applies.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most employment agreements include provisions protecting the confidentiality of an employer's confidential information, including intellectual property and information regarding clients and the business's employees.

Contractual confidentiality provisions typically restrict employees from using confidential information for anything other than their duties. These provisions can continue post-employment.

II. CONFIDENTIAL RESTRAINTS AND NONCOMPETES

Employment agreements typically contain provisions restraining employees from using confidential information or soliciting clients or other employees after the termination of employment.

Most employment contracts for senior employees contain noncompete provisions intended to protect an employer's legitimate proprietary interests and can be enforced if reasonable in the circumstances.

III. PRIVACY OBLIGATIONS

The Privacy Act 2020 imposes obligations with respect to how employers (referred to as "agencies") collect, use, disclose, store and give access to personal information. These obligations apply to how an employer handles personal information relating to its employees.

If an agency has a privacy breach that either has caused or is likely to cause a person (or persons) serious harm, there is a duty on that agency to notify the Privacy Commissioner and any affected person (or persons).

IV. WORKPLACE SURVEILLANCE

Workplace surveillance in New Zealand is largely unregulated, but the principles of the Privacy Act 2020 and good faith under the Employment Relations Act 2000 will apply.

The Privacy Commissioner recommends that employers consult with employees before introducing surveillance measures. Employers will generally be entitled to take reasonable steps to monitor employee performance, to safeguard working conditions and to secure the place of business.

V. WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict resolution tool to determine policy breaches, misconduct or misuse of confidential information (amongst other alleged issues that may arise in, or relate to, a workplace). The conduct of these investigations is determined by common law obligations of procedural fairness, section 103A of the Employment Relations Act 2000 and the statutory obligation of good faith.

Outcomes of workplace investigations are often used to determine whether to undertake a disciplinary process, which may result in dismissal or other disciplinary action.

WORKPLACE BEHAVIOURS

I. MANAGING PERFORMANCE AND CONDUCT

Employment policies and agreements may provide for management of employee performance and conduct.

Under common law principles, an employer must fairly warn an employee before terminating his or her employment because of poor performance (other than extreme incidents of negligence, which may be treated as serious misconduct).

Employee misconduct may also warrant a warning, disciplinary action or, if the conduct is serious, termination of employment. Employees summarily terminated for serious misconduct do not receive all of their contractual notice entitlements on termination of employment.

II. BULLYING AND HARASSMENT

Bullying

Bullying is defined by the New Zealand workplace safety regulator, WorkSafe, as repeated unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.

Bullying can amount to misconduct or serious misconduct. Bullying at work may also be a basis for employee claims of unjustified (constructive) dismissal or unjustified action. Under the Health and Safety at Work Act 2015 and common law, an employer must take all reasonably practicable steps to eliminate or minimise the risk of harm to workers (or others) arising from the behaviour of employees in the workplace.

Harassment

Harassment is behaviour that is insulting, intimidating, humiliating, malicious, degrading or offensive. There are specific definitions for sexual harassment and racial harassment in the Employment Relations Act 2000 and Human Rights Act 1993. Failing to properly manage issues of harassment may cause an employer to breach the Health and Safety at Work Act 2015.

III. DISCRIMINATION

The Employment Relations Act 2000 makes it unlawful for an employer to discriminate against an employee on the basis of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, sexual orientation, union membership or being affected by family violence.

Employees also have recourse for unlawful discrimination through the protections in the Human Rights Act 1993. However, employees cannot pursue an unlawful discrimination claim in both the Employment Relations Authority and Human Rights Review Tribunal (an election must be made).

IV. UNIONS

Representation

Employees have the right to decide whether they want to join a union or not. It is illegal for an employer or any other person to put unreasonable pressure on an employee to join (or not join) a union or to discriminate against someone on the basis of union membership.

Right of Entry

Union representatives are legally allowed to enter a workplace for purposes related to the employment of members or the union's business with the prior consent of the employer. The employer's consent may not be unreasonably withheld. Both the employer and union should deal with union visits in good faith.

Industrial Disputation

Strikes and lockouts are only lawful under the Employment Relations Act 2000 in prescribed circumstances, such as where a collective agreement has expired and the parties have already entered a period of bargaining or where the action is justified on safety or health grounds.

Employers may suspend striking employees without pay and may request other employees to perform the work of striking or locked-out employees (subject to certain limitations). Employers may not discriminate against employees for participating in a lawful strike.

V. REMOTE/HYBRID WORK

No Legislation

Other than the "flexible working arrangements" regime noted below, there is no legislation in New Zealand that prescribes specific requirements in relation to remote or hybrid work arrangements. These arrangements are commonly addressed by way of agreement (between employer and employee, outlining bespoke arrangements applicable to that individual) or under employer policies (which do not have contractual force and may be amended or withdrawn from time to time).

Health and Safety Considerations

An employer with employees who "work from home" (WFH) for some or all of their working hours will still owe health and safety obligations to their employees when they are at home, as the home is their "workplace." WorkSafe has published guidance to support employers in complying with these obligations.

Flexible Working Arrangements

Employees may request WFH arrangements through a "flexible working arrangements" request under the Employment Relations Act 2000. Employers are not required to agree to such requests, but they must have grounds to decline and follow the statutory process.

Outside of New Zealand

Where an employee performs work on a WFH basis and is allowed to do so outside New Zealand, this can raise complex questions under tax, employment, immigration, and health and safety law. In most cases, these questions can be addressed through clear communications and within the parties' contract; however, specific advice should be taken in each case.

AUTHORS AND CONTRIBUTORS

Michaela Moloney

Practice Group Coordinator
Melbourne
+61.3.9640.4430
michaela.moloney@klgates.com

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INTRODUCTION

Keeping well informed about evolving legal changes and staying vigilant regarding upcoming developments remains essential. Our annual Qatar Employer Guide offers a concise overview of the latest developments in employment law, addressing key concerns.

Employment in Qatar is primarily governed by Law No. (14) of 2004, as amended (Qatari Labour Law) and is supplemented by various ministerial decisions.

In line with the objectives of the National Vision 2030 centered around economic, social, human, and environmental development, the Qatari government continues to reform its employment laws for the purposes of improving working conditions and broadening the range of online services for processing employment-related and visa-related applications.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Non-Qatari employees must be sponsored by an employer that is duly established in Qatar in order to obtain work visas and residency permits to work and reside in Qatar.

Non-Qatari employees with valid residency permits earning monthly salaries of QAR10,000 and above may sponsor their spouses and dependents to reside in Qatar.

Reference/Background Checks

An employer may request a reference from an employee's previous or current employer directly; however, there is no statutory obligation for the previous employer to respond to the information request.

The Qatari Labour Law entitles an employee to request and obtain, upon termination or expiry of employment, a certificate from the employer setting out:

- The period of the employment.
- The nature of the work performed by the employee during the employment.
- Details of the employee's remuneration package.

Police and Other Checks

Police checks are carried out by the Qatari immigration authorities (through the Criminal Evidence and Information Department) prior to the granting of residency permits.

Medical Examinations

Non-Qatari employees are required to undergo a medical exam for the screening of certain statutory-prescribed diseases in order to qualify for a residency permit in Qatar.

Qatar Visa Centers

To improve and streamline recruitment processes, the Qatari government has launched a new initiative where recruitment applications together with all necessary checks are processed via visa centers in a few countries (such as India, Indonesia, Nepal, Pakistan, Sri Lanka, the Philippines, and Bangladesh). An employer may recruit personnel from the relevant countries through submitting online applications for visas. Upon securing initial approval from the Labour Department, the prospective employee will then be able to complete the process via designated visa centers.

Minimum Qualifications

Non-Qatari employees must provide their educational qualifications (and any other relevant professional accreditations) as supporting documentation for the work visa application by the employer. The educational qualifications will need to be commensurate to the job description in the work visa application (e.g., a work visa application for an engineer will need to be supported by engineering educational qualifications and accreditations from any other relevant professional accrediting bodies).

II. TYPES OF RELATIONSHIPS

Employee

Employees may be employed on a temporary, full-time, fixed-term, or open-ended contract. Each type of employment relationship carries different rights and obligations for the employer and the employee.

Independent Contractor

Due to the requirements of immigration and sponsorship in Qatar, it is very rare to come across non-Qataris acting as independent contractors in their own right. At the very least, independent contractors must be duly licensed to carry out their services, and in order to do so, they will need to be under the sponsorship of a Qatari person or company that is so licensed. It is therefore likely that an independent contractor's services would be provided within the context of a service agreement with the duly licensed Qatari company or person.

Labor Hire

Temporary manpower supply is a highly regulated commercial activity that can only be carried out by properly licensed entities in Qatar. There are, however, various instances of companies hiring out workers (mainly unskilled laborers, cleaners, or domestic workers) under their sponsorship to third parties on an unregulated basis. Due to criticism that Qatar has previously received for the treatment of non-Qatari workers, there has been much stricter enforcement by the Qatari authorities to clamp down on such unregulated manpower supply.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

The terms and conditions of employment must be in writing, in Arabic, executed by the employee and employer, and filed with the Labour Department within the Ministry of Labour (MoL) as part of the immigration process. The Labour Department regularly issues a template employment contract for use, and changes to such template will need to be approved by the Labour Department before its registration.

Codes or Rules

The Qatari Labour Law applies to all employment relationships within Qatar (whether contracted in writing or orally) with the exception of employment relations in the Qatar Financial Centre. The Qatar Financial Centre is a special economic zone established by the government of Qatar to provide a platform for investment with 100% foreign ownership in the state. The Qatar Financial Centre is not a defined geographic area; however, it has its own employment regulations governing employment relations between employer entities registered in the Qatar Financial Centre and their employees.

Registered Agreements

As per "Contracts" above.

Policies

Policies are generally not mandatory. Any proposed disciplinary policies or procedures to be introduced by the employer must be approved by the Labour Department before they can be implemented.

IV. ENTITLEMENTS

Minimum Employment Rights

The Qatari Labour Law sets out the minimum rights and obligations of employers and employees and governs all employment relationships in Qatar, except for the following:

- Employment in the public sector.
- Employment with Qatar Petroleum or any of its affiliates.
- Employment in companies engaged in oil and gas exploration and production and petrochemical industries.
- The Qatar Armed Forces, other military authorities, and the police.
- Employment at sea.
- Domestic services (such as maids, drivers, cooks, gardeners, and similar roles).
- Employment in the agricultural sector.

Hours of Work

The limit on normal working hours is eight hours per day. Employees are also entitled to a minimum of one rest day per week (which in most cases is Friday). Employees can also be requested to work overtime hours, although the maximum number of hours worked in one day cannot exceed 10.

Reduced working hours apply during the month of Ramadan, when the limit on normal working hours is six hours per day. The maximum number of hours worked during Ramadan (including overtime) cannot exceed eight hours per day.

Annual Leave

There is a minimum entitlement of three weeks per annum for an employee who has worked for one year and whose period of service is less than five years, increasing to a minimum entitlement of four weeks per annum for an employee whose period of service is five years or more.

Maternity Leave

Female employees (who have completed a full year's service) are entitled to 50 days of maternity leave with full pay. Such maternity leave includes the period before and after the birth, provided that the period following the birth is not less than 35 days.

Sick Leave

Employees are entitled to sick leave (only after completing a period of three months in employment and only if supported by a certificate from a licensed physician approved by the employer) as follows:

- First two weeks with full pay.
- If the illness extends for a further four weeks, the employee will receive half pay during this period.
- Any subsequent period with no pay.
- If after 12 weeks the employee is unable to return to work, the employer may seek to terminate employment if it can prove (via a competent physician) that the employee is no longer able to resume work.
- If an employee resigns due to illness (with the approval of a competent physician) before the end of the six weeks in which he or she is entitled to paid sick leave, the employer will pay out the remaining amount of the employee's entitlement.

Public Holidays

Employees are entitled to leave with full pay on public holidays as announced by MoL for the public sector on the following occasions:

- Eid al-Fitr – three days.
- Eid al-Adha – three days.
- Independence Day – one day.
- National Sports Day – one day.
- Designated days at the discretion of the employer – three days.

Special Leave

Muslim employees are entitled, during the course of service (only permitted once), to special leave of up to 20 days without pay for the Hajj pilgrimage.

Health Insurance

An employer is obliged to procure basic health insurance for its employees, pursuant to the provisions of the Healthcare Insurance Law issued at the end of 2021. Furthermore, the Healthcare Insurance Law provides that an employer must procure such insurance before it can apply for a residence permit and work visa for an employee.

Wages/Discretionary Benefits

Wages

Without prejudice to any agreement providing higher wages to the employees, employers are obliged to comply with the minimum wage rules specified by a decision of MoL. Currently, the minimum wage is QAR1,000 per month for basic salary and, unless provided by the employer, monthly accommodation and food allowances of QAR500 and QAR300, respectively. Past employment contracts where employees have been employed at less than the prescribed minimum wage scheme must be updated in light of this change.

Bonuses

Employers are free to choose to incentivize employees by including bonus provisions in employment contracts. Bonuses are usually dependent on individual, department, or business performance and are usually paid at the employer's discretion.

Allowances

Employers are required to indicate the allowances provided to employees in the employment contract. Typically, the standard template contract of employment will set out categories of housing and transportation allowances that must be completed. Along with the implementation of the minimum wage scheme as described above, employers must also provide certain minimum allowances for housing and for food.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Unlimited-Term Contract

Employment can be terminated by mutual agreement of the parties. Either party may also unilaterally terminate the contract by giving written notice (or payment in lieu) to the other party.

Fixed-Term Contract

Employment can be terminated by mutual agreement, upon service of written notice (or payment in lieu), or at the expiry of the agreed term.

Dismissal for Cause

An employer may terminate the employment without providing any notice, any termination entitlement (such as end-of-service gratuity payment), or compensation in the event of serious misconduct, including, but not limited to:

- If the employee commits a violation of the employer's disciplinary procedures (that have previously been approved by the Labour Department), and such violation permits dismissal for cause.
- If the employee assumes a false identity or nationality or submits false certificates or documents.
- If the employee commits an act that causes gross financial loss to the employer. The Labour Department must be notified of the incident within 24 hours of it taking place.
- If, on more than one occasion, the employee violates the employer's policies on the safety of the employees and the workplace despite being notified in writing. Policies must be posted in a conspicuous place.
- If, on more than one occasion, the employee fails to carry out his or her essential duties under the service contract or Qatari Labour Law despite being notified in writing.
- If the employee discloses the secrets of his or her employer.
- If, during working hours, the employee is drunk, under the influence of drugs, or commits an assault.

II. MINIMUM ENTITLEMENTS

Payments/Notice

The notice period for termination must be one month for an employee who has served no more than two years of service. Where the employee has been employed for more than two years, the notice period must be two months.

The employer and employee may also terminate the employment contract during the probation period by serving notice as below:

- An employer may dismiss an employee during the probation period if such person is unfit to carry out his or her duties, provided that notice of at least one month is provided.
- In the case of an employee:
  - If he or she has secured alternative employment in Qatar, he or she must serve at least one month's notice to the employer. The new employer is under an obligation to compensate the previous employer a portion of the recruitment fees and air ticket incurred, if any, provided that such amount does not exceed two months of the employee's basic salary.

- If he or she intends to leave the country, an employee must serve notice in accordance with the period agreed between the parties, provided that such notice does not exceed two months.

If a party fails to comply with the abovementioned notice periods, such party will be liable to compensate the other party for an amount equivalent to the employee's basic salary for the notice period.

In both cases, the employer can choose to terminate the contract immediately by paying the employee in lieu of notice.

Employees remain entitled to their contractual rights during the notice period, provided they continue to perform their duties during such period.

Statutory Entitlements

Upon termination, an employee is generally entitled to payment of the following:

- Accrued but unused vacation.
- Accrued salary and allowances up to the date of termination.
- End-of-service gratuity payment.

Upon completion of one year of continuous employment with the same employer, the employee is entitled to an end-of-service gratuity calculated (pro rata) on the basis of at least three weeks' basic salary (excluding all allowances and discretionary payments) for each year of service. This is a nonwaivable entitlement of the employee payable on or around the date of termination of the employment contract. The only way employers can avoid paying an end-of-service gratuity is if they offer an equivalent or better end-of-service benefit than the one prescribed by the Qatari Labour Law.

III. REDUNDANCY

Genuine Redundancy

The Qatari Labour Law does not contain detailed provisions on redundancy, and, by law, employers are generally allowed to terminate the employment contract (subject to its terms) without providing a reason for doing so.

Recent changes, however, were made to the Qatari Labour Law that permit an employer to terminate employment contracts due to economic or restructuring reasons, provided that it serves 15 days' prior notice to MoL that details: (a) the supporting reasons for the employer's decision, (b) the number of employees likely to be affected by such decision, and (c) the time frame for carrying out such exercise.

IV. REMEDIES

Dismissal Action

All disputes must be referred to the Labour Department. If no resolution is reached amicably between the disputing parties, the department is under an obligation to refer the dispute to the Labour Dispute Resolution Committee within the Labour Department for resolution. The committee is tasked and empowered to process and review such claims on an urgent basis, and a decision must be issued within three weeks from the date of the first hearing session. If a disputed party is not satisfied with the decision of the Labour Dispute Resolution Committee, such party may appeal before the local courts.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Employment

Transfer of employment from one employer to another requires the approval of the Labour Department. On occasion, such transfers may be rejected by the Labour Department where the new employer has been found by the Labour Department to be noncompliant with its obligations under the Qatari Labour Law.

Transfer of employment of non-Qatari employees generally also requires a transfer of sponsorship to the new employer (unless the non-Qatari individual is sponsored by a spouse or parent). Transfers of sponsorship are subject to the approval of the Ministry of Interior, but an employee is no longer required to produce a no-objection certificate from the current employer.

II. RESTRUCTURING

Notification

Any variation to the employment contract will require mutual agreement between the employee and the employer. If the employment needs to be shifted to another group entity, the employment contract will need to be terminated and the employee rehired by the other entity.

Consultation

The Qatari Labour Law is silent on consultation.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Employees are barred from divulging confidential information (i.e., trade secrets and information not in the public domain) relating to their employer either for their personal benefit or for benefit to a third party. Disclosure of confidential information could give rise to both civil and criminal liability.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

For noncompete clauses to be enforceable, proof would need to be provided to the Labour Department that the future employment of the employee is in direct competition with the previous employer's business and that the employee has been privy to the previous employer's trade secrets. Noncompete undertakings or covenants by an employee cannot exceed one year in duration.

III. PRIVACY OBLIGATIONS

Unless the employee has provided a written waiver, employers have a duty not to disclose confidential information relating to their employees, even if such information was obtained through a third party.

IV. WORKPLACE SURVEILLANCE

Considering the potential sanctions under the Qatari Penal Code for intrusion into an individual's private life, a key consideration for employers is if the employees have a legitimate expectation of privacy in their workplace. If so, employers may need an employee's consent for surveillance.

V. WORKPLACE INVESTIGATIONS

Revealing the details of an investigation that may involve sensitive personal information relating to an employee without that employee's consent may arguably lead to sanctions under the Qatari Penal Code.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts may provide for management of employee performance and conduct.

II. BULLYING AND HARASSMENT

Bullying

There are no specific anti-bullying provisions within the Qatari Labour Law; however, if the employer has issued a code of conduct or disciplinary procedures that have been approved by the Labour Department, these could include anti-bullying provisions and related disciplinary sanctions.

Harassment

If the employer has issued a code of conduct or disciplinary procedures that have been approved by the Labour Department, these could include anti-harassment provisions and related disciplinary sanctions. Harassment of females can also be deemed to be a violation of the Qatari Penal Code in some circumstances.

III. DISCRIMINATION

Priority in employment is given to Qatari nationals over non-Qataris. Furthermore, it is relatively common practice in Qatar for different pay scales to apply to Qataris and to non-Qataris.

The Qatari Labour Law requires that female employees be paid and given the same opportunities for training and promotion as their male counterparts performing the same work. However, the Qatari Labour Law also includes specific provisions regulating the employment of women in the workplace. For example, it is prohibited to employ women in hazardous works that may be harmful to their health or works or in other works specified by a decision from the Minister of Labour."

IV. UNIONS

Representation

Qatari employees in establishments employing at least 100 employees can form a Labour Committee. An individual Labour Committee can join larger groupings or a "General Committee for the Profession`s or Industry`s Workers," which represents workers across the same or interrelated industries. Strikes are permitted, provided they follow the rules of the Qatari Labour Law. Notwithstanding this, industrial action by Qataris is extremely rare.

Right of Entry

Only Qatari nationals can become members of a Labour Committee or General Committee for the Profession`s or Industry`s Workers.

