Labor & Employment Law: A global perspective

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Labor & Employment Networking Group
February 18, 2014
The Global Labor and Employment Landscape

- Complex, lengthy and/or costly - employer beware!
- Significant regulation and process – but nothing’s impossible
- Relatively quick and/or cheap to achieve business goals

* discrimination aside
Europe – Regional Overview

Europe – wide:

- Highly regulated, with some high risk countries
- Civil law (exc UK & Ireland)
- European Directives and Regulations
- For cause termination
- Employee representation
- High severance
- Data privacy

Complex, lengthy and / or costly - employer beware!

Significant regulation and process – but nothing’s impossible

Relatively quick and / or cheap to achieve business goals
Remuneration is mainly governed by the individual employment agreement, collective bargaining agreement and internal collective agreements.

The CBA for the banking sector in France provides:
- Minimum pay defined by grade and seniority
- Diploma bonus
- Increase of minimum pay if foreign languages are mastered
- Relocation leave

New compensation rules and restrictions effective as of January 1, 2014.
France - Employee Representation

- Only "representative unions" may designate union delegates
- Union delegates negotiate collective agreements with the employer
- The Union Section within the company represents the interests of the union, and may be constituted once the union has 2 members within the company
- A Union representative may be appointed by a non-representative union in companies employing at least fifty employees. In smaller companies this role may be held by an employee delegate.
France - Employee Representation

- Employee delegates
  - Aid employee / employer communication
  - Ensure the labor laws and regulations are complied with
- Works councils
  - Have economic and social prerogatives
    - European works council
    - Group works council
    - Central works council
    - Local or company works council
- Health and Safety committee
  - Preventive actions
  - Consultation prerogatives
  - Liaison and consultation with other employee representative bodies
- Employee representatives enjoy a protective status during their mandates and for a period thereafter
France – Dismissals

- Dismissal shall be for "real and serious cause"
  - Personal
  - Economic
- A specific and distinct procedure applies to each
- Various indemnities due on dismissal – as provided by the CBA or the employment agreement:
  - Notice (1-3 months depending on grade and seniority)
  - Severance indemnity, paid in the event of a non-disciplinary dismissal or a dismissal without real and serious cause
  - Legal indemnity in a disciplinary dismissal, except for serious or gross misconduct
  - Paid vacation indemnity
  - As the case may be, a non-compete indemnity
  - In the event of dismissal for serious or very serious cause, the employee will lose entitlement to most or all indemnities (except for the non-compete)
- Damages in the event of a dismissal without real and serious cause
France – Dismissals

- Social plan in the event of:
  - a redundancy for economic reasons
  - of more than ten employees
  - over a period of thirty days (other thresholds apply)
- And retraining scheme (Congé de reclasement)
- Specific rules and procedures apply to employees enjoying a protected status, such as: employee representatives, employees on maternity leave, employees elected as labor judges, union representatives.
Remuneration is mainly stipulated in individual employment contracts, CBA and statutory law.

New Remuneration Ordinance relating to the remuneration of employees and managers of financial institutions (InstitutsVergV) effective as of January 1, 2014

- requires institutions to put in place "appropriate" remuneration systems
- major institutions are required to appoint a remuneration officer to supervise

Section 25a of the Banking Act (KWG) states that the variable compensation (e.g. bonus payments) of employees and managers of financial institutions in Germany generally may not exceed 100% of the base salary (bonus cap)
Germany – Employee Representation

- **Unions**
  - employee representation on a sector level
  - CBA for the banking sector in Germany which provides for working hours, overtime pay, notice period, holiday, remuneration (applicable only if the employer is a member to the employer's association which agreed to the CBA)

- **Works Councils**
  - employee representation on a company level
  - company can have more than one works council, e.g. European works council, group works council, central works council, local works council
Germany – Employee Representation

- Information and consultation obligations in personal, social and economic matters. Works council’s consent is required before
  - an employee is hired
  - working time is allocated and overtime is instructed
- H&S issues, currently especially relating to mental health issues, may be enforced by the works council
- Operational changes (e.g. closing down a factory) trigger the duty to agree on a social compensation plan
- Costs of the works council are borne by the employer
  - suspended for works council activities at full pay
  - legal fees (regardless of the outcome)
Germany – Dismissals