Industrial Disputes

All disputes between employers and employees are initially heard by a joint committee comprising representatives of the employer and the employees. If the joint committee fails to settle the dispute, the dispute is referred to the Labour Department for mediation between the parties. If the mediation fails, the dispute is then referred to an arbitration committee comprising representatives appointed by the MoL representatives appointed by the Qatar Chamber of Commerce and Industry, and a representative nominated by the General Union of Workers in Qatar. The arbitration committee has the power to render a final ruling on the dispute.

V. REMOTE/HYBRID WORK

There is no formal guidance on remote/hybrid working models in Qatar. Since the time of the COVID-19 pandemic, employees who are vulnerable or at risk may be allowed to work remotely at the discretion of the employer.

AUTHORS AND CONTRIBUTORS

Amjad Hussain

Partner
Doha
+974.4.424.6119
amjad.hussain@klgates.com

Randa I. Shiblaq

Senior Paralegal
Doha
+974.4.424.6138
randa.shiblaq@klgates.com

Jaime Oon

Senior Associate
Doha
+974.4.424.6128
jaime.oon@klgates.com

Mira Khalaf

Associate
Doha
+974.3.360.6136
mira.khalaf@klgates.com

K&L GATES STRAITS LAW

Singapore Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

With the announcement of enhanced statutory parental leave schemes set to commence in 2025 and the anticipated introduction of the Workplace Fairness Legislation (WFL) in the near future, Singapore's employment law landscape is set to move forward, providing stronger support for working parents, encouraging shared parental responsibility, and enhancing employees' protection against workplace discrimination, while strengthening fair employment practices and outcomes for Singapore's future workforce.

In line with Singapore's goals to boost its population growth rate, a new shared parental leave scheme was announced in August 2024, and is expected to be introduced in two phases starting from 1 April 2025. Once fully implemented on 1 April 2026, qualifying employees will be entitled to up to 30 weeks of paid parental leave.

Apart from parental leave legislation, the Ministry of Manpower (MOM) has also implemented the Complementarity Assessment Framework (COMPASS). COMPASS will increase the transparency of employment pass applications and, at the same time, also ensure the quality of foreign manpower into Singapore. Employers will be provided with improved guidance to identify individuals that are capable, talented, and diverse. Through these changes, employers will benefit from a more productive and engaged workforce and be able to attract and retain top talent, while still having access to a complementary foreign workforce, ensuring stronger business outcomes in the years ahead.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure employees who are not Singapore citizens or permanent residents have a valid work pass or requisite approvals allowing them to work in Singapore.

One of the more common work passes is the Employment Pass (EP), which allows foreign professionals, managers, and executives (PMETs) to work in Singapore. Since 1 September 2022, new EP applicants who are not employed in the financial services sector have needed to earn a fixed monthly salary of at least S$5,000, while new EP applicants in the financial services sector will need to earn a fixed monthly salary of at least S$5,500. The minimum qualifying salary increases progressively with age from age 23 up to S$10,500 at age 45 and above. This is because older, more experienced applicants are expected to command higher salaries to qualify, in line with their qualifications, work experience, and skill sets. Note that the aforementioned minimum qualifying salaries apply to renewal EP applications from 1 September 2023.

Employers must apply for an EP on behalf of a job candidate. Any change of employer will require a new application, except in limited circumstances. Employers applying for an EP from 1 September 2023 have needed to ensure that their EP candidates are awarded at least 40 points to pass under COMPASS. Likewise, employers applying for EP renewals from 1 September 2024 onward will need to ensure that their EP candidates are able to pass COMPASS in order to have their passes renewed.

Other work passes and approvals include:

- The Overseas Networks & Expertise Pass for top talent in business, arts and culture, and sports, as well as academia and research.
- The Tech.Pass for established technology entrepreneurs, leaders, or technical experts from around world that satisfy at least two of the following conditions: (a) have a last drawn fixed monthly salary (in the last year) of at least S$22,500, (b) have at least five cumulative years of experience in a leading role in a technology company with a valuation of at least US$500 million or at least US$30 million funding raised, or (c) have at least five cumulative years of experience in a leading role in the development of a technology product that has at least 100,000 monthly active users or at least US$100 million in annual revenue.
- The Personalized Employment Pass for high-earning existing EP holders or overseas foreign professionals earning fixed monthly salaries of at least S$22,500.
- The EntrePass (for eligible foreign entrepreneurs wanting to start and operate a new business in Singapore).
- The S Pass (for midlevel skilled staff not employed in the financial services sector who earn a fixed monthly salary of at least S$3,150 or for midlevel skilled staff employed in the financial services sector who earn a fixed monthly salary of at least S$3,650 and meet certain assessment criteria). Note that from 1 September 2025, the minimum qualifying salary for new S Pass applications will be at least S$3,300 for applicants not in the financial services sector and at least S$3,800 for applicants in the financial services sector. The revised minimum qualifying salaries will apply to S Pass renewal applications from 1 September 2026 onward.
- The Work Permit (for semi-skilled foreign workers in the construction, manufacturing, marine shipyard, process, or services sector).
- The Letter of Consent (for eligible spouses or unmarried children under the age of 21 of Singapore citizens or Singapore permanent residents who hold a Long-Term Visit Pass/Long-Term Visit Pass Plus issued by the Immigration and Checkpoints Authority).

Reference/Background Checks

An employer is generally permitted to contact a prospective employee's referees and previous employers to gather and verify information. It is also common to expressly provide for this right in an employment agreement. However, employers owe a duty of care to both former and present employees to prepare a reference that is true and accurate. The reference, taken as a whole, must not be unfair or misleading.

Verification Proof of Employees' Qualifications

From 1 September 2023, employers submitting EP applications have been required to provide verification proof on the authenticity of their applicants' educational qualifications for diploma-level and above qualifications. The MOM has selected 12 background screening companies to provide services for employers to verify educational qualifications. Current details of these companies can be found on the MOM website.

Apart from background screening companies, verification proof can also be obtained through online verification portals of the relevant countries' government or educational institutions, or digital certificates issued by educational institutions and verified through the OpenCerts portal.

From 1 September 2024, employers who are renewing EPs for their employees are required to submit verification proof.

COMPASS

Under COMPASS, the MOM will assess each EP candidate on four foundational criteria and two bonus criteria. The four foundational criteria include: C1. salary, C2. qualification, C3. diversity, and C4. support for local employment, while the two bonus criteria include: C5. skills (that are not readily available in Singapore) and C6. strategic economic priorities (which create jobs for Singaporeans).

The assessment of each criteria and point scoring systems are as follows:

- If an assessment exceeds the MOM's expectations, 20 points will be awarded for that criteria.
- If an assessment meets the MOM's expectations, 10 points will be awarded.
- However, if an assessment fails to meet the MOM's expectations, zero points will be awarded.

C1. Salary

All EP candidates (other than those working in the financial sector) must meet the qualifying fixed monthly salary of S$5,000, save for EP candidates working in the financial sector who must meet the qualifying fixed monthly salary of S$5,500. From 1 January 2025, the qualifying fixed monthly salary for EP candidates not working in the financial sector will be revised to at least S$5,600 while the qualifying fixed monthly salary for EP candidates working in the financial sector will be revised to at least S$6,200. These new qualifying fixed monthly salary thresholds will likewise apply to EP renewal applications for EPs expiring from 1 January 2026 onward.

For an EP candidate to be awarded points under the COMPASS criteria, the candidate's fixed monthly salary should be equal to or greater than the 65th percentile of that sector's PMETs salaries in Singapore. If the EP candidate's salary is equal to or greater than the 90th percentile of that sector's PMETs salaries in Singapore, the candidate would be awarded 20 points under this criteria.

C2. Qualification

In line with the new verification proof requirements, EP candidates who have verification proof of a bachelor's degree and above qualifications from a top-tier institution will be awarded 20 points under this criteria. Top-tier institutions would include:

- The top 100 universities based on QS World University Rankings and other highly reputed universities in Asia.
- Singapore's autonomous universities.
- Institutions that are highly recognized in a particular field and endorsed by a relevant agency.

For EP candidates that possess degree-equivalent qualifications with the relevant verification proof, the MOM will award these candidates 10 points under COMPASS. Degree-equivalent qualifications generally refer to:

- Foreign qualifications that are assessed to be comparable to a bachelor's degree in the United Kingdom's system. (This is determined with reference to international recognition bodies, such as the UK National Information Centre for recognition and evaluation of international qualifications and skills.)
- Professional qualifications that are well-recognized by the industry and endorsed by a relevant sector agency.

EP candidates that do not possess degree-equivalent qualifications or verification proof of their qualifications will not be awarded points under this criteria.

C3. Diversity

COMPASS also awards points where the EP candidate's nationality forms a small share of the firm's PMET employees. If an employer has fewer than 25 PMET employees, the EP candidate will be awarded 10 points by default. For employers with more than 25 PMET employees, the EP candidate will be awarded points based on the share of the candidate's nationality among the nationalities of the employer's total number of PMET employees, as follows:

- If the candidate's nationality forms less than 5% of the total share of PMETs' nationalities, 20 points will be awarded,
- If the candidate's nationality forms between 5% and 25% of the total share of PMETs' nationalities, 10 points will be awarded.
- If the candidate's nationality forms more than 25% of the total share of PMETs' nationalities, zero points will be awarded.

The EP candidate's nationality is assessed based on the nationality indicated on his or her passport.

C4. Support for Local Employment

The MOM will also award points to EP candidates if their employer (or their organization) creates opportunities for the local workforce and builds complementary teams with both local and foreign professionals.

Employers applying for EPs for their prospective employees with less than 25 PMETs in their employ would be granted 10 points by default. If more than 25 PMETs have been employed, the points awarded will depend on the employer's local PMET share relative to the relevant sector, as follows:

- If the organization's local PMET share relative to its sector is in the 50th percentile and above, 20 points will be awarded to the EP candidate for that application.
- If the organization's local PMET share relative to its sector is between the 20th and 50th percentile, 10 points will be awarded to the EP candidate for that application.
- If the organization's local PMET share relative to its sector is below the 20th percentile, zero points will be awarded to the EP candidate for that application.

C5. Skills

EP candidates who possess highly specialized skills, which are in shortage in the local workforce, will also be awarded points under COMPASS. The determination of whether a highly specialized skill is in shortage is based on the Shortage Occupation List (SOL) created by the MOM and the Ministry of Trade and Industry.

For the EP candidate to receive 20 points under this criteria, (a) the candidate's occupation should fall within the SOL, and (b) the candidate's nationality should form less than one-third of the total (PMETs) nationalities in his or her organization.

If the EP candidate's nationality forms more than one-third of the total (PMETs) nationalities in his or her organization, but the candidate's occupation falls within the SOL, only 10 points will be awarded under COMPASS.

If the EP candidate's occupation does not fall within the SOL under this criteria, zero points will be awarded.

C6. Strategic Economic Priorities

COMPASS recognizes firms that are undertaking ambitious investment, innovation, and internationalization activities in partnership with economic agencies or have been endorsed by the National Trades Union Congress as a strong partner on workforce transformation. EP applications of these firms will be awarded 10 points under this criteria. Such firms should also have the scale or potential to provide good jobs for locals.

To qualify, firms must be participants of selected economic programs run by the government agencies in Singapore or meet the specific assessment criteria and show commitment to strengthening Singapore's local workforce.

Exemptions From COMPASS

Candidates who (a) earn a fixed monthly salary of at least S$22,500, (b) are applying as an overseas intracorporate transferee, or (c) are filling a role on a short-term basis of one month or less are exempted from COMPASS.

COMPASS is summarized in the table below.

	INDIVIDUAL ATTRIBUTES		EMPLOYER/FIRM'S ATTRIBUTES	
FOUNDATIONAL CRITERIA	**C1. Salary** Assessed relative to local PMET salary norms for sector	Points awarded	**C3. Diversity** Share of candidate's nationality among firm's PMETs	Points awarded
	90th percentile and above	20	Less than 5%	20
	65th percentile to 89th percentile	10	5% to 24%	10
	Below 65th percentile	0	25% or more	0
	C2. Qualifications Based on candidate's qualifications	Points awarded	**C4. Support for Local Employment** Firm's local PMET share relative to its sector	Points awarded
	Top-tier institution	20	50th percentile and above	20
	Degree-equivalent qualification	10	20th to 49th percentile	10
	No degree-equivalent qualification	0	Below 20th percentile	0
	C5. Skills Jobs with skills shortages	Points awarded	**C6. Strategic Economic Priorities** Partnership with government on workforce transformation activities	Points awarded
BONUS CRITERIA	Job on the SOL Share of candidate's nationality among firm's PMETs is less than one-third	20	Firm meets specific assessment criteria on innovation or internationalization activities	10 (max)
	Share of candidate's nationality among the firm's PMETs is more than one-third	10		

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis.

Effective from 1 April 2019, the Employment Act 1968 (the Act) applies to all employees regardless of their salary and position who are under a contract of service except:

- Any seafarer.
- Any domestic worker.

- Any person belonging to any other class of persons who the minister may, from time to time by notification in the *Government Gazette*, declare not to be an employee for the purposes of the Act, which currently includes any person employed by a statutory board or the government.

Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will usually engage the individual by means of a service agreement with the individual or with the individual's business.

Workmen

A "workman" includes the following classes of persons:

- Any person, skilled or unskilled, who has entered into a contract of service with an employer to which he or she is engaged in manual labor, including any artisan or apprentice, but excluding any seafarer or domestic worker.
- Any person, other than clerical staff, employed in the operation or maintenance of mechanically propelled vehicles used for the transport of passengers for hire or for commercial purposes.
- Any person employed partly for manual labor and partly for the purpose of supervising any workman in and throughout the performance of his or her work.
- Any person specified in the first schedule to the Act.
- Any person who the minister may, by notification in the *Government Gazette*, declare to be a workman for the purposes of the Act.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employers are required to issue key employment terms (KETs) and itemized pay slips to their employees (covered by the Act). These KETs must be included in each employee's employment contract.

KETs must include items such as:

- Full name of employer.
- Employer's trade name, if different from its full name.
- Full name of employee.
- Job title, main duties, and responsibilities.
- Start date of employment.
- Duration of employment (if employee is on a fixed-term contract).
- Working arrangements, such as daily working hours, number of working days a week, and rest days.
- Salary period.
- Basic salary, fixed allowances, and fixed deductions.
- Overtime payment period (if applicable).
- Overtime rate of pay (if applicable).
- Other salary-related components, such as bonuses and incentives.
- Leave entitlement (e.g., annual leave, sick leave, maternity leave, child care leave, paternity leave, adoption leave, shared parental leave, infant care leave).
- Other medical benefits (e.g., insurance, dental benefits).
- Probation period (if applicable).
- Notice period.

- Place of work, if the work location is different from the employer's address (optional, but recommended to include).

Employers must also issue itemized pay slips to all their employees covered by the Act at least once a month. Employers may issue these itemized pay slips electronically. Employers must also keep a record of all pay slips issued.

Policies

Policies that should be in place include those relating to discrimination, harassment, bullying, and workplace health and safety.

IV. ENTITLEMENTS

Minimum Employment Rights

The Act provides for certain minimum employment rights. A contract of service that contains less favorable terms than those prescribed by the Act is illegal, null, and void to the extent that it is less favorable. Some of these rights are contained in Part 4 of the Act, which only applies to:

- Workmen earning a basic monthly salary of S$4,500 or less.
- Other employees (other than workmen) earning a basic monthly salary of S$2,600 or less.

(Note: Basic salary excludes overtime, bonus, annual wage supplement, productivity incentive payment, reimbursement for special expenses, and any allowances.)

Hours of Work

There are maximum hours of work provided for employees covered by Part 4 of the Act. Generally, such employees are not allowed to work more than 12 hours a day. However, an employer can ask an employee to work more than 12 hours a day in the following circumstances:

- An accident or threat of accident.
- Work that is essential to the life of the community, national defense, or security.
- Urgent work to be done to machinery or the plant.
- An interruption of work that was impossible to foresee.

If an employer requires an employee covered by Part 4 of the Act to work more than 12 hours a day (up to a maximum of 14 hours), it must apply for an overtime exemption. While an employee should only work up to 72 overtime hours in a month (as stipulated by the Act), employers can apply for an exemption if they require employees to work more than 72 hours of overtime in a month. Certain work activities, however, will not be granted any such exemption.

Annual Leave

An individual employed for a period of three months or more is statutorily entitled to paid annual leave of seven days in the first 12 months of continuous service with the same employer and an additional one day of paid annual leave for every subsequent 12 months of continuous service with the same employer (up to a maximum of 14 days of leave). Such leave is in addition to the rest days, public holidays, and other statutory leave under the Act or any other applicable Singapore law.

An individual employed for a period of not less than three months, but who has not completed 12 months of continuous service, is entitled to paid annual leave in proportion to the number of completed months of service.

Maternity Protection and Benefits/Child Care Leave for Parents

Maternity leave, adoption leave, child care leave, extended child care leave, paternity leave, shared parental leave, and infant care leave are provided for either under the Act or under the Child Development Co-Savings Act 2001 (CDCSA). For all the statutory leave entitlements set out below (with the exception of shared parental leave), the individual must be employed for a minimum of three continuous months or self-employed for at least three months to be eligible.

In general, a female employee is entitled to paid maternity leave, with such paid maternity leave period being either eight or 16 weeks (depending on whether the child is a Singapore citizen and certain other criteria), which must be taken within 12 months of the child's date of birth (inclusive of the date of birth). Where the female employee is only entitled to eight weeks of paid maternity leave, she is entitled to claim a further four weeks of unpaid maternity leave. Employers cannot contract out of this entitlement. Whether a female employee's maternity leave will be government-paid maternity leave will depend on whether the child is a Singapore citizen.

An employee who has a child below the age of 7 is entitled to child care leave of six days per annum if the child is a Singapore citizen and two days of child care leave per annum where the child is not a Singapore citizen. For qualifying employees whose child is a Singapore citizen, the fourth to sixth day of his or her paid child care leave will be reimbursed by the Singapore government. In total, an employee is only entitled to 42 days of child care leave in respect to any qualifying child.

An employee who has a child between the ages of 7 and 12 is entitled to extended child care leave of two days per annum if the child is a Singapore citizen. Where an employee has children both below the age of 7 and between the ages 7 and 12, that employee will be entitled to a combined total maximum of six days per year.

In general, a male employee is entitled to two weeks' government-paid paternity leave if the child is a Singapore citizen and the male employee is or has been lawfully married to the child's mother between conception and birth. Employers may allow male employees to take an additional two weeks of government-paid paternity leave. Note that from 1 April 2025, the additional two weeks of voluntary government-paid paternity leave will be mandatory for eligible working fathers whose child is a Singapore citizen born after 1 April 2025. Adoptive fathers who adopt a Singapore citizen child will also be entitled to government-paid paternity leave.

An employee who has a Singapore citizen child below the age of 2 is entitled to six days a year of unpaid infant care leave, over and above any child care leave or extended child care leave entitlement he or she may already have.

Subject to eligibility criteria, a female employee may be entitled to 12 weeks of government-paid adoption leave.

Under the existing shared parental leave scheme, a working father can apply to share up to four weeks of his wife's maternity or adoption leave entitlement, subject to his wife's agreement. The wife's maternity leave will then be reduced by the corresponding amount. To be able to share parental leave, the child must be a Singapore citizen, the father must be lawfully married to the child's mother, and the child's mother must qualify for maternity leave. From 1 April 2025, however, the existing shared parental leave scheme will be replaced with a new shared parental leave scheme that grants an increased amount of shared parental leave between a child's parents. These changes will be implemented in the following two phases:

- From 1 April 2025: six weeks of shared parental leave, to be allocated in equal shares (i.e., three weeks for each parent).
- From 1 April 2026: 10 weeks of shared parental leave, to be allocated in equal shares (i.e., five weeks for each parent).

While some of the statutory leave described above is administered under government-paid leave schemes, note that the different types of leave may be subject to different reimbursement caps.

Sick Leave

Individuals employed for a period of three months or more are entitled to paid sick leave. Employees who have worked for a period of more than six months are entitled to the full entitlement of paid sick leave, including:

- If no hospitalization is necessary, 14 days in each year.
- If hospitalization is necessary, the lesser of the following:
  - Sixty days in each year.
  - The aggregate of 14 days plus the number of days they are hospitalized.

A medical certificate from a medical practitioner registered under the Medical Registration Act 1997 or Dental Registration Act 1999 is required in order to claim any sick leave entitlement. Failure to obtain such a certificate or failure to inform, or attempt to inform, the employer of such sick leave within 48 hours is deemed to be an absence from work without permission and without reasonable excuse.

Medical Insurance

Mandatory medical insurance for Work Permit (including migrant domestic workers) and S Pass holders was enhanced from 1 July 2023 through a co-payment scheme. The insured medical expenses for these workers increased from S$15,000 to S$60,000. Insurers pay 100% up to S$15,000 and co-pay 75% up to S$60,000 of medical expenses for these workers.

Note that from 1 July 2025, other enhancements such as the standardization of allowable exclusion clauses, age-differentiated premiums, and direct reimbursement by insurers will be applied to the mandatory medical insurance for these workers, as follows:

- Standardization of allowable exclusion clauses.
  - Insurers can only exclude certain medical conditions or treatments from their medical insurance coverage for Work Permit and S Pass holders.
- Age-differentiated premiums for those age 50 and above.
  - Work Permit and S Pass holders that are below the age of 50 will have more affordable insurance premiums.
- Direct reimbursement by insurers.
  - The medical expenses of Work Permit and S Pass holders will be paid by the medical insurers to the hospital directly. Employers will not need to pay their workers' medical expenses up-front before seeking reimbursement from insurers.

Public Holidays

Employees are entitled to 11 paid public holidays a year. Employees that are required to work on a public holiday should be entitled to an additional day's salary or receive another day off, in lieu of that public holiday.

Notice of Termination

Either party to a contract of service (i.e., an employment contract) may, at any time, give to the other party notice of their intention to terminate the contract.

The length of such notice must be the same for both employer and employee and is determined by the relevant contractual provision or, in the absence of such provision, the following statutory notice periods:

- One day’s notice if employed for less than 26 weeks.
- One week’s notice if employed for 26 weeks or more, but less than two years.
- Two weeks’ notice if employed for two years or more, but less than five years.
- Four weeks’ notice if employed for five years or more.

Both parties must have the option to pay salary in lieu of serving out the notice period.

Discretionary Benefits

Bonuses

Employers may choose to incentivize employees by including bonus provisions in employment contracts. Bonuses are usually dependent on individual department or business performance and are usually paid at the employer’s discretion.

Paid Parental Leave

Some employers offer paid parental leave schemes that either supplement the income provided by the legislated parental leave pay scheme or offer additional periods of paid parental leave.

TERMINATION OF EMPLOYMENT

I. GROUNDS

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

II. MINIMUM ENTITLEMENTS

Notice

Under the Act, when either party terminates the employment for reasons other than a willful breach of a condition of service by the other, they must provide a written notice of termination for at least the relevant notice period (see “Notice of Termination” section above).

Advance notice does not need to be provided when a party terminates the contract for willful breach of a condition of the contract of service by the other party.

Where an employer intends to dismiss an employee without notice on the grounds of misconduct (misconduct being a failure to fulfill the conditions of employment in the contract of service), the employer should conduct an inquiry before deciding whether to dismiss the employee or to take other forms of disciplinary action. When making a “due inquiry” (whether under the employment contract or by operation of the Act), the employee must be accorded an opportunity to present his or her case and defend himself or herself. Further, the more informal the process, the greater the risk that “due inquiry” may be viewed as not having been sufficiently undertaken.

III. REDUNDANCY

Payment

Under the Act, employees who have more than two years’ continual service and are covered under Part 4 of the Act are entitled to retrenchment benefits on their dismissal if their dismissal is on the ground of redundancy or by reason of any reorganization of the employer’s profession, business, trade, or work. The prevailing norm is to pay a retrenchment benefit of between two weeks’ to one month’s salary per year of service completed, depending on the employer’s financial position and the industry.

Where the employee is entitled to retrenchment benefits, the amount of compensation is not fixed by law. It will have to be negotiated between employee and employer.

Notification

For retrenchment exercises taking place on or after 1 November 2021, employers who employ at least 10 employees must notify the MOM of all retrenchments, regardless of the number of employees affected. Failure to provide the notification may result in a fine of up to S$2,000 per contravention.

IV. REMEDIES

Claims, Complaints, and Investigations

The Employment Claims Tribunals (ECT) can hear the following types of claims:

For employees:

- Statutory salary-related claims from all employees covered under the Act, the Retirement and Re-employment Act 1993, and the CDCSA.
- Contractual salary-related claims from all employees covered by the Act.
- Wrongful dismissal claims from all employees covered by the Act and the CDCSA.

For employers:

- Claims for salary in lieu of notice.

Parties with any dispute should first register their claims with the Tripartite Alliance for Dispute Management, which will provide advisory and mediation services. Claims that cannot be resolved through mediation will then be referred to the ECT.

The maximum claim amount for disputes before the ECT is S$20,000, or up to S$30,000 if the relevant parties have gone through the Tripartite Mediation Framework or mediation assisted by their recognized unions under the Industrial Relations Act 1960.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Under the Act, in a transfer-of-business scenario, where a transferring employee (covered by the Act) moves to another employer, continuity of service will not be broken by the transfer. The transfer of business from the previous employer to the new employer does not terminate the contract of service of the transferring employee. Rather, there will be an automatic transfer of employment pursuant to the Act with identical terms before the business is transferred.

On the completion of such a transfer, the new employer is required to fulfill the previous employer's duties and liabilities that are a part of the transferring employee's employment contract. Actions done by the previous employer will be deemed by the Act to have been done by the new employer.

In addition, the Act requires that employers who are taking over a previous employer's duties and liabilities inform the relevant employees of the following:

- The fact that a transfer is going to take place.
- The approximate date on which the transfer is to take place.
- The reasons for the transfer.
- The implications of the transfer.
- The measures (in relation to the employees) that the employer envisages will be taken.

As such, employers who are taking over from a previous employer should request all necessary information to (a) perform their requisite duties and liabilities to their new employees, and (b) inform these relevant employees of the changes/transfer details.

Penalties for Noncompliance

Employers should take note that entering into a contract of service or collective agreement that is contrary to the requirements (e.g., the requirement to fulfill the previous employer's duties and liabilities, the requirement to inform employees of the transfer details) as set out under the Act is an offense.

The penalties for such an offense include a fine not exceeding S$5,000 or imprisonment for a term not exceeding six months or both, and for a subsequent offense, to a fine not exceeding S$10,000 or to imprisonment for a term not exceeding 12 months or both.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and the business's employees.

Confidentiality provisions restrict employees from using confidential information for anything other than their duties. These provisions typically restrain employees from using confidential information during, and for a period of time after, termination of employment. If an employee breaches his or her obligations of confidence, employers will have recourse under the employment contract. Generally, the remedies available to employers for their employees' breach of confidentiality obligations include account of profits, damages, and an injunction. An interim injunction can be sought to prevent an employee threatening to disclose their employer's confidential information from making such disclosure.

Restrictive Covenants

Restrictive covenants such as noncompete and nonsolicitation clauses are prima facie void and unenforceable, unless an employer can show that such restrictive covenants protect legitimate business interests and are reasonable for the protection of such business interests. It is therefore not uncommon for executive employment contracts to contain noncompete provisions that protect an employer's legitimate business interests, which can be enforced if reasonable under the circumstances. The reasonableness of the noncompete provisions in an employment contract would depend on several factors, including, but not limited to:

- The scope of the noncompete provision (i.e., whether the activities that the employee is being restrained from are specific to the job scope undertaken by the employee or whether it prevents abuse by the employee of the employer's legitimate business interest).
- The seniority of the employee to whom the noncompete provision applies.
- The duration of the noncomplete provision.
- The geographical scope of restraint.
- Whether an employee receives financial compensation in return for the restrictive covenant.

All of these factors should serve the purpose of protecting the employer's legitimate business interest, rather than being arbitrarily determined by the employer.

II. PRIVACY OBLIGATIONS

Under the Personal Data Protection Act 2012 (PDPA), all employers need to be able to demonstrate their compliance in relation to the data processing operations that they implement with regard to their employees. Employment records and other employee-related data should only be kept for as long as it is necessary for business or legal purposes. If an employer transfers personal data overseas, it needs to ensure that the overseas recipient is also bound by legally enforceable obligations to provide a comparable standard of protection under the PDPA.

Companies in Singapore are required to appoint a data protection officer if they process employees' data in Singapore, namely a person in charge of overseeing PDPA compliance with sufficient legal and technical knowledge to implement the PDPA.

The PDPA requires that a sufficient legal basis justifies personal data processing operations, and employers have a general obligation to inform their employees and obtain consent for the purposes in which they collect, use, and disclose their employees' personal data.

For several employment-related circumstances, the PDPA grants employers sufficient legal basis to process their employees' data in Singapore.

- Deemed consent.
  - Individuals who voluntarily provide their personal data to a firm for a job application would have been deemed to have consented to the firm collecting, using, and disclosing the individual's data for assessment of job suitability. Information that is publicly available would also not require the firm to obtain consent from the individual.
- Business contact information.
  - Information such as an individual's name, position, or title; business telephone number; business address; business email address; or fax number not provided for personal purposes is exempted from the general data protection obligations under the PDPA.
- Evaluative information.
  - Information that is collected, used, or disclosed for the purposes of determining the suitability, eligibility, or qualifications of an individual for employment, promotion, or continued employment. The Personal Data Protection Commission has given examples of such information to be:
    - References from a prospective employee's former employer.
    - Performance records or other relevant information or opinions of that employee.

When faced with issues managing their employees' personal data, employers can consult the Advisory Guidelines on the Personal Data Protection Act for Selected Topics (the Selected Topics Advisory Guidelines) and the Advisory Guidelines on Key Concepts in the Personal Data Protection Act (the Key Concepts Advisory Guidelines). Both the Selected Topics Advisory Guidelines and the Key Concepts Advisory Guidelines have examples and explanations provided for by the Personal Data Protection Commission on the manner in which employers in Singapore are to manage their employees' personal data.

Relevant data protection regulations in Singapore for employers would include:

- The PDPA.
- The Personal Data Protection Regulations 2021.
- The Personal Data Protection (Notification of Data Breaches) Regulations 2021.
- The Key Concepts Advisory Guidelines and Selected Topics Advisory Guidelines issued by the Personal Data Protection Commission.

III. WORKPLACE SURVEILLANCE

Under the PDPA, employers should inform the employees of the purposes for the collection, use, and disclosure of their personal data (which includes any closed-circuit television surveillance (CCTV) footage at the workplace) and obtain their consent prior to the collection, use, and disclosure (as the case may be). If CCTVs are in operation, notices should be placed in a manner and at such positions to sufficiently notify employees of their operation and purpose, unless the intention for installation of CCTVs is to monitor the premises for security reasons.

One exception is that the collection by employers of personal data from their employees for the purpose of managing or terminating their employment relationships, and the use or disclosure of such personal data for consistent purposes, would not require the consent of their employees. For example, where an employer uses employee monitoring software, which offers location tracking, time tracking, application tracking, or communications monitoring services, among others, an employer can rely on this purpose to argue that an employee's consent is not required for an employer to utilize employee monitoring services. However, the PDPA still requires employers to inform their employees of the purposes of such collection, use, or disclosure, even though their consent is not required, and

the purpose for which an employer uses employee monitoring software should be for a purpose that a reasonable person would consider appropriate in the circumstances.

With employee monitoring software, an employer will also be obliged to have in place written data protection policies in respect to the use of employee monitoring software and conduct training for officers who have access to such employee monitoring software to prevent misuse and ensure protection of personal data in its possession or under its control.

IV. WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict resolution tool to determine policy breaches, misconduct, or misuse of confidential information. Before an employee is dismissed, an employer is required to conduct due inquiry of an employee before dismissing him or her without notice for misconduct.

The conduct of these investigations is usually determined by an employer's internal grievance policy (set out in the employee handbook or a stand-alone policy) or dictated by the employment contract. Where an employer lacks policy or clear guidance on the conduct of a workplace investigation, reference should be taken from the Tripartite Advisory on Managing Workplace Harassment, the Tripartite Alliance for Fair and Progressive Employment Practices' (TAFEP) Grievance Handling Handbook, and the Tripartite Guidelines on Fair Employment Practices (Tripartite Guidelines).

Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment.

WORKPLACE BEHAVIORS

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies, and agreements provide for management of employee performance and conduct.

Employee misconduct may warrant a warning, disciplinary action, or, if the conduct is serious, termination of employment. Employees terminated for serious misconduct do not receive the usual notice and other entitlements.

II. BULLYING AND HARASSMENT

Bullying

Workplace bullying, and the sanctions thereof, is usually covered in the employer's policy documents and differ from workplace to workplace.

Harassment

The Protection from Harassment Act 2014 (POHA) prescribes a range of civil remedies and criminal sanctions to protect people from harassment and related antisocial behavior. Workplace harassment occurs when a co-worker, manager, or any other person at the workplace (e.g., a customer, contractor, or volunteer) harasses, alarms, or distresses another person with their behavior. This can relate to intentional or nonintentional acts of a sexual or nonsexual nature and take place physically or through modes of communication such as email, telephone, or on the Internet. It may also pose a risk to the victim's safety and health.

Employers are legally obligated to keep their workplaces safe for employees by preventing and managing workplace harassment, but they may also be held responsible for acts of harassment committed by employees, as long as they occur at the workplace. Harassment within or outside the workplace may be an offense under the POHA. The TAFEP has additionally issued a Tripartite Advisory on Managing Workplace Harassment, which sets out some guidelines to employers on ensuring a safe working environment to prevent workplace harassment.

Increasingly, workplace policies also specifically address the issue of harassment at the workplace and the sanctions therefor.

III. DISCRIMINATION

While Singapore does not currently have workplace anti-discrimination enshrined in the law, the Tripartite Guidelines are in place, which set out fair employment practices for adoption by employers that will help prevent discrimination at the workplace. While it is not legislation, failure to comply may result in the MOM curtailing work pass privileges of employers. At present, the Tripartite Guidelines only set out six categories of characteristics where workplace discrimination is impermissible: (a) age, (b) race, (c) gender, (d) religion, (e) marital status and family responsibilities, and (f) disability.

The upcoming WFL workplace anti-discrimination legislation, slated to be introduced in the near future, is expected to provide employees with specific causes of action and access to damages for workplace discrimination.

Protection Against Workplace Discrimination

The WFL will prohibit direct discrimination in the workplace in respect to the following protected characteristics: (a) age; (b) nationality; (c) sex, marital status, pregnancy status, and caregiving

responsibilities; (d) race, religion, and language; and (e) disability and mental health conditions. It will also impose requirements of fair consideration in job advertising by banning the use of words in job advertisements that indicate a preference or bias towards a protected characteristic. Lastly, it will modify the requirements for employers to establish processes for resolving grievances and disputes.

Under the WFL, employers will be prohibited from the following:

- Discriminating against workers during all stages of employment. This covers the recruitment stage, in-employment stage, and dismissal stage.
- Using words or phrases in job advertisements that indicate preference for a protected characteristic.
- Retaliating against employees who report cases of workplace discrimination or harassment.

Support for Firms With Specific Organizational Needs and National Objectives

Employers are permitted to consider employees based on protected characteristics, if such characteristics constitute a genuine and reasonable job requirement. Where a protected characteristic is a reasonable job requirement, the employer or recruiter must state the job requirement instead of the protected characteristic. For example, an employer hiring a language teacher discriminating against prospective employees based on language proficiency would be permitted to do so, despite the protected characteristic "language" constituting a job requirement, given that the "language ability" of the prospective employee constitutes a genuine and reasonable job requirement.

Small firms with less than 25 employees will be exempted from compliance with the WFL. Religious organizations will also be permitted to make employment decisions based on religious requirements. This is so even where such an employment decision would discriminate prospective employees on the grounds of a protected characteristic, although the discrimination must require a religious basis.

Development of Resolution Processes for Workplace Grievances and Disputes

Under the WFL, employers will be required to establish grievance-handling processes. The proposed grievance-handling processes to be legislated will include the following:

- Putting in place a proper inquiry and documentation process.
- Informing employees of the firm's grievance-handling procedures.
- Communicating the outcome of the inquiry to the affected employee.
- Protecting the confidentiality of the person's identity that reported the workplace discrimination and harassment where possible.

Providing Redress for Victims of Workplace Discrimination and Penalties for Breaches

Mediation conducted by the Tripartite Alliance for Dispute Management will focus on educating employers on correct practices and mending the employment relationship where practicable. Employers should be aware that the following nonmonetary remedies may be considered at mediation:

- Reinstatement of an employment offer.
- Apology by the employer.
- Reconsideration of the employee.

If mediation fails, the dispute goes before the ECT, which can order the payment of monetary compensation from employers. The ECT is also empowered to (a) strike out frivolous or vexatious claims, and (b) award costs of up to S$5,000 to be paid by the claimant to the employer, if the claimant's claim was struck out in these situations. The awarding of costs by the ECT will be on a case-by-case basis with consideration not to deter workplace fairness claims in general.

Employers may also take appropriate disciplinary action against claimants where the ECT has struck out the claim or awarded the costs to the employer due to frivolous or vexatious claims brought against it.

Enforcement Action Against Workplace Fairness Breaches

Where the ECT claim involves a serious breach of the WFL, the state may concurrently investigate with a view of taking enforcement action against the firm.

The Tripartite Committee for Workplace Fairness (Tripartite Committee) has provided a range of penalties, including the following:

- Corrective orders issued by the MOM.
- Administrative penalties (e.g., work pass curtailment).
- Civil penalties (e.g., financial penalties, action brought against errant employer in the courts).

These penalties will be calibrated based on the severity of breach (e.g., low to high severity), and they may be applicable to the firm or to the individual person responsible for breaching the WFL.

Tripartite Guidelines for Persons With Disabilities

In addition to prohibiting workplace discrimination, the Tripartite Committee will also issue a Tripartite Advisory providing guidance to employers about providing reasonable accommodations to persons with disabilities. Reasonable accommodations will be deemed reasonable when they help the person with a disability perform essential job functions without imposing heavy burdens on the employer. Examples of such reasonable accommodations set out by the Tripartite Committee include the following:

- Providing a hearing loop system for hard-of-hearing employees.
- Installing ramps for employees needing wheelchairs.

IV. UNIONS

Representation

The Trade Unions Act 1940 and the Industrial Relations Act 1960 govern the registration, operation, and recognition of trade unions in Singapore. Before a trade union can represent its members in collective bargaining, the trade union must first be accorded recognition by an employer. The rules governing the recognition process of trade unions is set out in the Industrial Relations (Recognition of a Trade Union of Employees) Regulations. After a trade union has been recognized by an employer, it may negotiate with the employer for a collective agreement in relation to any industrial matters, subject to certain exclusions, such as promotion or assignment or allocation of duties consistent with the employment terms.

Industrial Action

It is only lawful to take industrial action (e.g., strikes, lockouts, slowdowns) under certain circumstances, which are prescribed by the Trade Disputes Act 1941. The Trade Unions Act 1940 expressly prohibits a registered trade union from commencing, promoting, organizing, or financing any strike or any form of industrial action without first obtaining the consent of the majority of its members affected by way of a secret ballot.

V. REMOTE/HYBRID WORK

Even after the COVID-19 pandemic, remote working arrangements and hybrid working arrangements still continue to remain widespread among employers in Singapore.

As an employee's place of work is recommended to be included as a KET in an employee's employment contract, any remote or hybrid working arrangements that require or enable an employee to work from a place other than his or her employer's address should be set out in his or her employment contract.

From 1 December 2024, employers are required to comply with the Tripartite Guidelines on Flexible Work Arrangement Requests (Flexible Work Guidelines). The Flexible Work Guidelines set out how employees may request for a flexible work arrangement (FWA), how employers should handle any FWA requests made by employees, and how employers should make or communicate any decisions on a formal FWA request. Where requests for FWA are denied, employers should provide their decision in writing and, as much as possible, discuss alternatives with the employee in question if denying the FWA request. Ultimately, the Flexible Work Guidelines acknowledge that employers still have the prerogative to make the final decision regarding FWAs.

UPCOMING DEVELOPMENTS

I. ENHANCED PATERNITY LEAVE AND SHARED PARENTAL LEAVE

At present, working fathers are entitled to two weeks of paid paternity leave provided they meet certain eligibility criteria and an additional two weeks of paid paternity leave on a voluntary basis, subject to their employers voluntarily opting in to grant them the additional two weeks of paid paternity leave, which is reimbursed by the government.

From 1 April 2025 onward, the additional two weeks of paid paternity leave that employers could previously give on a voluntary basis will become mandatory. This means that eligible male employees will be able to enjoy four weeks' paid paternity leave (double the two weeks currently offered). Employees must give a minimum of at least four weeks' notice before using the paid paternity leave.

There will also be an increase in the amount of maternity leave or adoption leave that an eligible wife can share with her eligible husband. At present, working mothers can apply to share up to four weeks of maternity leave or adoption leave with their husbands, provided they meet certain eligibility criteria.

From 1 April 2025, the current shared parental leave scheme will cease and a new shared parental leave scheme will be implemented in two phrases to provide additional paid parental leave to be shared between a couple. With effect from 1 April 2025, the statutory entitlement will be six weeks of shared parental leave (on top of the prevailing maternity and paternity leave) to be shared between both parents, and each parent will be entitled to three weeks by default. With effect from 1 April 2026, the statutory entitlement will be 10 weeks of shared parental leave (on top of the prevailing maternity and paternity leave) to be shared between both parents, and each parent will be entitled to five weeks by default. The default number of weeks of shared parental leave can be reallocated between both parents, and all shared parental leave will be paid for by the Singapore government, up to the prevailing cap of S$2,500 per week.

In summary, this means that with effect from 1 April 2026, parents will get another 10 weeks of shared leave on top of their current leave entitlement, bringing the total amount of government-paid parental leave to 30 weeks.

See also the discussion in the "Entitlements" section above.

II. FINANCIAL SUPPORT FOR RETRENCHED WORKERS

Under a new SkillsFuture Jobseeker Support scheme that will be implemented from 1 April 2025, lower-paid workers who are involuntarily employed will receive temporary financial support of up to S$6,000 over six months from the government. Involuntary reasons would include retrenchment, cessation of business, dismissals, or termination due to illness, injury, or accident.

To qualify, an employee must have earned an average monthly income of SGD5,000 or less (for the duration of his or her previous employment within the last 12 months), among other requirements. He or she must also demonstrate that he or she is in "active job search," having applied for jobs, attended career coaching, or participated in eligible training courses.

The payout quantum will be the highest in the first month, at S$1,500, and falling to S$1,250 in the second month, S$1,000 in the third month, and finally S$750 per month in the last three months. After receiving such payouts, the same worker will not be eligible again for payouts for the next three years.

III. UPCOMING GUIDELINES ON RESTRICTIVE COVENANTS

Please refer to the earlier section discussing restrictive covenants to understand the position under Singapore law. Following recent developments in caselaw dealing with the enforcement of restrictive covenants, the tripartite partners, being the MOM, National Trades Union Congress, and Singapore National Employers Federation, announced that they would be releasing guidelines in the second half of 2024 on the inclusion of restrictive covenants in employment agreements. These guidelines will be in addition to the existing Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment, and the Tripartite Guidelines on Mandatory Retrenchment Notifications.

While the guidelines are not intended to change existing law on noncompete clauses, the guidelines will explain the reasonable use of such restrictive covenants and assist to educate employers and shape norms.

IV. INTRODUCTION OF NEW PLATFORM WORKERS ACT

On 10 September 2024, the Platform Workers Bill 2024 was passed in the Parliament of Singapore, and the corresponding Platform Workers Act (PWA) took effect on 1 January 2025.

The PWA creates a new category of workers known as platform workers (e.g., ride-hailing or delivery services workers), in addition to employees and the self-employed. It also strengthens protection for such platform workers in three areas: (a) housing and retirement adequacy through Central Provident Fund (CPF) contributions by both platform operators and platform workers so as to ensure that both platform operators and platform workers contribute to CPF at the same rate as other businesses, (b) financial compensation if platform workers get injured while working, and (c) a legal framework for representation of platform workers (e.g., the formation of platform work associations) that will be able to represent platform workers in negotiating with platform operators, similar to how trade unions represent employees. These platform work associations will be able to sign legally binding collective agreements with platform operators on behalf of platform workers, and there will also be a formal process to resolve collective disputes, with matters to be brought first before the MOM before being brought before the Industrial Arbitration Court.

Ultimately, the rights and protections set out in the PWA are conditional on a platform worker being under management control by a “platform service,” among other provisions, and “platform service” is narrowly defined under the PWA as a delivery service or a ride-hail service that is provided in Singapore via a digital platform or other platform by a platform operator exercising management control in respect to the provision of that service by one or more platform workers of the platform operator. This means the current definition is quite narrow and would exclude gig workers in other industries.

V. CONCLUSION

Significant changes in Singapore employment law took place in 2024—from the WFL and introduction of FWAs, to the upcoming enhancement of parental leave, introduction of guidelines on the reasonable use of restrictive covenants, and the PWA.

These represent bold steps forward in Singapore’s journey toward greater protection and support for workers, while supporting aspirations for employees to start or grow their families. As Singapore continues to adapt to evolving workforce needs, employers will need to adjust their policies to align with these new regulations, ensuring compliance and support for their employees.

AUTHORS AND CONTRIBUTORS

Christopher Tan

Partner and Director of
K&L Gates Straits Law LLC
Singapore
+65.6507.8110
christopher.tan@klgates.com

Charlotte Kouo

Associate,
K&L Gates Straits Law LLC
Singapore
+65.6713.0247
charlotte.kouo@klgates.com

Esther Neo

Associate,
K&L Gates Straits Law LLC
Singapore
+65.6713.0225
esther.neo@klgates.com

K&L GATES

Taiwan

Employer Guide

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INTRODUCTION

In 2024, the most significant change to Taiwan labor laws is to expand the protections against workplace sexual harassment. In 2023, there was an outpouring wave of “Me Too” against a wide range of public figures in Taiwan. Following this, related laws governing sexual harassment have been amended to provide better protection for employees when they encounter sexual harassment in the workplace. The new amendments were fully implemented on 8 March 2024.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers are responsible for ensuring their employees have legal status to work in Taiwan and are required to file applications for work permits on behalf of all foreign workers they employ.

Foreign workers must have visas to live and work in Taiwan, on either a temporary or permanent basis.

When a foreign worker is required to stay in Taiwan for more than 180 days, he or she will need to obtain a resident visa.

Reference/Background Checks

An employer must obtain an employee's consent to gather his or her personal data.

Police and Other Checks

The Personal Data Protection Act (PDPA) requires an employee's written consent to gather personal information, such as background police checks. Furthermore, pursuant to the Employment Service Act, an employer is not allowed to force its employees or candidates for employment to submit themselves to background checks or to provide personal information that is not related to the job that they are performing or for which they are applying.

Medical Examinations

The PDPA requires an employee's written consent to gather personal information of this nature.

Minimum Qualifications

Employers may set minimum qualifications to ensure applicants are suitable for an advertised job. However, pursuant to the Employment Service Act, for the purpose of ensuring every national's equal opportunity in employment, employers are prohibited from discriminating against any job applicant or employee on the basis of race, class, language, ideology, religion, political party, place of origin, place of birth, gender, sexual orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union, unless otherwise stated clearly in other laws.

II. TYPES OF RELATIONSHIPS

Employee

Part-time and full-time employment agreements are both allowed under Taiwanese labor law; however, compensation paid to either type of employee must reach the minimum standards required by the government, which will be NT$190 per hour and NT$28,590 per month effective on 1 January 2025.

Fixed-term employment agreements may be permitted by government authorities subject to certain conditions required by Taiwanese labor law.

Independent Contractor

Businesses can engage an individual to provide services under a service agreement; such individuals will not be classified as employees and, therefore, will not be entitled to employee benefits.

Dispatching Relationship

The employment agreement between an employee who is employed by a dispatching entity but actually works for the dispatch-requiring entity, must be under an agreement without a fixed term.

Before the dispatching entity and the dispatched employee sign an employment agreement, the dispatch-requiring entity is prohibited from interviewing or appointing the specific dispatched employee.

Labor Hire

It is not common for businesses to engage contractors for a short-term project or during a temporary labor shortage.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

There is no mandatory requirement for the format of an employment agreement.

Codes or Rules

In Taiwan, there are no specific requirements on the format of employment agreements. However, it is very common for employment agreements to refer to the Labor Standards Act (LSA) if the clauses in the employment agreement are not comprehensive.

Registered Agreements

Foreign workers must file an employment agreement when the employer is applying for a work permit on their behalf. Other than the above, there is no legal requirement for registration of an employment agreement.

Policies

Work rules must be established and filed with government authorities if a business has 30 or more employees.

IV. ENTITLEMENTS

Minimum Employment Rights

Maximum Working Hours

The maximum working hours an employee can be required to work are eight hours per day and 40 hours per week, unless certain exceptional conditions exist.

Annual Leave

All employees are entitled to paid annual leave based on their length of employment as stipulated below:

- Three days when employed for six months or more but less than one year.
- Seven days when employed for one or more but less than two years.
- Ten days when employed for two or more but less than three years.
- Fourteen days when employed for three or more but less than five years.
- Fifteen days when employed for five or more but less than 10 years.
- One additional day for each year of service over 10 years, up to a maximum of 30 days.

Parental Leave

Parents are entitled to a maximum of two years of parental leave without pay, which must be taken before the child reaches 3 years of age.

Birth Leave

Mothers are entitled to a maximum of eight weeks of paid birth leave per child.

Employers must pay an employee's full salary if the employee has worked for more than six months and half salary if the employee has worked for less than six months.

Miscarriage Leave

Female employees who have worked for the employer for more than six months are entitled to four weeks of paid miscarriage leave if they miscarry after three or more months of pregnancy and half pay if the employee has worked for the employer for less than six months.

Employees who have a miscarriage after a pregnancy of more than two months but less than three months will be entitled to one week of leave without pay.

Employees who have a miscarriage after a pregnancy of less than two months will be entitled to five days of leave without pay.

Personal Leave

Employees are entitled to take a maximum of 14 days of unpaid personal leave per year.

Compassionate Leave

Employees are entitled to take the following:

- Eight days of paid wedding leave.
- Three to eight days of paid compassionate leave.
- Thirty days of sick leave not involving hospitalization (at half pay).
- One year of sick leave involving hospitalization (without pay) every two years.
- Total sick leave with and without hospitalization of up to one year.

Special Holidays

Employees are entitled to some special holidays on specific dates regulated by Taiwanese labor law.

Redundancy Pay

Employees are entitled to a redundancy payment based on length of service.

Retirement Pay

Employees are entitled to retirement payments based on length of service.

Compensation for Professional Injuries

Employees or their survivors are entitled to receive the following:

- Compensation based on their preexisting wages, or the equivalent of 40 months' salary, if the employee completely loses the ability to work.
- Compensation subject to the degree of their injuries.
- Compensation equivalent to 45 months' salary in the event of death.

Discretionary Benefits

Employers are required to give a discretionary bonus to employees if the employer enjoys a net profit after tax.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination of employment by an employer must comply with Articles 11, 12, and 13 of the LSA.

Termination of employment by an employee (resignation) can be solely "at will," subject to prior notice as required by Taiwanese labor law.

Termination by mutual consent of the parties is permitted.

II. MINIMUM ENTITLEMENTS

Payments/Notice

Employers are not responsible for any payments when a fixed-term employment agreement expires.

In the event of termination of a non-fixed-term employment agreement, an employer will pay redundancy based on the employee's length of service.

Statutory Entitlements

Employees are entitled to be given a certificate for their services from their employer after termination of the employment agreement.

III. REDUNDANCY

Genuine Redundancy

Redundancy can be for the circumstances listed in Article 11 of the LSA or by mutual consent.

Consultation

Within 10 days from the date of submission of the mass redundancy plan, the employees and the employer will enter into a consultation process.

Payment

Payment for redundancy will be calculated and paid based on an employee's length of service.

- Employees who were employed before 30 June 2005:
  - If the employees continue to work for a business entity owned by the same employer, the severance pay will be equal to one month's average wage for each year of service.
  - The severance pay for the months remaining after calculation in accordance with the preceding subparagraph, or for workers who have been employed for less than one year, will be calculated proportionally; any period of employment less than one month will be calculated as one month.
- Employees who were employed after 1 July 2005:
  - Employees will have their severance pay paid by the employer based on their seniority. The payment will be half a month of average wages for every full year of employment and prorated for periods of employment less than one full year.

IV. REMEDIES

Dismissal Action

In Taiwan, an unfair dismissal constitutes an illegal termination of the employment agreement, and the employee may claim compensation. Courts are able to grant provisional injunction orders for continuous monthly payments to an employee during any relevant litigation period.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

If the transfer of business is consummated in accordance with the Business Mergers and Acquisitions Act or the LSA, and the procedures for employment transfer stated therein apply. If not, then the employee transfer, including the terms of such transfer, is subject to separate agreements between the new employer and transferred employees.

II. RESTRUCTURING

Notification

If the transfer of business is consummated in accordance with the Business Mergers and Acquisitions Act, notification should be given 30 days before the reference date of the merger/consolidation and acquisition.

If the transfer of business is consummated in accordance with the LSA, there are no regulations regarding notification.

Consultation

Not regulated in Taiwan.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Employees are required to protect trade secrets under the Trade Secrets Act.

Employees will not necessarily be required to protect information outside the scope of a “trade secret.”

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

An employer will not enter into a post-employment, noncompetition agreement with employees unless the following requirements have been met:

- The employer has proper business interests that require protection.
- The position or job of the employee entitles him or her to have access to or to be able to use the employer’s trade secrets.
- The period, geographic area, scope of restricted occupational activities, and prospective employers with respect to the business competition limitation will not exceed a reasonable range.
- The employer will reasonably compensate the employee concerned who does not engage in business competition activities for the losses thereby incurred by him or her.

III. PRIVACY OBLIGATIONS

The gathering and use of an employee’s personal information is subject to the PDPA and its regulations.

IV. WORKPLACE SURVEILLANCE

Workplace surveillance is not specifically regulated in Taiwan; however, certain workplace areas cannot be “monitored,” including toilet/bathroom and changing room areas.

V. WORKPLACE INVESTIGATIONS

Workplace investigations are not specifically regulated in Taiwan; however, only authorities (police/prosecutor) with a search warrant can search a person’s personal property. Employers are not allowed to implement an inspection of employees’ property.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

In order to encourage the spirit of hard work and to ensure the progress of work, the employer may, depending on the needs thereof, conduct performance reviews of employees.

II. BULLYING AND HARASSMENT

Bullying

Employers should set up the Plan for Prevention and Management of Unlawful Workplace Infringement to prevent employees from suffering physical or mental injuries caused by unlawful infringement, harassment, or other behaviors in the workplace.

Harassment

Employers will prevent and correct sexual harassment. For employers having more than 30 employees, measures for preventing and correcting sexual harassment, related complaint procedures, and disciplinary measures must be formally established. For employers having more than 10 employees but less than 30 employees, a complaint channel should be established and publicly disclosed in the workplace. All these measures should be openly displayed in the workplace.

III. DISCRIMINATION

Sexual discrimination is prohibited under the Act of Gender Equality in Employment.

IV. UNIONS

Representation

Establishment of a labor union is not mandatory under Taiwanese labor laws. All employees are entitled to join a union if it exists.

Industrial Disputes

Labor-management disputes can be handled based on the Act for Settlement of Labor-Management Disputes.

V. REMOTE/HYBRID WORK

Employers should work with remote/hybrid employees to identify and evaluate potential health hazards and impacts on physical and mental health from their working environment and safety issues they may encounter when performing their duties. In addition, employers are required to implement safety and health management measures for remote/hybrid employees.

AUTHORS AND CONTRIBUTORS

Jacqueline Fu

Office Managing Partner
Taipei
+886.2.2326.5125
jacqueline.fu@klgates.com

Cecilia Lee

Associate
Taipei
+886.2.2326.5172
cecilia.lee@klgates.com

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United Arab Emirates Employer Guide

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INTRODUCTION

In August 2023, the United Arab Emirates (UAE) made sweeping changes to the procedural rules governing labor disputes, including increasing the statutory limitation period to two years as well as increasing the administrative penalties for employer violations in order to shorten the time and costs relating to the resolution of labor disputes.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure that their employees are lawfully allowed to work and reside within the UAE.

Foreign workers must have residency or work permits to work and reside in the UAE.

Residency/work permits are issued to foreign workers who are sponsored by their spouse, a family member, or by their employer.

Recent reforms to the residency system in the UAE have made it possible for foreign workers to potentially apply for residency by sponsoring themselves under the “freelancer visa,” the “golden visa,” or the “green visa.”

Reference/Background Checks

An employer may request a reference from an employee’s previous or current employer directly. There are no statutory obligations for the employer to provide a reference.

An employee has the right to request and obtain a certificate from his or her employer setting out the period of employment, the nature of the work performed by the employee during the employment, and details of the employee’s last pay package.

Police and Other Checks

Foreign workers from certain countries may be required to provide a police clearance certificate from their home country in order to qualify for a residency/work permit within the UAE. An employer may request that a UAE national, or a foreign worker residing in the UAE for a long period, obtain a police clearance certificate from the UAE authorities.

Medical Examinations

Foreign workers are required to undergo a medical exam for screening of certain statutory-prescribed diseases in order to qualify for a residency/work permit within the UAE.

Minimum Qualifications

In relation to certain professions or management positions, employees must verify their educational qualifications as part of the sponsorship process in order to qualify for a residency/work permit within the UAE.

II. TYPES OF RELATIONSHIPS

Employee

In 2021, the UAE published the New Labor Law No. 33 of 2021 (New Labor Law), which repeals Federal Labor Law No. 8 of 1980 (Previous Law). The New Labor Law came into effect on 2 February 2022 and provides the requirement to have employment contracts with fixed terms only, removing the possibility to have unlimited-term contracts. Any existing unlimited employment contracts were required to be updated before 31 December 2023.

The New Labor Law states that the term of fixed employment contracts must not exceed three years. The term may be extended or renewed, any number of times, for similar or shorter terms. Any extension or renewal of the term will be added when calculating an employee’s period of continuous

service (i.e., with respect to calculating any applicable end-of-service gratuity). Where parties do not expressly renew or extend the term but continue performing the contract, the term is deemed automatically extended on the same terms and conditions.

The New Labor Law sets out different work models including full-time, part-time, temporary, and flexible working. Employees attract different entitlements depending on the basis of their employment.

Independent Contractor

Previously, foreign workers were not permitted to work as independent contractors, as they needed to be under the sponsorship of their employers in order to live and work legally within the UAE.

Following recent reforms to the UAE residency system, foreign workers may now apply for a freelancer visa, golden visa, or green visa, all of which may allow them to sponsor themselves and their families to live and work in the UAE without the need for an employer.

Labor Hire

Not applicable.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Terms and conditions of employment must be written (in at least Arabic), executed by the employee and employer, and filed with the relevant government agency.

Codes or Rules

The New Labor Law applies within the UAE except within the Dubai International Financial Centre and the Abu Dhabi Global Market, which have their own employment laws and regulations.

Registered Agreements

The employment contract must be registered with the relevant government agency in order to obtain a work permit for the employee.

Policies

The New Labor Law and its executive regulations (Executive Regulations) provide that employers must put in place a health and safety policy. Additionally, employers with more than 50 employees must implement internal policies and procedures addressing issues such as regulations of the work, disciplinary measures and penalties, complaints and grievances procedures, and incentives and promotions.

Minimum Employment Rights

The New Labor Law sets out the minimum employment rights of foreign and domestic employees.

Hours of Work

The maximum working hours are eight hours per day or 48 hours per week. An employer may require an employee to work additional hours over the maximum working hours provided they do not exceed two hours a day, unless the work is necessary to prevent the occurrence of a serious loss or accident or to eliminate or mitigate its effects. In any event, the total working hours must not exceed 144 hours every three weeks.

The Executive Regulations provide that working hours will be reduced by two hours per day during the holy month of Ramadan.

The maximum working hours for youth employees (employees aged between 15 and 18) are six hours per day, with a minimum of at least one hour as a break time. Youth employees may not work for more than four hours consecutively.

The following categories of work and employees will be excluded from the provisions relating to the maximum number of working hours set by the New Labor Law and the Executive Regulations:

- Chairpersons and members of the board of directors.
- Individuals holding supervisory positions if such positions give their holders powers of the employer.
- Naval vessel employees and employees working at sea who are subject to special conditions of service due to the nature of their work.
- Technical work that requires continuous work through consecutive shifts, provided that the average working hours per week do not exceed 56 hours.
- Preparatory or complementary work that must be performed outside of the working hours established for work at the establishment.

Annual Leave

Every full-time employee is entitled to 30 calendar days' annual leave per annum once his or her period of service is at least one year, and he or she is entitled to two days additional leave per month where his or her period of service is more than six months but less than one year.

Part-time employees shall be entitled to annual leave according to the actual working hours spent by the employee with the employer, the duration of which shall be determined in the employment contract in accordance with the Executive Regulations.

An employee can only carry over up to half of his or her unused annual leave to the next year or agree with their employer to be paid in lieu thereof based on the basic pay received at the time the leave entitlement was accrued.

Maternity Leave

Under the New Labor Law, female employees are entitled to maternity leave of 45 days with full pay and 15 days with half pay.

The New Labor Law also states that a female employee will be entitled to her maternity leave as stipulated if delivery takes place six months or more after pregnancy, even if the child is stillborn or is born alive but dies.

A female employee shall be entitled, in the event where she gives birth to a sick or disabled child (known as "people of determination") and whose health condition requires a constant companion according to a medical report issued by a medical entity, to a leave of 30 days with full pay starting after the end of the period of maternity leave. She shall have the right to extend the leave for 30 days without pay.

The government of Abu Dhabi recently introduced a nonmandatory extended maternity leave entitlement for Emirati women employed in the private sector applicable to employees in Abu Dhabi. This initiative is part of a five-year trial by the Emirati Family Growth Programme. Under the program, Emirati women working in the private sector who give birth on or after 1 September 2024 are entitled to 90 days' paid maternity leave, provided that they obtained consent and a no-objection certificate from their employer to extend their maternity leave to 90 days.

Paternity Leave

Parental leave is also offered for both parents for five days for child care to be taken within six months from the date of birth.

Sick Leave

Employees are entitled to 90 days of sick leave (three months after completion of the probationary period) as follows:

- First 15 days with full pay.
- Next 30 days with half pay.
- Any subsequent period with no pay.

Study Leave

Employees who have more than two years' service are entitled to 10 days' leave per year in order to take exams. The employee is required to be studying at an accredited educational institution in the UAE.

Public Holidays

Employees are entitled to leave with full pay on public holidays as announced by the Ministry of Human Resources & Emiratisation (the Ministry) for the private sector.

Special Leave

The New Labor Law introduces five days of paid bereavement leave for the death of a spouse and three days for the death of a parent, child, sibling, grandchild, or grandparent, commencing from the date of death.

The New Labor Law does not make provisions for Hajj leave.

Repatriation

An employer must repatriate the employee if the employee does not secure alternative employment within 30 days of termination. Unless something more was agreed, the employer shall pay for the employee's flight back to his or her home country. If the employee, upon the termination of the employment relationship, is employed by another employer in the UAE, the new employer would be liable for the repatriation expenses of the employee.

Health Insurance

The New Labor Law requires employers to bear health care costs in accordance with the applicable legislation. It also requires employers to bear the costs of insurances, contributions, and securities specified by any applicable legislation in force.

In Dubai, under Dubai Health Insurance Law No. 11 of 2013 (Health Insurance Law), employers are required to put in place health insurance coverage for all of their employees that meet the minimum requirements of the Health Insurance Law.

The Dubai Health Authority has specified a minimum level of benefits that must be provided in any health insurance plan.

The same is required in Abu Dhabi, where employers or sponsors are required to provide health insurance for their employees.

Discretionary Benefits

Bonuses

Employers may choose to incentivize employees by including bonus provisions in employment contracts or in internal policies. Bonuses are usually dependent on individual, departmental, or business performance and are usually paid at the employer's discretion.

Allowances

Employers may choose to provide certain allowances to their employees, including housing, transportation, travel, and education.

Accommodations

Employers employing employees in areas remote from towns and not connected with them by means of normal transportation must provide the employees with adequate means of transport and a suitable living accommodation.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Unlimited-Term Contract

Unlimited-term contracts are no longer permissible under the New Labor Law.

Fixed-Term Contract

The New Labor Law provides a list of events that would terminate an employment contract. These include (without limitation) the following:

- The mutual written agreement of the parties.
- Expiration of the term of the contract (unless it is renewed or extended).
- Upon the decision of either party subject to the requirements relating to termination and notice periods.
- If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
- The permanent closure of the establishment or if the employer becomes bankrupt, insolvent, or unable to continue the business for any economic or exceptional reason. These reasons are to be considered in accordance with the conditions, controls, and procedures set by the Executive Regulations and applicable legislation in force at the time.

Either party may terminate the employment contract for a legitimate reason by giving the other a prior written notice, provided that such notice is not less than 30 days and not more than 90 days.

The New Labor Law also provides that parties to an unlimited-term employment contract that was entered into before the New Labor Law came into effect may terminate such contract for a legitimate reason by giving the other the following:

- Thirty days' written notice if the period of service is less than five years.
- Sixty days' written notice if the period of service exceeds five years but is less than 10 years.
- Ninety days' written notice if the period of service exceeds 10 years.

Dismissal for Cause

The New Labor Law provides the following list of events that would terminate an employment contract:

- By mutual written agreement of the parties.
- The expiration of the term of the contract, unless it is extended or renewed pursuant to the provisions hereof.
- Upon the will of either party, subject to the provisions of the New Labor Law in relation to termination of the employment contract and the notice period agreed upon in the contract.
- Upon the employer's death if the subject of the contract is connected with their person.
- Upon the employee's death or permanent total disability, as evidenced by a certificate from a licensed medical institution.
- If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
- The permanent closure of the establishment, pursuant to the legislation in force in the UAE.
- If the employer becomes bankrupt, insolvent, or unable to continue in business for any economical or exceptional reasons, in accordance with the conditions, controls, and procedures set by the Executive Regulations and the legislation in force in the UAE.

- If the employee does not meet the conditions for renewal of the work permit for any reason outside the control of the employer.

An employer may terminate the employment without providing notice in certain serious circumstances. The New Labor Law provides a similar list of termination-without-notice events that were present in the Previous Law with some variations. These are as follows:

- If the employee assumes a false identity or submits false certificates or documents.
- If the employee commits an error resulting in gross material losses to the employer or deliberately causes harm to the property of the employer, and admits the same, provided that the employer notifies the Ministry of the incident within seven working days of being aware of the occurrence thereof.
- If the employee violates the policies in relation to work and employees' safety in the workplace, provided that such instructions are in writing and posted in a visible place and the employee has been advised thereof.
- If the employee fails to perform his or her main duties in accordance with the employment contract, and he or she fails to remedy such failure despite a written investigation with him or her on the matter and two warnings that he or she will be dismissed in case of recidivism.
- If the employee divulges the business secrets in relation to industrial or intellectual property and it results in losses to the employer or loss of opportunity or a personal benefit for the employee.
- If the employee is found during working hours in a state of drunkenness or under the influence of a narcotic or psychotic substance or commits any act against morals at the workplace.
- If the employee commits a verbal, physical, or other form of assault punishable by legislation in force in the UAE against the employer, the responsible manager, his or her supervisor, or a co-employee.
- If the employee is absent from work without legal cause or justification acceptable to the employer for more than 20 interrupted days in a year or more than seven consecutive days.
- If the employee abuses his or her position with the aim to obtain personal gains and profits.
- If the employee joins another employer without complying with the controls and procedures prescribed in this regard.

An employee may resign without notice in the event that the employer breaches its obligations toward the employee, as set out in the contract or the law. The New Labor Law provides the following list of events where an employee can resign without providing notice:

- If the employer commits a breach of its obligations to the employee stated in the employment contract or in the New Labor Law or its Executive Regulations, provided that the Ministry is notified by the employee not less than 14 working days before the date of leaving work and the employer fails to remedy the breach even though being notified by the Ministry.
- If the employee is subject to assault, violence, or harassment at the workplace by the employer or its legal representative, provided that the employee reports such acts to the concerned authorities and the Ministry within five working days from the date on which he or she is able to report.
- If the workplace poses a serious threat to the safety or health of the employee, provided that the employer is aware thereof and has not taken the actions necessary to eliminate such threat. The Executive Regulations determine the requirements for serious threats.
- If the employer entrusts the employee with work that is substantially different from the work agreed upon in the employment contract without the written consent of the employee, except in cases stated in Article 12 of the New Labor Law.

Arbitrary Termination

Following the termination of employment, employees in the UAE may pursue claims for arbitrary dismissal under the New Labor Law. Whether an employee will be successful with any such claim will depend on the reason for the termination and the process the employer undertook prior to terminating the employment.

An employee's employment will be deemed to have been arbitrarily terminated if the reason for the termination was "irrelevant to the work."

The maximum compensation that can be awarded to an employee pursuant to an arbitrary dismissal claim is three months' pay, calculated based on the last pay received by the employee prior to dismissal.

II. MINIMUM ENTITLEMENTS

Payments/Notice

The New Labor Law allows employees to be paid in currencies other than UAE dirhams (AED) by agreement between the employer and the employee.

The New Labor Law provides that the employer or employee may terminate the contract for any legitimate reason, provided that the other party is notified in writing and commits to work within the notice period agreed upon in the contract, and provided that the notice period is not less than 30 days and not more than 90 days or that there is payment in lieu of notice.

The New Labor Law provides that parties to an unlimited-term employment contract that was entered into before the New Labor Law came into effect may terminate such contract for a legitimate reason by giving the other the following:

- Thirty days' written notice if the period of service is less than five years.
- Sixty days' written notice if the period of service exceeds five years but is less than 10 years.
- Ninety days' written notice if the period of service exceeds 10 years.

Under the Previous Law, an employer was able to terminate an employee during the probation period without giving any notice. The New Labor Law introduces a notice period of 14 days' prior written notice for terminating an employment contract by the employer during the probation period (which is capped at six months).

In addition, the New Labor Law provides that an employee who wants to move on to another employer in the UAE during the probationary period shall notify his or her current employer in writing at least one month before the date on which he or she intends to terminate the contract, and unless agreed otherwise, the new employer shall compensate the first employer for recruitment or contract costs.

The New Labor Law also states that a foreign worker wishing to terminate the employment contract during the probationary period in order to leave the UAE shall notify his or her employer in writing at least 14 days prior to the date determined for termination of the contract. If the employee wants to return to the UAE and obtains a new work permit within three months from the date of his or her departure, the new employer shall pay the compensation mentioned above, unless agreed otherwise by the employee and the original employer.

Statutory Entitlements

An employee shall be entitled to be paid for his or her days of leave if he or she leaves work before the use, irrespective of the length, of such leave. The employee shall be entitled to the leave pay for

the fractions of the year in proportion to the period of service, and the same is calculated on the basis of the basic pay.

Gratuity Payment

The New Labor Law clarifies that a foreign worker who completes at least one year of continuous service will be entitled to gratuity pay, which is calculated on the basis of his or her basic pay. The New Labor Law expressly provides that the basic pay excludes any other allowances or benefits.

Upon termination of employment, the employee is entitled to 21 working days' basic pay for the first five years of service and 30 working days' pay for each additional year of service. The total severance pay must not exceed two years' pay (which includes the basic pay plus any allowances or benefits).

Employees summarily dismissed now retain their entitlement to gratuity pay, and no reductions apply where an employee resigns.

The gratuity pay together with all other termination payments must be made within 14 days of the termination date.

III. REDUNDANCY

Genuine Redundancy

In the event that the employment is terminated for reasons not related to the work, the employee is entitled to compensation of up to three months' wages, depending on seniority and length of service, as compensation for arbitrary termination. However, the courts may find that a genuine redundancy (whereby the duties are not undertaken by another employee) is a valid reason for the termination and the employer is not required to pay compensation.

IV. REMEDIES

Dismissal Actions

All disputes must first be referred to the Ministry. If the dispute is not settled, the matter may be transferred to the UAE labor courts.

In August 2024, the UAE government issued Federal Decree Law No.9 of 2024, amending a key section of the New Labor Law dealing with labor disputes.

First, for disputes under AED50,000, the Ministry decision will be binding and executable, but it will be subject to appeal.

Second, the limitation period for a labor dispute has increased from one year to two years. Importantly, the limitation period now runs from the date of termination and not from when the employment entitlement was due.

Moreover, in cases where an employee's wages have been suspended due to a dispute, the Ministry can now instruct employers to continue paying the employee's wages for up to two months during the dispute process. This is to prevent the employee from facing undue financial hardship while his or her claim is being resolved.

The decree has also increased the penalties payable by employers for violations to AED100,000 to AED1,000,000, from the previous AED50,000 to AED200,000, depending on the specific violation.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Not applicable in the UAE.

II. RESTRUCTURING

Notification

The employment contract will remain valid.

Consultation

Not applicable in the UAE.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Employees are barred from divulging confidential information (i.e., trade secrets and information not in the public domain) relating to their employer, either for their personal benefit or the benefit of a third party. Disclosure of confidential information attracts both civil and criminal liability.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

As with the Previous Law, the New Labor Law allows employers to agree on noncompete clauses with their employees. However, the New Labor Law provides clarity as to the conditions for such clauses to be enforceable. For instance, noncompete clauses are only enforceable for a maximum of two years after the expiry or termination of an employment contract. Noncompete clauses must also specify the place and type of work to the extent necessary to protect the legitimate business interests of the employer.

The statute of limitation to file a claim for breach of a noncompete clause in an employment contract is one year from the date on which the breach is discovered.

The Executive Regulations provide additional clarity on the application of a noncompete clause in an employment contract, including situations where the noncompete clause will not apply due to an employer's breach and in situations where both parties agree in writing to disapply the clause after the employment contract ends.

III. PRIVACY OBLIGATIONS

Unless the employee has provided a written waiver, employers have a duty to not disclose confidential information relating to their employees, even if such information was obtained through a third party. The employee's personal data is subject to the provisions of the Personal Data Protection Law.

IV. WORKPLACE SURVEILLANCE

The New Labor Law is silent as to workplace surveillance. However, it is against the Penal Code and Cybercrimes Law to tape-record, videotape, or photograph individuals without their consent.

V. WORKPLACE INVESTIGATIONS

Investigations are permitted.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts and internal policies may provide for management of employee performance and conduct.

II. BULLYING AND HARASSMENT

Bullying

The New Labor Law expressly prohibits sexual harassment, bullying, or any verbal, physical, or mental abuse against employees by their employer, manager, or colleagues.

Harassment

The New Labor Law expressly prohibits sexual harassment, bullying, or any verbal, physical, or mental abuse against employees by their employer, manager, or colleagues.

III. DISCRIMINATION

The New Labor Law expressly prohibits discriminating against a person on the grounds of race, color, sex, religion, national origin, ethnic origin, or disability. However, rules and procedures that would enhance the participation of UAE nationals in the labor market shall not be considered as discrimination.

IV. UNIONS

Representation

Not applicable in the UAE.

Right of Entry

Not applicable in the UAE.

Industrial Disputation

Not applicable in the UAE.

V. REMOTE/HYBRID WORK

Return to the Workplace

The UAE government and the Dubai Health Authority have issued several circulars and guidance concerning COVID-19 guidelines for employers.

As companies in the UAE are now able to operate at 100% capacity, employers are required to follow the issued guidance to maintain the health of their employees and prevent the spread of the virus.

The guidelines cover risk assessment, minimizing the risk of COVID-19, taking care of employees/visitors who may be suspected cases, and emergency response procedures.

Remote/Hybrid Work

Work Model

The New Labor Law made provisions for several different types of work models available to employees in the private sector in the UAE; these include the following:

- Full time – working for a single employer full time.
- Part time – working for a single employer part time.
- Temporary work – work carried out for a specified time and for a specific task.
- Flexible work – work that allows changing work hours to take into account operational needs of an employer.

In addition to the above, the Executive Regulations allow for employees to work remotely (work that is performed outside of the workplace and that may be either full time or part time) on a job-share basis (work is divided between one or more employees on a part-time basis) and on a freelance basis.

The Executive Regulations further provide that additional employment arrangements can be introduced based on labor market demands.

Work Permits

In addition to the above, the Ministry also introduced the following 12 new work permits that can now be issued:

- A work permit to recruit a worker from outside the UAE.
- A work permit to transfer a foreign worker from one establishment to another.
- A work permit for a resident on a family sponsorship.
- A temporary work permit to hire a worker to complete a job within a specific period.
- A one-mission work permit to recruit a worker from abroad to complete a temporary job or a particular project for a specific period.
- A part-time work permit to recruit a worker under a part-time contract where his or her working hours or days are less than his or her full-time contract.
- A juvenile permit to recruit a juvenile between 15 and 18 years of age.
- A student training and employment permit to employ a 15-year-old student who is already in the UAE.
- UAE/Gulf Cooperation Council (GCC) national permit to employ a UAE or a GCC national.
- A golden visa holder permit to employ a worker holding the UAE's golden residence visa.
- A national trainee permit to train a UAE national.
- A freelance permit issued for self-sponsored foreigners in the UAE who provide services or perform tasks to individuals or companies (without being sponsored by a specific employer in the UAE and without having an employment contract).

Employment Contracts

Given the introduction of the new work models, the Ministry has introduced new template contracts to accommodate for the different types of working models.

The Executive Regulations provide the minimum requirements necessary for the purpose of a valid employment contract.

Employers are also now permitted to add additional provisions to employment contracts (with the consent of the employee), provided that they are not in contradiction with the provisions of the New Labor Law and the Executive Regulations.

VI. EMIRATISATION PROGRAM

The Cabinet of the UAE introduced measures to increase the rate of Emiratisation in the private sector to 2% annually. The new rules came into effect in January 2023.

The new measures provide that mainland-registered private sector businesses with more than 50 employees will be required to increase their percentage of UAE employees in high-skilled roles by a minimum of 2% annually. In addition, by 2026, there must be at least 10% of UAE nationals employed by such businesses.

In order to reach the rate of 10%, a quota system will be imposed on private sector employers, requiring them to recruit and retain a certain number of UAE nationals as a percentage of their overall staff. These thresholds are as follows:

- For commercial entities (where the entity has more than 50 employees), 2%.
- For banks, 4%.
- For insurance companies (where the entity has more than 50 employees), 5%.

There will be a fine of AED6,000 for each UAE national that has not been employed if employers fail to meet this requirement.

In addition to the above, in July 2023, the Ministry introduced further measures that now require UAE mainland private companies across 14 sectors with 20 to 49 employees to employ UAE nationals. The current target set for these smaller companies is to employ at least one UAE national by 2024 and another UAE national by 2025.

The 14 sectors that these rules apply to are as follows:

- Information and communications
- Financial and insurance activities
- Real estate
- Professional and technical activities
- Administrative and support services
- Arts and entertainment
- Mining and quarrying
- Transformative industries
- Education
- Health care and social work
- Construction
- Wholesale and retail
- Transportation and warehousing
- Hospitality and residency services

NAFIS Program

NAFIS is a federal training program aimed at supporting UAE nationals in occupying jobs in the UAE's private sector.

The government is using the NAFIS program to help facilitate new goals to increase the percentage of UAE nationals in the private sector and is encouraging all private sector businesses to register with the NAFIS platform to advertise job vacancies for UAE nationals.

In addition, the Ministry has established a three-tier system that classifies companies according to their contribution to the Emiratisation program as follows:

- Tier 1 – applies to companies that exceed their Emiratisation target rate by 3% and cooperate with the NAFIS training program.
- Tier 2 – applies to companies that meet their Emiratisation target and are compliant with all UAE policies on cultural and demographic diversity.
- Tier 3 – applies to companies that fail to meet their Emiratisation target and lack commitment to UAE policies on cultural and demographic diversity.

AUTHORS AND CONTRIBUTORS

Nazanin Aleyaseen

Partner
Dubai
+971.4.427.2707
nazanin.aleyaseen@klgates.com

Kulsum Rehman

Senior Paralegal
Dubai
+971.4.427.2758
kulsum.rehman@klgates.com

Mohammad Rwashdeh

Special Counsel
Dubai
+971.4.427.2742
mohammad.rwashdeh@klgates.com

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United Kingdom Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

As we look back on 2024 and ahead into 2025, alongside the typical changes relating to increase in statutory family-related pay, sick pay and the National Minimum Wage, there have also been a number of significant proposed changes in many other areas of employment law. Following 14 years of Conservative Party leadership, the United Kingdom now has a Labour Party (Labour)-led government. The new UK government has confirmed that they intend to introduce an Employment Rights Bill within the first 100 days in office. The intended reforms are set out in Labour's "Plan to Make Work Pay" manifesto and will introduce a number of significant changes to employment law (including leave entitlements, pay and benefits and working patterns) that will likely have a significant impact on business decisions for employers with employees in the United Kingdom.

This guide covers key employment law considerations for employers with employees based in the United Kingdom. It also covers key proposed employment law updates for 2024–2025, which, although not yet implemented by the UK government, could require employers to make a significant number of changes to their internal policies and procedures.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration Requirements

Employers must ensure that their employees are legally allowed to work in the United Kingdom.

Freedom of movement between the United Kingdom and the European Union ended on 31 December 2020. The United Kingdom has implemented a points-based immigration system, which applies equally to EU and non-EU citizens. Employees from outside the United Kingdom, excluding Irish citizens, will need to qualify for a visa allowing them to work in their own right or be sponsored by an employer to come to the United Kingdom.

Routes for sponsorship include the following:

- A skilled worker route – for workers who have a job offer in an eligible skilled occupation from an approved sponsoring employer.
- An intracompany transfer route – for employers who want to transfer a worker from part of their business overseas to work in the United Kingdom.

Employers will now need a sponsor licence to hire most eligible employees from outside the United Kingdom.

Companies wishing to establish their first presence in the United Kingdom may use a UK Expansion Worker Visa to allow a senior employee, with extensive and relevant industry experience, to migrate to the United Kingdom.

Reference/Background Checks

An employer is permitted to contact a prospective employee's referees and previous employers to gather and verify information. However, save for certain regulated industries, there is no general legal obligation on an employer to provide a reference. It is becoming increasingly common for previous employers to confirm dates of employment only. An employer should also take account of its UK General Data Protection Regulation (UK GDPR) and Data Protection Act (DPA) obligations when considering or undertaking background checks. The UK GDPR is the retained EU law version of the General Data Protection Regulation (GDPR), and the DPA is the United Kingdom's implementation of the GDPR. All references and background checks must be limited to what is proportionate for the purpose of the recruitment.

Police and Other Checks

These are permitted with the applicant's consent, if necessary, to determine suitability for a particular job, such as working in the financial sector or working with children and vulnerable adults. Particular jobs may have specific requirements for a Disclosure and Barring Service (DBS) check to be undertaken. Certain criminal convictions become spent after a set time period, after which applicants are entitled to hold themselves out as having a "clean" criminal record.

An employer should also take account of its UK GDPR or DPA obligations when considering or undertaking criminal records checks because additional conditions apply in relation to processing criminal convictions data under the DPA. Information related to criminal convictions collected in the recruitment process needs to be deleted once it has been verified through a DBS disclosure, except in limited circumstances where the information is clearly relevant to the ongoing employment relationship.

Medical Examinations

Medical examinations are permitted with the applicant's consent, if necessary, to determine fitness for a particular job. However, employers who seek medical examinations must ensure that they do not do the following:

- Breach UK GDPR or DPA rules regarding the "special category" personal data which they receive as a result of making those checks.
- Discriminate on the basis of any ground (most obviously disability, but see further the "Discrimination" section of this UK guide below) revealed by the results of the examinations or searches.

Minimum Qualifications

Businesses may ask for minimum qualifications to assess an applicant's suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis. Employees are entitled to a variety of employment rights, such as holiday and sick pay, and their employers must pay national insurance contributions (NICs) to HM Revenue & Customs (HMRC) in addition to their employees' wages.

Independent Contractor

Businesses often engage self-employed contractors on a fee-for-service basis. However, with certain limited exceptions, contractors do not have any employment rights, and businesses do not need to pay NICs in addition to their consultancy fees.

Employment tribunals and HMRC will scrutinise the relationship between any contractor and the organisation for which the contractor performs services to ensure that the relationship is not used to avoid tax or to "contract out" of giving an individual employment rights. On 6 April 2021, the "off-payroll working" rules (commonly known as IR35) came into force, which increase the tax risks for end-user companies who use independent contractors who contract through their personal service companies.

Labour Hire

Agency workers are often engaged by hiring businesses for short periods and are common in industries such as building and construction or information technology. Agency workers are not employed by the hirer and may not even be employees of the agency. However, agency workers must be given the same access to communal facilities, such as canteens, car parks and childcare. They also acquire certain rights after working for the hirer for more than 12 weeks and must be given the same basic rights (such as pay, hours, rest periods and annual leave) as the hirer's own employees.

UK employment law also recognises a third, hybrid category called a "worker." A worker is someone who provides services personally and is not in business on his or her own account but who is not an employee. Workers qualify for certain limited rights, for example, the right to be paid the National Minimum Wage and the right to paid holiday leave.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employment contracts can be oral or in writing, although there is a statutory requirement that an employee or worker receives a written statement of particulars of employment on or before the date the employment commences. This statement must contain certain specified information, for example, details of pay, notice periods, duties, holidays, training, paid leave and hours of work. The statement must also contain a reference to the employer's disciplinary and grievance procedures (see the "Policies" section of this UK guide below).

Failure to provide an employee or a worker with a statement in accordance with Section 1 of the Employment Rights Act 1996 can lead to an employee being awarded two to four weeks' salary.

Codes or Rules

Trade unions may negotiate collective agreements with employers within a certain industry. Such an agreement may cover the following:

- Terms and conditions of employment and conditions of work.
- Hiring, firing and suspension.
- Allocation of work.
- Discipline.
- Union membership.
- Union recognition.
- Facilities agreements.
- Procedures.
- Other machinery of collective bargaining.

Collective agreements are legally binding only where they are in writing and stated to be so or where the agreement is incorporated into the worker's contract.

Employers can also establish internal employee works councils in order to consult with their employees about economic- and employment-related matters, although these work councils are relatively rare in the United Kingdom.

In the absence of the employer recognising a trade union or works council, there are no industry-wide collective bargaining agreements which apply by default as there are in some other countries.

Registered Agreements

UK employment law does not recognise this concept.

Policies

Employers must provide employees with their disciplinary and grievance policies, either in the employee's contract of employment itself or in a separate policy or handbook. A written health and safety policy is also legally required for businesses that employ five or more people.

While there is no other requirement for employers to put other policies in place, it is strongly advised that employers establish an employee handbook that contains details of all other relevant policies. Employers should have an anti-bribery policy, as this will help them demonstrate that they have put adequate procedures in place designed to prevent bribery and, therefore, defend any corporate prosecution under the Bribery Act 2010.

IV. ENTITLEMENTS

Minimum Employment Rights

Hours of Work

There is a statutory restriction on the number of hours that an employee can work. Employees may not, on average, work more than 48 hours per week.

However, employers can ask that employees consent in writing to "opt out" of the 48-hour weekly working limit. If employees opt out, they must be able to "opt in" on no more than three months' notice.

Holidays

Employees and workers have a statutory entitlement to paid holiday leave of 5.6 weeks per year. This can include public holidays, of which there are normally eight a year in England and Wales. They cannot be paid in lieu of this entitlement, except on termination, and employees/workers must take four weeks of their statutory entitlement in each holiday year, but they can carry any remaining holiday leave over to another holiday year if the employer is in agreement.

Maternity Leave

All employees are entitled to paid leave to attend antenatal appointments and one year's statutory maternity leave, regardless of length of service. This is made up of 26 weeks' ordinary maternity leave (OML) and 26 weeks' additional maternity leave (AML). All employees who qualify for OML will qualify for AML.

A pregnant employee has the right to statutory maternity pay (SMP) if she has been continuously employed by her employer for at least 26 weeks as at the date that is 15 weeks before the due date for the birth. SMP is paid for 39 weeks from the time the employee starts maternity leave and is payable at two rates, as follows:

- The first six weeks are paid at 90% of the employee's average weekly earnings.
- The remaining 33 weeks are paid at the lower of the "prescribed rate," currently £184.03 per week or 90% of the employee's average weekly earnings.

Employers often offer enhanced maternity pay.

An employee who has taken OML has the right to return to the same job on the same terms and conditions as those under which she was employed before her absence.

An employee who returns to work after AML is also entitled to return to the same job on the same terms and conditions as if she has not been absent. However, in this case, if it is not reasonably practicable for the employer to offer the employee her original job, she is entitled to be offered another suitable alternative position.

Paternity and Shared Parental Leave

Employees who support a child's mother or adopter (of any gender) also have an entitlement to either one or two weeks of paid paternity leave (at the set amount) to be taken within 52 weeks of a child's birth or placement for adoption, provided they have 26 weeks of continuous service with their employer at the end of the 15th week before the expected week of childbirth/placement and continue to work for the employer until the baby is born/placed with them for adoption. This includes the birth of a child to a surrogate mother where the employee (and his or her partner) expects to obtain a parental order.

Under the United Kingdom's shared parental leave regime, these employees can also share up to 50 of the 52 weeks of the other parent's statutory maternity or adoption leave and up to 37 of the 39 weeks of statutory maternity or adoption pay provided, under the following rules:

- The employee has 26 weeks' continuous service with his or her employer at the end of the 15th week before the expected week of childbirth/placement.
- The other parent must have worked in at least 26 of the 66 weeks before the expected week of childbirth/placement and had earnings of at least £390 in total in 13 of those 66 weeks.
- For both parents to share the shared parental leave, each parent must earn on average at least £123 a week to be eligible for shared parental leave.

Parental Leave

Employees (of any gender) who have one year's service are entitled to take time off work to look after a child or make arrangements for the child's welfare. They may take up to 18 weeks' unpaid leave per child up to the child's 18th birthday. No more than four weeks may be taken in any one year (unless the child is disabled), and leave must be taken in multiples of one week. Parents of disabled children are entitled to take single days of leave.

Since 6 April 2020, all employed parents have the right to two weeks' leave if they lose a child under the age of 18 or suffer a miscarriage or stillbirth. Parents are also able to claim statutory pay for this period, subject to meeting eligibility criteria.

In addition, there is a statutory right for employees to take time off for dependants, which gives all employees, regardless of service, a right to take a reasonable period of time off to deal with an emergency involving a dependant. Again, this is unpaid.

Neonatal Care Leave

The Neonatal Care (Leave and Pay) Act 2023 makes provision for up to 12 weeks of statutory leave and pay for employees whose children are admitted to neonatal care for at least seven days. However, these new rights will not come into force until April 2025.

For those who qualify, the right to neonatal care leave is a "day one" right, so there is no minimum service requirement. The right to receive statutory neonatal care pay requires 26 weeks of service and earnings on average of at least £123 a week, which mirrors the entitlement to maternity pay. Employers should therefore consider updating their policies and procedures, and amendments will likely be needed to contracts of employment to reflect this new entitlement.

Flexible Working Arrangements

Following the enactment of the Employment Relations (Flexible Working) Act 2023, from 6 April 2024, all employees can make two requests in any 12-month period for flexible working arrangements (previously one request) that support a work-life balance, irrespective of whether or not they have caring responsibilities. The employee triggers the procedure by making a written request. The employer will then have a two-month decision period (previously three months) (which can be extended by agreement) within which to consider the request, discuss it with the employee (if appropriate) and notify the employee of the outcome. The employer must deal with the application in a reasonable manner and may only refuse a request for one (or more) of eight specified reasons.

This act has three other key reforms to the flexible working legislation, as follows:

- The right to make a statutory request for flexible working is now a "day one" right for all employees (previously, employees had to have at least 26 weeks' continuous employment).
- Employers now have to consult with their employees, as a means of exploring the available options, before rejecting their flexible working request.

- There is no longer a requirement for employees to set out how the effects of their flexible working request might be dealt with by the employer.

Personal/Carer's Leave and Compassionate Leave

Other than the parental bereavement leave referred to above, employees do not have statutory rights to personal and compassionate leave; however, employers will usually have policies permitting employees to take such leave.

As the law currently stands in the United Kingdom, employees who care for dependants (including their spouses or civil partners, children, parents or people living in the same house as the employee) are entitled to unpaid time off to provide assistance where a dependant falls ill, gives birth or is injured or assaulted to make provision for the care of that dependant or in consequence of the death of a dependant. Employees can take time off because of unexpected disruption, and parents can also take time off to deal with unexpected incidents involving their children while they are at school.

The Carer's Leave Act 2023 came into effect on 6 April 2024. This act provides that all employees are entitled to take one week's unpaid leave in any 12-month period to provide or arrange care for a dependant with a long-term care need. This is a "day one" right. Employees do not have to provide evidence of their caring responsibilities when requesting the leave, and employees who take carer's leave have the same employment protections that are available for other family-related leave, including protection from dismissal.

Community Service Leave

Employees in the United Kingdom are not granted a direct right to take time off for jury service; however, they are protected from being subjected to a detriment or being dismissed as a result of being summoned to attend or being absent from work on jury service. Employers are not required to pay employees during absence for jury service, and (unless the contract provides for payment) this does not constitute a detriment.

Long Service Leave

There is no statutory entitlement to a period of leave after employees have worked for an employer for a particular length of time. Employers may choose to grant employees a period of sabbatical and, if so, would normally set this out in their staff handbook.

Public Holidays

Employees are entitled to paid leave for each day which is proclaimed a public holiday in countries in which they work. If an employer requests an employee to work on a public holiday, he or she is usually entitled under the contract of employment to additional pay or time off in lieu, although this is not legally required.

Sick Pay

The employer does not have to continue to pay normal salary during illness (unless the employer has agreed to do so in the contract of employment). Instead, employees are entitled to be paid statutory sick pay from the employer for the first 28 weeks of linked absence in any period of three years. The first three days of absence do not count; the employee only becomes entitled to statutory sick pay on the fourth day of absence. The current rate of statutory sick pay is £116.75 per week.

As part of the "Plan to Make Work Pay," the new UK government proposes to (a) strengthen statutory sick pay, (b) remove the lower earnings limit to make it available to all employees and (c) remove the four-day waiting period.

Remuneration (Minimum Remuneration, Rules for Variable Remuneration)

As of April 2024, the minimum wage is £11.44 per hour for an adult worker over the age of 21. Different rates apply to younger workers. These rates are reviewed each year.

Notice Periods

After one month's service, an employee is entitled to receive a minimum of one week's notice of termination of employment from the employer. Once an employee has been employed for at least two years, an employer is required to give one week's notice per complete year of service up to a maximum of 12 weeks after 12 years' service. The minimum notice period required to be given by an employee (regardless of length of service) is one week. The employer and employee can agree to longer notice periods (and often do so) but never less than the statutory minimum.

An employer can dismiss without notice if the employee is guilty of gross misconduct.

Pension

All employers must automatically enrol all eligible workers in a pension scheme that meets certain requirements and make minimum contributions to that scheme in respect of those workers (except where a worker chooses to opt out of the scheme). This regime has been phased in over a number of years.

Discretionary Benefits

There is no legal obligation on employers to provide any other form of benefit other than salary and pension contributions (except where the worker chooses to opt out of the scheme), although it is common for employers to do so to remain competitive in the recruitment market.

Employers will often pay contractual sick pay in excess of the statutory minimum and provide additional holiday leave entitlements, as well as other commonly provided benefits, such as private health insurance, life assurance and critical illness cover.

In relation to bonuses, employers may also choose to incentivise employees by including bonus provisions in employees' contracts, dependent on the employee achieving certain defined aims or offering discretionary noncontractual bonus schemes, payable by reference to a wider variety of factors, such as team or business performance.

Many employers also offer tax-efficient benefits, such as cycle-to-work and childcare voucher schemes.

TERMINATION OF EMPLOYMENT

I. GROUNDS

An employee's employment may be terminated by notice being given by either the employer or the employee, or by the employer without notice in cases of gross misconduct, mutual agreement, frustration or the end of a fixed-term contract.

II. MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates an employee's employment for reasons other than serious misconduct, it must give the employee his or her contractual notice period or the statutory minimum (calculated as described in the "Entitlements" section of this UK guide) if greater. Employers may be able to pay the employee in lieu of notice if the contract provides for this.

Notice does not need to be provided when an employer terminates an employee for gross misconduct. When an employee resigns, he or she has to give the contractual notice period.

III. REDUNDANCY

Statutory Entitlements

Payment on termination includes the following:

- Outstanding wages for hours already worked.
- Accrued but untaken annual leave.
- Payments in lieu of notice and payments in respect of any contractual entitlements that would have been payable during the notice period (if applicable).
- Redundancy pay (if applicable).

Genuine Redundancy

Once an employee has completed two years' continuous employment, he or she is entitled to a statutory redundancy payment if dismissed "by reason of redundancy." A genuine redundancy situation will arise where the following occurs:

- An employer has stopped, or intends to stop, carrying on the business, either altogether or in the place where the employee is employed.
- There is no longer a requirement for an employee or employees to carry out work of a particular kind.

Consultation

Employers must follow a fair procedure and consult with their employees before making them redundant. The scope of employers' consultation duties depends on the size of the business, and employers who are considering making more than 20 employees redundant have more onerous consultation obligations. Further details of employers' consultation rights are provided in the "Restructuring" section of this UK guide.

Payment

The amount of the statutory redundancy payment is calculated in the same way as the basic award for unfair dismissal (see the "Dismissal Actions" section of this UK guide). An employee's weekly pay, up to the statutory limit currently capped at £700, and a maximum of 20 years' service can be taken

into account when calculating the statutory redundancy payment, which as at 6 April 2024 is capped at a maximum of £21,000.

Protection From Redundancy (Pregnancy and Family Leave) Act 2023

Following the enactment of the Protection from Redundancy (Pregnancy and Family Leave) Act 2023, from 6 April 2024, the redundancy protected period for pregnant employees or those taking maternity leave has been extended.

The act extends the redundancy protection (i.e., the right to be offered first access to suitable alternative vacancies, if one is available, before being dismissed by reason of redundancy (failure to do so being automatically unfair)) to a wider group, which includes (a) a pregnant employee who is in a protected period of pregnancy, (b) an employee who has recently suffered a miscarriage and (c) parental leave returners.

The redundancy protected period during pregnancy and maternity (a) starts when an employee tells her employer she is pregnant and (b) ends 18 months from the date the baby is born. The redundancy period for someone taking adoption leave (a) starts on the day the adoption leaves begins and (b) ends 18 months from the date the adoption placement begins or, for overseas adoptions, the date the child enters England, Scotland or Wales.

IV. REMEDIES

Dismissal Actions

Employees with two years' service can challenge the fairness of their dismissal by bringing a claim against their employer for unfair dismissal in an employment tribunal. In order to successfully defend such a claim, the employer has to demonstrate that it has a fair reason for dismissal and that it has followed a fair procedure.

There are five potentially fair reasons, as follows:

- Redundancy.
- Misconduct.
- Capability (including performance or illness).
- Potential breach of a legislative requirement if the employer were to continue to employ the employee (e.g., if they did not have a visa).
- Some other substantial reason that justifies dismissal.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) prescribes a number of rules that apply if there has been a "relevant transfer."

These rules apply in relation to the following:

- Asset purchases where there is a transfer of a business, or part of a business, that is an economic entity (defined as an organised grouping of resources that has the objective of pursuing an economic activity, which includes divisions of businesses) and that economic entity retains its identify following the transfer.
- Service provision changes by which a client:
  - Outsources work by engaging a contractor to do work on its own behalf.
  - Transfers outsourced work from one contractor to another.
  - Brings an outsourced contract "in house," provided that in all cases the activities carried on after the change in service provider are fundamentally or essentially the same as those carried on before the change and that the client (where relevant) remains the same throughout.

TUPE does not apply in relation to share purchases, as there is only a change in the shareholders of a company and there is no transfer of the economic entity's business. However, if there is an internal reorganisation involving the transfer of assets, such as a hive-up or hive-down of assets as a precursor to a share purchase, then TUPE will apply to those transfers.

II. RESTRUCTURING

Notification

Employers can dismiss an employee by reason of "redundancy" because they are closing down a particular division, business or the physical location where the employee worked or where they have a reduced requirement for that employee.

Employees are entitled to a statutory redundancy payment, which is calculated by reference to their pay, age and their length of service. An employee's weekly pay, up to the statutory limit, and a maximum of 20 years' service can be taken into account when calculating the statutory redundancy payment, which as at 6 April 2024 is capped at a maximum of £21,000.

Consultation

Where 20 or more employees are being made redundant over a period of 90 days or less at one establishment, an employer must inform and consult employee representatives over a period of 30 days before the first dismissal takes effect. Where 100 or more employees are being made redundant over the same period at one establishment, the required consultation period increases to 45 days. Employers must also inform the UK government of their intention to make 20 or more employees redundant.

Employers who fail to comply with these information and consultation requirements may be liable to pay up to 90 days' pay in respect of each employee whose rights were breached and could be subject to fines for failure to notify the UK government. Employers who are proposing to make less than 20

employees redundant must follow a fair procedure and consult with them in an appropriate fashion so as to minimise the risk of unfair dismissal claims being brought against them.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property and trade secrets.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than the performance of their duties. These provisions restrain employees from using confidential information during and after termination of employment (although, if employment contracts do not include this prohibition, employees will have a limited implied duty not to use or disclose their ex-employers' trade secrets but would be free to use or disclose all other types of confidential information).

As a general principle, an employer can potentially enforce clauses preventing the employee from working for a competitor or from soliciting the employer's employees and customers. These restrictive covenants must protect a legitimate business interest of the employer (such as trade secrets or client connections) and must be reasonable in all circumstances. Restrictive covenants may be enforceable for a reasonable period of up to 12 months (as appropriate, which will be based on the employee's seniority and position) after termination of an employee's employment.

III. PRIVACY OBLIGATIONS

Information that an employer stores about its employees will constitute "personal data" under the UK GDPR. In summary, it is legitimate for an employer to store and to process personal data to the extent that such information is necessary for the purposes of administering the employment contract or for another legal basis, outlined below.

Employers should not generally rely upon employees' consent as a legal basis for processing their personal data because such consent cannot usually be demonstrated to be "freely given," due to the imbalance of power between the parties and because consent may be withdrawn at any time.

A number of principles apply to the processing of personal data, including that the data must always be kept up to date, secure and may not be transferred outside the United Kingdom unless a legal basis applies and certain conditions are met.

Employees must be provided with information about what information the employer collects about them and how it is used and processed. Personal data should be retained for no longer than necessary for the purposes for which it is processed, and the employer should put in place a retention policy in relation to its employment records.

Under the UK GDPR, at least one of the following legal bases must apply when processing this personal data:

- Consent of the individual.
- Necessity for the performance of a contract to which the data subject is party.
- Necessity for compliance with a legal obligation.
- Protection of the vital interests of the data subject or another natural person.
- Public interest.
- Legitimate interest pursued by the controller or by a third party.

The processing of sensitive personal data (i.e., ethnic origin, political opinions, religious beliefs, union membership, genetic or (certain) biometric data, or data relating to health or sexual orientation) is prohibited in principle, but there are some limited exceptions under the UK GDPR (e.g., processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law, or data processing necessary to protect the vital interests of the employee).

A further useful condition permitting employers to process sensitive personal data of employees is where the data processing is necessary to comply with obligations or rights under UK employment law. Employers are required to have an appropriate policy document in place when processing sensitive personal data, and an employee privacy notice will usually fulfil this requirement. Employers are obliged to inform both employees and applicants in detail about the collection and processing of their personal data, including data sharing, international transfers and legal rights in this regard. Such information should generally be provided through privacy notices for each category of employee and applicant in order to only convey the information relevant to that category.

Employers should notify employees and applicants of any substantial updates to the privacy notices.

Employers are required to maintain records of their personal data processing activities (ROPA). In the context of employment law, this includes documenting what, how, why, for how long and by whom employee data is collected and processed, details of transfers to third countries (if any) and information about technical and organizational security measures.

The ROPA must be provided to the Information Commissioner's Office upon request, and failure to establish or maintain an up-to-date ROPA would in and of itself be a breach of the UK GDPR and the DPA.

Data sharing with third parties (including service providers, such as payroll providers and marketing partners) must be thoroughly assessed and framed within a data sharing agreement to ensure that UK GDPR requirements are complied with all through the data life cycle. Additionally, both disclosure to and acquisition from third parties must be indicated in the ROPA.

There are no intragroup exemptions, so group companies have to be treated as third parties, and any data flows among group companies need to be carefully assessed.

There are limited ways in which data can be transferred to third parties outside the United Kingdom. Where the recipient is not located in a country benefiting from an "adequacy decision," or all involved parties have implemented binding corporate rules, a data transfer agreement will generally need to be implemented to ensure that UK GDPR requirements are complied with all through the data life cycle.

Noncompliance with the UK GDPR might result in fines up to £17.5 million or up to 4% of the global annual turnover, whichever is higher.

The United Kingdom is currently in the process of adopting a new data protection framework in the coming months, which may affect the above.

In 2023, the UK government introduced a new version of the Data Protection and Digital Information Bill. With the bill, the United Kingdom aims to amend the existing UK GDPR post-Brexit.

A UK-US data bridge has recently been established, as an extension of the EU-US Data Privacy Framework. In September 2023, the UK government laid adequacy regulations before the UK Parliament. The regulations act as a safeguard for the transfer of personal data from the United Kingdom to the United States under UK GDPR Article 44.

IV. WORKPLACE SURVEILLANCE

The records or recordings made as a result of workplace monitoring are likely to contain personal data. Workplace monitoring is subject to the UK GDPR, and relevant matters in relation to workplace monitoring must be taken into account, including whether a legal basis applies to the monitoring and processing of the resulting personal data.

Employers should consider whether workplace surveillance is the right thing to do in all circumstances, proportionate and necessary in order to achieve a legitimate aim. Employers should limit the areas in which monitoring takes place to protect employees' privacy adequately and limit the people who have access to such recordings. Covert recording is rarely justifiable and should only be used in exceptional circumstances. Employers should aim to introduce data protection "by design" and should carry out a data protection impact assessment when contemplating any new data processing activity, including surveillance of employees, and employees must be informed about the personal data collection and processing involved in workplace monitoring. The records and results of workplace monitoring should be subject to a retention policy and should be deleted if it is no longer necessary to keep them in order to fulfil the purposes for which they were collected.

V. DATA SUBJECT ACCESS REQUESTS

Employees have several statutory rights under the UK GDPR with regard to their personal data, namely:

- Right to access, rectify or delete their data.
- Right to restrict the processing.
- Right to data portability.
- Right to object.
- Right to freely withdraw consent.

Upon receiving such Data Subject Access Request, the employer will need to address the request within one month of its receipt; this can be extended by an additional two months in particularly complex cases.

VI. WORKPLACE INVESTIGATIONS

Employers may conduct workplace investigations if they have a legal basis and if they can justify it (e.g., to determine policy breaches, misconduct or misuse of confidential information). Employers should be aware that monitoring workers often includes capturing sensitive data for which additional conditions apply.

Employers must have disciplinary and grievance procedures that set out how they must approach, deal with and investigate complaints or issues they have with their employees. These procedures will provide for the employer to investigate any disciplinary or grievance issue by, for example, interviewing witnesses and taking witness evidence, as well as reviewing factual evidence.

Employers are entitled to inspect the employee's professional computers, emails and mobile phone and to copy the data. However, files, folders and emails identified by the employee as "personal" may only be accessed where the employee has been invited to be present.

VII. MANAGING PERFORMANCE AND CONDUCT

Where an employer is contemplating dismissing an employee or taking other relevant disciplinary action (e.g., a written warning) in relation to misconduct or poor performance, it should follow a disciplinary process that includes the following:

- Sending the employee a statement setting out the reasons why the employer is contemplating disciplinary action or dismissal together with the basis of those reasons.
- Holding a meeting to discuss the matter.
- Informing the employee of the decision.
- Holding an appeal meeting if the employee requests an appeal.

Failure by the employer to follow this procedure may result in an employment tribunal finding any subsequent dismissal to be procedurally automatically unfair, and damages can be increased by up to 25%.

VIII. BULLYING AND HARASSMENT

Bullying

Employers are expected to recognise and protect the dignity of their employees. It is recommended that employers have anti-bullying and anti-harassment policies in place that clearly state the following:

- That all forms of bullying and harassment are unlawful and will not be tolerated in the workplace.
- The steps that the organisation will take to prevent bullying and harassment.
- That those found to have taken part in bullying or harassing behaviour will be subject to the company's disciplinary procedure.

Employees who make a complaint after being bullied or harassed will be raising a "grievance," which the company must investigate in accordance with its grievance policy.

Harassment

Harassment is defined as unwanted conduct related to a relevant protected characteristic (see the "Discrimination" section of this UK guide below) that violates or intends to violate an individual's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Sexual harassment is prohibited in the United Kingdom.

If an employer does not adequately respond to an employee's allegations of harassment, especially if a grievance has been raised, the employee may be entitled to resign and then bring a claim against his or her employer for unfair constructive dismissal and discrimination.

Following the passing of the Worker Protection (Amendment of Equality Act 2010) Act 2023, from October 2024 there will be a positive legal obligation on employers to take reasonable steps to protect their employees from sexual harassment during the course of their employment. Employers should be aware of this new duty and should act to put preventative measures in place. Employment tribunals will have the power to uplift compensation by up to 25% in circumstances where an employment tribunal finds that sexual harassment has taken place and an employer has breached its duty to take reasonable steps to prevent the sexual harassment. The Equality and Human Rights Commission will have the power to take enforcement action against the employer. Employers should therefore anticipate scenarios where their employees may be subject to sexual harassment in the course of employment and take action to prevent such harassment from taking place.

What is "reasonable" will vary for different employers depending on factors such as the employer's size, the sector in which it operates and the working environment, but this can include: (a) reviewing and refreshing harassment policies and reporting procedures, (b) conducting regular training sessions with employees and (c) conducting thorough investigations into complaints of sexual harassment.

IX. DISCRIMINATION

All employees, regardless of length of service, have the right to not be discriminated against on the grounds of race (including colour, nationality or ethnic origin), sex, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership, or age. This applies when offering employment, in the course of employment or in respect of its termination.

Damages for discrimination are uncapped and include an award for injury to feelings, where applicable.

Employees who bring, or might bring, discrimination claims or complaints about harassment or become involved in another employee's discrimination complaint are protected from suffering any detriment because of their actions or potential actions. If an employee is subject to detriment, they can also bring a claim for victimisation.

X. UNIONS

Representation

Trade unions can be recognised by an employer voluntarily or by the union applying for 'statutory recognition' through a statutory procedure which, if successful, enables the trade union to negotiate collective bargaining agreements on certain employees' behalf. It is not mandatory for employees to be recognised by a trade union.

Right of Entry

Trade union members can accompany employees during disciplinary and grievance hearings.

Industrial Disputation

It is only lawful to take industrial action (e.g., strikes, lockouts, slowdowns, overtime bans) under certain circumstances prescribed by the Trade Union and Labour Relations (Consolidation) Act 1992.

The Strikes (Minimum Service Levels) Act 2023 provides anti-strike measures, such as a minimum service level to be in place during any period of strike across several sectors, including health services, fire and rescue, education and transport.

XI. REMOTE/HYBRID WORK

Providing employees with options for remote and hybrid working is encouraged in the United Kingdom. When considering offering such arrangements to employees, employers must consider the following:

- Updating health and safety procedures and ensuring they have adequate insurance for home working.
- Updating contractual provisions relating to the place of work.
- Availability of specialist equipment that may be necessary for an employee to carry out his or her job.
- Confidentiality of work when working from home or public spaces.
- Tax consequences, such as working abroad or using company equipment for nonbusiness use.
- Security of data to ensure compliance with data protection obligations.

Employers must ensure that salary, benefit packages, holidays and sick pay remain the same between remote or hybrid workers and those who work from the workplace, to avoid risk of discrimination.

Trial periods may be used by employers to evaluate the efficacy of remote or hybrid working.

PLAN TO MAKE WORK PAY

We encourage employers to keep up to date on employment law reforms as they continue to develop under the new UK government, as these will likely have a serious impact on employer operations and employer duties in the United Kingdom. Below is a brief overview of a number of Labour's proposals under the "Plan to Make Work Pay" manifesto.

I. FAMILY-FRIENDLY RIGHTS

The new UK government believes that having a 'baseline' set of family-friendly rights will allow workers to enjoy a better work-life balance that benefits their wellbeing and productivity. These family-friendly rights include:

- Right to "switch off" and not to have to engage with work correspondence (including emails, telephone calls and instant messaging) outside of contracted working hours.
- Unlawful to dismiss a woman who is pregnant within six months of her return to work.
- Family-related leave to be a "day one" right.

II. ENDING "ONE-SIDED FLEXIBILITY"

As part of the new UK government's plan to end "one-sided flexibility" in the workforce, they plan to introduce the following measures which aim to give workers more security and predictability in their day-to-day lives:

- Ban on the practice of "fire and rehire" (subject to very limited exceptions).
- Ban on "exploitative" zero-hour contracts and giving employees the right to an average-hours contract based on a 12-week reference period.
- Right to reasonable notice of work schedules and wages for shifts cancelled on short notice.
- Basic "day one" rights (unfair dismissal, parental leave and sick pay).
- New single status of "worker."

III. RIGHTS AT WORK

According to the "Plan to Make Work Pay" manifesto, the new UK government hopes to improve Britain's labour market enforcement system by:

- Increasing the time limit to bring an employment tribunal claim from three to six months.
- Introducing a mechanism to allow employees to collectively raise grievances about conduct in their workplace.

AUTHORS AND CONTRIBUTORS

Paul Callegari

Practice Area Leader, Office Managing Partner
London
+44.20.7360.8194
paul.callegari@klgates.com

Amelia J. MacHugh

Associate
London
+44.20.7360.6470
amelia.machugh@klgates.com

Natalie Taylor

Senior Associate
London
+44.20.7360.6367
natalie.taylor@klgates.com

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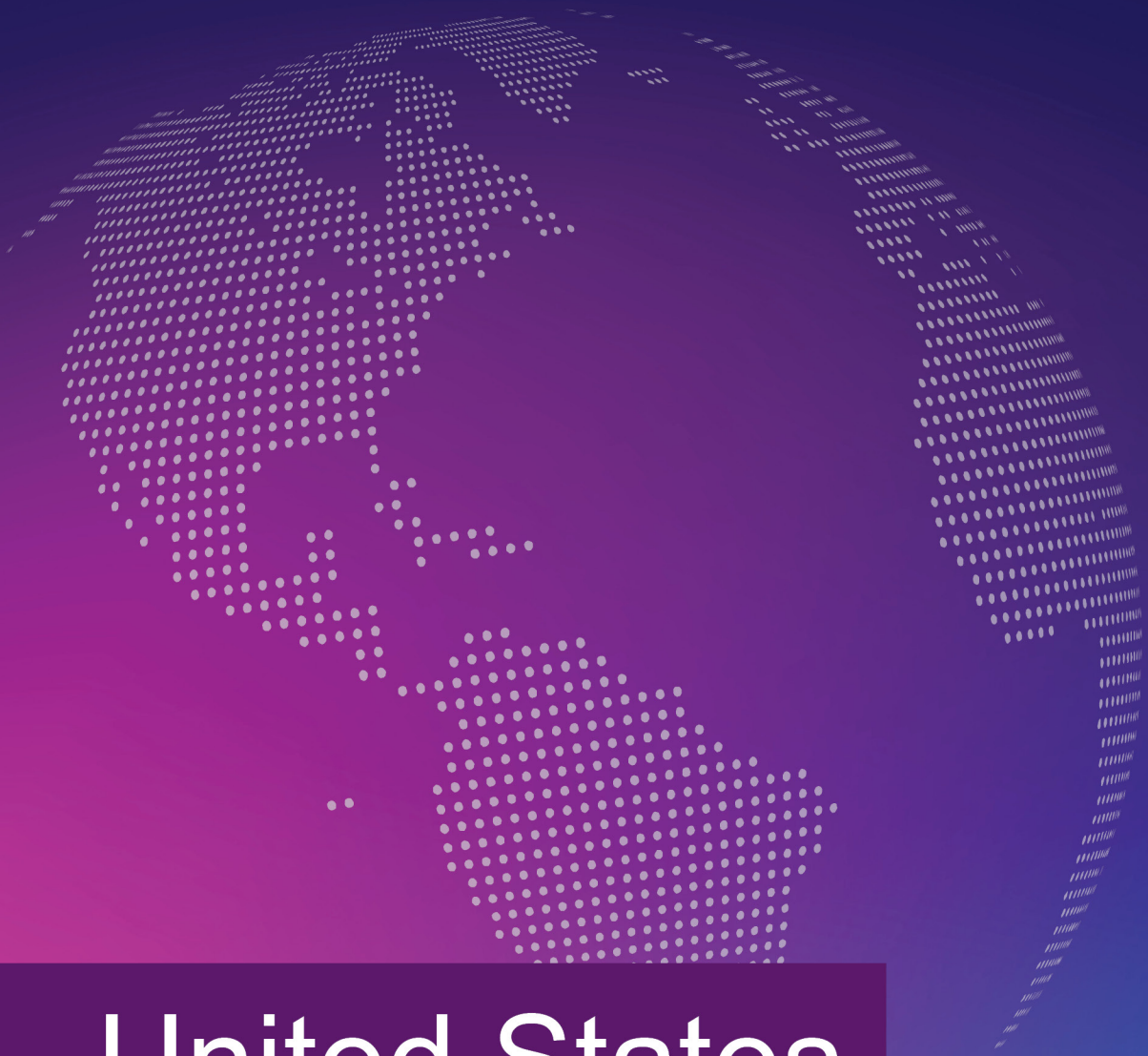

United States Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

As the United States continues to move beyond pandemic-era policies, the proliferation of artificial intelligence (AI) into the workplace and the associated legislative and regulatory scrutiny involved has become a seminal issue for employers. In addition to federal agency guidance, three states (California, Colorado, and Illinois) enacted legislation to address AI's impact on employment, a trend that will likely continue in 2025 and beyond. In addition to AI, employers are faced with increased workplace regulations at the federal, state, and local level. Earlier in 2024, the US Federal Trade Commission issued regulations that would have invalidated all but a narrow subset of noncompetition covenants between companies and their employees. The regulations, which were originally set to go into effect in September 2024, were enjoined by a federal court and are on hold pending appeal. As a result, enforceability of noncompetition covenants continues to be determined largely by state law rather than a uniform federal standard. Federal regulations face an uncertain future following the seminal US Supreme Court case, *Loper Bright Enterprises v. Raimondo*, which upended decades of deference to regulatory agencies, along with the new presidential administration's executive actions related to employment discrimination in the public and private sector. However, states and municipalities continue to move forward with substantial legislative and regulatory agendas, with a continued focus on pay transparency as well as paid family and medical leave and data privacy. Employers looking ahead to 2025 should anticipate a continued increase in state and municipal employment regulations, unpredictability of federal enforcement priorities, instability in the labor market, the impact of climate change on the workplace, and tension surrounding flexibility for employees.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure that their employees are lawfully authorized to work in the United States.

Employers must have employees complete a Form I-9 to verify employment eligibility and collect evidence of eligibility to work in the United States. Employees typically must complete their Form I-9 on or before the first day of work, and the employer must complete verification within three days of their date of hire.

Foreign workers are eligible to live and work in the United States with the proper work permits/visas.

Reference/Background Checks

An employer may contact an applicant's previous employers and personal references before extending an offer of employment. Some states provide protections to employers against defamation lawsuits stemming from information provided in response to such inquiries, but many do not.

An employer may run background and credit checks if it complies with the Fair Credit Reporting Act (FCRA). The requirements include, but are not limited to, seeking written permission from the applicant/employee and taking steps to notify the applicant/employee of the results prior to taking adverse action. Some state laws and local ordinances heighten the requirements of the FCRA.

The Equal Employment Opportunity Commission (EEOC) requires that employers make decisions based on background checks in a manner that does not discriminate against applicants and employees because of any trait protected by Title VII of the Civil Rights Act (Title VII), the Age Discrimination in Employment Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act, or other categories protected by law. The EEOC warns that, in certain circumstances, background check policies (such as those containing guidelines for what crimes will automatically cause denial of employment) can have a disparate impact on protected individuals, and, if that is true, such policies must be consistent with business necessity. Some state laws and local ordinances prohibit or limit employers from asking certain questions regarding an applicant's criminal background or require employers to follow certain procedures when an applicant discloses criminal background information.

Some state and local laws limit an employer's ability to inquire about a candidate or employee's wage or salary history during the recruitment and hiring process. Other state and local wage transparency laws require certain employers to disclose compensation information in job postings or during the recruitment process.

Medical Examinations

Under the ADA, an employer may not require any medical examination or make any disability-related inquiries prior to making an offer of employment.

After an offer is extended, but prior to employment beginning, an employer may require medical examinations and make disability-related inquiries as long as it does so for every applicant for such job category.

After employment begins, an employer may not require medical examinations or make disability-related inquiries unless they are job-related and consistent with business necessity.

Drug- and Alcohol-Free Workplace Policies

With certain exceptions, employers may implement policies and programs intended to take action against drug and alcohol use in the workplace, including, but not limited to, pre-employment and during-employment drug testing. Applicable law will require some types of private employers, including, but not limited to, federal contractors, to impose such programs. All employers should ensure their drug- and alcohol-free programs, including their testing policies, comply with applicable state law requirements, including, but not limited to, regulations addressing the medicinal and recreational use of marijuana. Employers should also ensure that their hiring, firing, and promotion policies do not discriminate against individuals with histories of substance abuse or individuals enrolled in rehabilitation programs. Employers should also refrain from asking employees about their legal prescription drug use during the prehiring or prepromotion drug testing process.

Minimum Qualifications

An employer may set minimum qualifications for a position and ascertain an applicant's qualifications through preoffer questioning and requests for proof that the applicant has obtained such qualifications.

II. TYPES OF RELATIONSHIPS

Employee

Generally, employers engage employees on an "at-will" basis, meaning that both the employer and the employee may end the employment relationship at any time, for any legal reason, with or without notice, and the employer may change the terms and conditions of the employee's employment. Montana, however, only recognizes the concept of at-will employment during an initial probationary period.

Employers and employees may enter contracts setting terms and conditions of employment or otherwise alter the at-will nature of employment, i.e., setting a term for the length of employment, restricting the reasons for which an employee may be terminated, or setting certain terms and conditions of employment.

Global pandemics, significant climate events, and subsequent economic instability have resulted in the furlough of many workers. A furlough is a temporary unpaid leave of absence. In general, an employer has discretion to furlough its employees who are employed on an at-will basis (meaning that both the employee and employer have reserved the right to terminate the employment relationship at any time and for any legal reason). If an employee has an individual contract of employment or is covered by a collective bargaining agreement, the terms of the contract will govern whether a furlough is permitted.

Independent Contractor

An individual who is classified as an independent contractor is generally afforded fewer rights than one who is classified as an employee. Workers may be engaged as independent contractors, as opposed to employees, if the relationship meets certain legal requirements. This relationship is usually documented in a written agreement, although the labels used by the parties themselves do not control the issue. Government agencies and courts increasingly disfavor the independent contractor relationship and impose strict standards, analyzing the overall job duties of the individual and the relationship between the individual and the employer to determine the proper category. Each state varies in its common law and legislative standards for classifying an independent contractor, with states like California being particularly strict. Misclassification of an employee as an independent contractor can create significant liability for the employer.

Labor Hire

Employers may hire employees as seasonal or temporary workers. Employers may also work with an employee leasing company, which temporarily assigns the leasing company's employees to the employer. The relationship between employers and employee leasing companies is sometimes regulated by state laws and must meet certain legal requirements. These arrangements create the risk that the leasing company and hiring company may be found to be joint employers.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employment contracts can be oral or in writing.

Most employers rely on the at-will nature of employment and do not enter into employment contracts with employees (although they frequently provide offer letters to employees confirming the terms of their employment, such as their position, supervisor, pay rate, and benefits).

However, employers will often enter into contracts with employees designed to protect their confidential, trade secret, and proprietary information. Such contracts may contain nondisclosure, noncompete, nonsolicit, and anti-raiding provisions—the validity, strength, and terms of which depend on state laws. These contracts often expressly preserve the at-will nature of the employment relationship.

Registered Agreements

The National Labor Relations Act (NLRA) provides employees with the ability to engage in collective activity and form labor unions. Employees that choose to do so and can meet certain requirements can request that the National Labor Relations Board (NLRB) conduct an election to determine whether the employer must set the terms and conditions of employment through negotiating with the employees' chosen union.

The Labor Management Relations Act requires that an employer must abide by any terms and conditions agreed to with the employees' chosen labor union.

Policies

Employers typically provide employees with a handbook or policies that discuss the terms and conditions of employment and rules governing workplace conduct. Such handbooks or policies are not required (although the lack of such policies—for instance, in the case of a sexual harassment policy—may expose the employer to increased liability), although some state and local laws require employers to maintain sexual harassment policies and conduct corresponding training. Some states also require employers that decide to create employee handbooks to include certain policies within those handbooks. Handbooks typically provide that they are not contractually binding and do not alter the at-will nature of employment.

Various federal and state laws require employers to post certain notices in breakrooms or other employee-accessible areas that inform employees of their rights under such laws. Such notices generally are required to be disseminated to employees who work remotely via electronic means.

Some state laws require that employers provide notice to employees as to certain aspects of the employment relationship, which include, but are not limited to, the rate of pay, hours of work, and timing of payment.

IV. ENTITLEMENTS

Minimum Employment Rights

The Fair Labor Standards Act (FLSA) requires that employers pay employees a specified minimum wage rate and provide overtime premium payments on all hours worked beyond 40 hours in a workweek. State and local law may increase (but not decrease) the minimum wage and may provide for additional overtime premiums (for instance, for work over eight hours in one day, work over 12 hours in one day, or after a certain number of days are worked in a week). In certain circumstances, an employee's "rate" may need to factor in commissions, incentives, and bonuses. The FLSA also describes which employees are "exempt" from overtime using a test that combines a minimum compensation level, which was increased in 2024 and will increase further in 2025, and a duties test.

Federal law prohibits discrimination against employees on the basis of certain characteristics, such as sex (which includes gender identity and sexual orientation), pregnancy, religion, color, race, national origin, veteran status, age, disability, genetic information, etc. State and local law may provide for other protected traits. Many states and municipalities have adopted a form of the Creating a Respectful and Open World for Natural Hair Act, which prohibits racial discrimination on the basis of an individual's hair texture and is protective of hair styles such as braids, locs, twists, and knots.

Employers must provide reasonable accommodations to qualified individuals with disabilities under the ADA so that they may perform the essential functions of their positions, unless doing so would cause the employer undue hardship. Further, employers must accommodate an individual's sincerely held religious beliefs, observances, or practices under Title VII, unless doing so would cause the employer undue hardship. Many state and local laws require employers to provide reasonable accommodation for individuals who are pregnant, and recently, the US Congress passed the Pregnant Workers Fairness Act (PWFA), which requires covered employers to provide reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

Employers that meet minimum size requirements must provide 12–26 weeks of leave under the Family and Medical Leave Act (FMLA) to employees in certain circumstances, including to care for their own serious medical condition or the serious medical condition of a family member, to bond with a natural born or adopted child, and, in certain circumstances, to care for or be with military personnel. FMLA leave is unpaid. Employers may not discriminate against or terminate employees for exercising their FMLA rights. Some state laws provide leave in addition to that which is available under the FMLA and may require payment during certain leaves. Those state laws often have minimum size requirements different from what exists for FMLA leave. In some instances, even if an employee is not eligible for FMLA leave at all or if the employee has already exhausted FMLA leave, the employer is still required to engage in an interactive process with the employee to determine the feasibility of providing leave as a reasonable accommodation under the ADA.

The Occupational Safety and Health Administration regulates workplace health and safety for covered employers by setting certain minimum standards, which can vary by industry, and requiring adequate training, notice, and recordkeeping requirements. States may have their own approved state workplace health and safety plan that may set additional workplace safety regulations. State law may require employers to maintain or offer some benefits to employees who sustain workplace injuries.

State law typically provides some level of unemployment insurance benefits for employees that are terminated for certain reasons, including through layoff or no fault of the employee.

State law also typically provides for temporary disability benefits.

State law may require employers to maintain worker's compensation insurance for employees, which is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment.

State law may provide for additional minimum employment rights.

Discretionary Benefits

Most terms and conditions of employment are provided to employees at the employer's discretion. Below are a few examples of discretionary benefits that may be provided by employers.

Paid Vacation

Employers may provide paid vacation benefits to their employees. Such benefits allow the employee to be absent from work for personal reasons without losing pay. If an employer chooses to provide vacation pay, it must comply with the applicable state's laws. For example, some state laws require that employers pay employees for all accrued, but unused, vacation upon termination; other states do not. Some states allow employers to maintain "use it or lose it" policies, which require that employees use the vacation benefits within a certain time frame or forfeit the same, while other states do not. Other states allow employers to place a ceiling on how much vacation an employee may accrue but may require that ceiling to be set at a certain level. A few states and municipalities have adopted mandatory paid time off for employees that may be used for any purpose.

Sick Leave

Employers may also provide paid sick leave to their employees. Such benefits are typically available when the employee must be absent from work due to a medical condition. If an employer chooses to provide paid sick leave, it must comply with the applicable state's laws. Some states and local municipalities require minimum amounts of paid sick leave. Some states allow for employers to provide "paid time off" policies that cover both paid vacation and paid sick leave amounts so long as they comply with state law requirements.

Holidays

Employers may provide paid or unpaid holiday benefits to employees. Employers commonly use federal holidays, or some subset thereof, as the basis for such benefits.

Bonuses

Employers may provide bonuses to employees separate from their typical wage payments. Such bonuses are typically earned based on personal or company performance milestones or provided at certain times of the year, e.g., Christmas.

Paid Medical/Parental Leave

Some employers voluntarily provide for income replacement during FMLA or other medical or personal leaves. Some states provide insurance benefits to employees who are on certain types of leave.

Other Leave

Employers may voluntarily provide for other paid or unpaid leave. Some states require that leave be given for reasons that include, but are not limited to, civil air patrol or firefighter duty, being a victim of crime or domestic violence, volunteering, jury duty, children's school activities, voting, organ donation, bereavement, and being a witness in a legal proceeding.

Retirement Benefits

Employers may provide for pensions (less common now as compared to previous years) or 401(k) plans (more common). These benefits assist employees in retirement planning. Some employers that maintain 401(k) plans “match” part or all of the employee’s contribution.

Insurance

Employers that meet certain minimum size requirements must offer health insurance to employees or pay penalties. Employers typically provide insurance for employees, including health, dental, vision, life, and disability. Often, employers offering such insurance benefits will pay all or a portion of the premiums.

COVID-19 and Similar Emergency Conditions

In response to the COVID-19 global health crisis, many state and local laws were enacted to address the effect pandemic conditions may have on the workplace. There are a myriad of state and local laws applicable to pandemic and other emergency situations. Legal guidance and advice is strongly recommended, as the individual circumstances of the situation and venue must be taken into account.

Many states and local governments have more comprehensive paid sick leave laws that are applicable to a broader range of employers for a longer length of time in pandemic or emergency situations.

Under federal law, private employers may maintain a policy requiring all employees to be vaccinated against COVID-19, subject to the reasonable accommodation and anti-discrimination provisions of Title VII and the ADA. Some state laws limit the ability of private employers to impose mandatory vaccination policies, inquire about an employee’s vaccination status, or discriminate against employees on the basis of their vaccination status. Employers who have such a requirement must maintain vaccination information in a confidential manner under the ADA and state law.

TERMINATION OF EMPLOYMENT

I. GROUNDS

In the typical at-will employment situation, an employee may be terminated for any reason, with or without notice, although employers may not terminate employees for any illegal reason. Statutes typically govern what constitutes an "illegal" reason. For example, Title VII prohibits employers from terminating employees on the basis of their race and gender (among other things). State public policies and common law often create other exceptions. For example, employees typically cannot be terminated for failing to perform an illegal act.

Employment contracts may limit the grounds for termination and require that a certain amount of notice be provided.

II. MINIMUM ENTITLEMENTS

Payments/Notice

Employers typically are not required by law to provide payments to terminated employees. However, some employers voluntarily provide severance benefits to departing employees in certain situations, such as reductions in workforce or in exchange for a release of potential claims the employee may have against the employer. Federal (such as the Age Discrimination in Employment Act (ADEA)) and state laws may impose specific requirements related to timing, notice, and revocation periods on employers entering into release agreements with employees.

Statutory Entitlements

Employers must pay all owed compensation to a terminated employee. State laws typically require that it be paid within a certain number of days from the date of termination. Some state laws require that certain vested or accrued benefits (such as vacation pay) are part of owed compensation and must be paid on or after termination.

Federal law requires employers meeting certain minimum size requirements to provide information to employees about how to temporarily continue their insurance benefits following employment (at the employee's cost but under the employer's plan). Certain states have similar laws (typically lowering the minimum size threshold).

III. REDUNDANCY

Layoff/Downsizing Notices

An employer may eliminate/consolidate positions and engage in reductions in workforce at its discretion.

The Worker Adjustment and Retraining Notification Act (WARN Act) requires covered employers to provide 60 days' advance notice of a mass layoff or a plant closing (as those terms are defined by the WARN Act), as well as for certain layoffs. State laws may expand the notice requirements in other situations.

Payment

Employers typically are not required by law to make payments to employees selected for a reduction in workforce or a layoff, although state and local law may require remuneration under certain conditions. However, some employers voluntarily provide a severance package to laid-off employees, usually in exchange for a release of potential claims the employee may have against the employer.

Federal (such as the ADEA) and state laws may impose specific requirements related to timing, notice, and revocation periods on employers entering into release agreements with employees.

IV. REMEDIES

Dismissal Action

Since employment is generally "at will" in the absence of an employment contract, a claim for wrongful termination typically must be based on an argument that the employment contract was breached or that the employer terminated the employee due to a protected trait (such as gender, pregnancy, religion, color, race, national origin, veteran status, age, disability, or genetic information). State and federal claims also include actions based on a retaliation theory, e.g., the employer retaliated against the employee for opposing discrimination or harassment in the workplace, complaining about the employer's failure to pay minimum wage or overtime, or stating that the employer failed to exercise FMLA rights or an NLRA right to participate in a protected concerted activity.

State laws often prohibit retaliation against employees who apply for benefits related to a workplace injury or who are forced to take leave because of a workplace injury.

State laws may provide for claims in circumstances where the employer terminated the employee for refusing to commit a criminal act or where the employer has breached the covenant of good faith and fair dealing. Further, many states have "lawful activities statutes" whereby an employer may not terminate an employee for engaging in lawful off-duty conduct.

Both federal and state laws also provide protections to certain categories of whistleblowers, including those who report financial misconduct of a company or its employees.

For many unlawful termination claims, there is a federal, state, or local agency dedicated to investigating and resolving such claims. Plaintiffs are also typically able to bring their claims in court (sometimes provided they have exhausted their remedies at an agency level first).

Successful plaintiffs in such actions can be awarded a variety of damages, including back pay, front pay, compensatory damages, punitive/exemplary damages, liquidated damages, attorneys' fees, court costs, and interest.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Employers are allowed to transfer, sell, or restructure businesses at their discretion. Typically, the contract regarding the transfer, sale, or restructuring addresses the impact of the transaction on the employees.

While an employer is free to sell its business or go out of business altogether, other decisions (including by a purchaser of the business) may be penalized under the NLRA if unlawfully intended to rid the business of the obligation to negotiate with the employees' chosen union. Furthermore, such business decisions may also implicate the enforceability of noncompetition agreements in some states.

II. RESTRUCTURING

Notification

As stated above, the WARN Act may require that a covered employer provide 60 days' advance notice if the transaction results in a plant closing or mass layoff. State and local laws may impose differing requirements.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Employers typically maintain a confidentiality policy that defines what confidential information is and prohibits employees from using or disclosing it, except for the employer's business purposes. Employers should be careful to ensure that the policy does not infringe on employees' rights under federal, state, or local law to share information about the terms and conditions of their employment, make protected disclosures to government agencies, or discuss information relating to unlawful employment practices.

Often, employers will require that employees sign confidentiality agreements, which are more detailed than the basic policies.

Many states provide employers with the right to sue employees and former employees who misappropriate confidential, proprietary, and trade secret information, even in the absence of a confidentiality agreement. The Defend Trade Secrets Act of 2016 provides a federal civil court remedy for acts of trade-secret misappropriation, which includes uniform definitions for "trade secrets" and "misappropriation," as well as a uniform set of procedural and evidentiary rules to be used in federal courts in such cases.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

Employers can typically require employees to sign noncompetition provisions (restricting the employee's ability to work for a competitor post-employment), nonsolicitation provisions (restricting the employee's ability to solicit customers post-employment), and anti-raid provisions (restricting the employee's ability to hire employees or contractors post-employment). State law governs such provisions and often requires reasonable restrictions on the temporal length, geographic scope, and subject matter. The laws regarding such provisions vary from state to state, and some states do not permit such restrictions at all except in narrow circumstances.

III. PRIVACY OBLIGATIONS

Federal law requires employers to keep employee medical information in a separate file that can be accessed only by those with the need to do so.

Some state laws provide employees with privacy protections with respect to their employment information and personal data, including biometric data.

Some state laws require that employees and former employees be allowed access to their personnel files upon request.

IV. WORKPLACE SURVEILLANCE

Employers generally are allowed to monitor the workplace as well as electronic networks (i.e., email) for security purposes (although they should provide notice of such intent to eliminate any expectation of privacy), and state laws may mandate specific notice and consent requirements.

The NLRA prohibits employers from implementing workplace surveillance in a manner that restricts employee participation in protected concerted activity (e.g., collective bargaining or unionization). For example, an employer may not begin surveillance in response to a union organizing campaign.

V. WORKPLACE INVESTIGATIONS

Employers can generally investigate misconduct in the workplace and manage, discipline, and terminate an employee's employment based on the same.

Employee complaints about violations of law (sexual harassment, discrimination, retaliation, etc.) should be investigated promptly and corrective action taken where appropriate. In many cases, such investigations can serve as a defense to later claims.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employers may set workplace conduct rules and production standards at their discretion so long as workplace rules do not infringe on an employee's rights to engage in protected concerted activity under the NLRA.

Employers may manage, discipline, and terminate an employee based on an employee's failure to comply with workplace conduct rules or production standards.

II. DISCRIMINATION

Employers may not make employment decisions based on membership in a protected group. Federally protected groups include, but are not limited to, sex, pregnancy, religion, color, race, national origin, veteran status, age (40 or older), disability, sexual orientation, gender identity, and genetic information. States and municipalities will sometimes also protect other traits.

Employers may not maintain facially neutral employment policies that tend to have a disparate impact on (i.e., disproportionately affect) employees in a certain protected class.

The ADA, as well as many state laws, requires employers to reasonably accommodate qualified employees with disabilities so that they may perform the essential functions of their positions. Reasonable accommodation of religious practices is also required. The PWFA, along with state and local laws, requires covered employers to provide reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

III. HARASSMENT

Federal law also prohibits harassment of employees based on protected traits.

Employers should provide training to employees on and maintain policies prohibiting harassment and discrimination to decrease the risk of such claims or provide affirmative defenses to them. Employee complaints about violations of law (sexual harassment, discrimination, retaliation, etc.) should be investigated promptly and corrective action taken where appropriate. In many cases, such investigations can serve as a defense to later claims.

State laws often mirror or increase protections for employees against harassment.

Some states and municipalities require maintenance of anti-harassment policies and provision of anti-harassment and related training.

IV. RETALIATION

Federal law prohibits retaliating against employees who:

- Make complaints regarding discrimination or harassment.
- Make complaints regarding payment of minimum wage and overtime.
- Exercise their rights under the FMLA.
- Exercise their rights under the NLRA.
- Exercise their rights under the Occupational Safety and Health Act.

State laws may provide for similar or greater protections.

State laws often prohibit retaliation against employees who are forced to take leave for a workplace injury.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, the Sarbanes-Oxley Act, and various state laws also protect "whistleblowers" in certain situations (particularly with regard to financial misconduct by a company or its employees and the reporting of such). Some state laws also prohibit retaliation against employees for reporting other violations of law or public policy.

V. BULLYING

Some states have enacted workplace bullying laws that prohibit abusive conduct of employees in workplaces even if the conduct is not based on the employee's protected traits and, thus, is not otherwise prohibited by discrimination and harassment laws.

VI. UNIONS

Representation

Under the NLRA, employees have the right to select a union to negotiate the terms and conditions of their employment. Employees may exercise this right by filing a petition for election with the NLRB. If the employees vote to have a union represent them during the election process, the employer is then obligated to negotiate with the union before making any changes (even favorable changes) to the employees' terms and conditions of employment. Unions are not as common as they used to be. Union activity tends to be concentrated in the manufacturing, government, teaching, health care, mining, and transportation industries, though the hospitality industry is experiencing increased union activity.

The Railway Labor Act governs the railway and airline industries but similarly allows for employees to use unions to negotiate collectively.

Right of Entry

An employer can restrict a union's right of access to the employer's property but only if it does so consistently with how it restricts third parties. In other words, the employer may not restrict only a union's access to the facility while allowing access to other third parties.

Industrial Disputes

Generally, employers may use lockouts and employees may use strikes as economic weapons during the bargaining process. Typically, once a contract is entered into, the contract will prohibit use of such means during the term of the contract.

The Railway Labor Act restricts use of such economic weapons for the railway and airline industries.

VII. REMOTE/HYBRID WORK

Many employers are permitting employees to work remotely on a full-time or part-time basis, resulting in various hybrid work situations. Some employers are also allowing employees to work remotely from a location that differs from the employer's physical worksite. As state and local laws vary greatly with regard to minimum entitlements, required policies, enforceability of restrictive covenants, and workplace regulations, employers should evaluate current policies for compliance with state and local laws, review employment requirements for new jurisdictions, and train managers and human resources personnel on location-specific requirements. Employers may consider implementing a remote work policy and entering into agreements with employees who will be working on a remote or hybrid basis. It is strongly recommended that employers seek legal guidance and advice on these matters.

VIII. PAY TRANSPARENCY AND EQUITY

The federal Equal Pay Act prohibits employers from paying men and women differently for the same work, with limited exceptions. State and local laws may prohibit employers from inquiring about an individual's salary or wage history during the hiring process and employment relationship. Other state and local laws require employers to include information about the rate of pay in job postings and to disseminate pay range information to current employees. A handful of state laws require employers to submit reports to the state on pay equity across certain protected characteristics. As state and local laws related to pay equity and transparency vary greatly, it is strongly recommended that employers seek legal guidance and advice on these matters.

AUTHORS AND CONTRIBUTORS

Erinn L. Rigney

Partner
Chicago
+1.312.807.4407
erinn.rigney@klgates.com

Yamilet Hurtado

Counsel
Miami
+1.305.539.3383
yamilet.hurtado@klgates.com