- Strong protection against dismissal in Germany
- General protection in the Dismissal Protection Act which applies to (i) employers that employ more than 10 employees on a regular basis and (ii) employees who have been employed for more than 6 months
- No mandatory severance payments. Remedy of an unlawful termination is (i) reinstatement and (ii) reimbursement for salary which would have been due between the end of the notice period and the day of the court's ruling. Amicable settlements including a severance are very common
- Special protection for certain employees (members of the works council, registered disabled employees etc.)
- Specific rules in case of a collective dismissal
As of 1 January 2014, new notice periods for blue- and white-collar workers following the harmonisation of blue- and white collar worker status

- Abolition of probationary periods
- New outplacement entitlements
- As of 1 April 2014, new obligation to provide reasons for dismissal on request of the employee and abolition of rules on unfair dismissal applicable to blue-collar workers
- Salary freezes for 2013/14 in an attempt to make Belgium competitive compared with neighbouring countries
- Gradual abolition of difference in treatment as between blue- and white-collar workers in complementary pension schemes
Belgium

- A bill to restrict bonuses in the banking sector is currently being debated in Parliament and is expected to be approved by the finance commission shortly.
- The bill proposes that bonuses in credit institutions will have to be limited to the highest amount of the following 2 options:
  - 50% of the fixed annual remuneration; or
  - EUR 50,000
- Further restrictions apply: e.g. variable remuneration can only be granted insofar as the financial situation of the credit institution and the individual performance of the employee can justify it, at least 50% of the variable remuneration should be paid out in stock options or similar financial instruments, etc.
- We expect the Act to be published in April 2014.
Latin America - Regional Overview

Latin America – wide

✓ Employees are generally and explicitly favored
✓ Unions common, and in some places, required by law
✓ Termination justification very different to the U.S.
✓ Wage / benefit protection strong - even if employer in economic difficulty
✓ Equal pay for equal work
✓ Lawsuits / claims by employees are the norm, although generally NOT for the type of allegations we face in the U.S. (e.g., harassment, discrimination, etc.)
✓ Labor costs require careful and constant monitoring
✓ Planning crucial - arrangements can be hard to change
✓ Except for Mexico, the situation not expected to improve
✓ Terminations can be incredibly costly
✓ On due diligence, employment and taxes are often the biggest exposures throughout the region
No choice of law/jurisdiction

High cost of employment / inflexible re employment relationships

Mandatory union representation, CBAs are prevalent

Limited scope to negotiate terms of employment - even for senior executives

Strong litigation culture and complex procedural rules

Offer letters and “Annual salary” can trigger relevant issues

Stock-based compensation plans with claw-back conditions, non competes and replacement of previous stock awards

Public Labor Prosecutor

NEW: New Anti-Corruption Law, effective January 28, 2014:
- Establishes comprehensive system of corporate and individual liability for acts of corruption
- No exception for facilitation payments (different than FCPA that permits certain payments for routine government actions)
- Employers should revisit codes of conduct and internal policies and conduct employee training sessions
Employees receive mandatory severance. The amount of severance depends on whether termination is “for cause”—as defined by law.
Employees can sue for money damages if they believe they were harassed for *any* reason in the workplace.

**Brazilian Employment Law Summary**

**Severance Claims**

**Moral Damage & Harassment**
Brazilian Employment Law Summary

Severance Claims

Employees can sue for money damages if they believe they were harassed for *any* reason in the workplace.

Moral Damage & Harassment

Banco do Brasil sued for **$4 million USD** for sending up to 80 text messages in one day to employees pressuring higher commercial performance.
Brazilian Employment Law Summary

Severance Claims

Moral Damage & Harassment

Labor Public Prosecutor

Collective interests: Brings Claims on behalf of a group of employees-serious claims with serious penalties
Brazilian Employment Law Summary

Severance Claims

HSBC was sued by the Labor Public Prosecutor for hiring an investigation company that followed employees on medical leave to test the veracity of their claims. Judge ruled a violation of privacy and imposed a $27 million USD awarded.

Moral Damage & Harassment

Collective interests: Brings Claims on behalf of a group of employees-serious claims with serious penalties.
Brazilian Employment Law Summary

- Severance Claims
- Wage & Hour
- Labor Public Prosecutor
- Moral Damage & Harassment

Methods and timing of the payment of wages.
Brazilian Employment Law Summary

- Severance Claims
- Wage & Hour
- Labor Public Prosecutor
- Moral Damage & Harassment
- Miscellaneous

Variable Compensation; Workplace Injuries; Subsidiary Liability; Classification
Brazil – Collective Dismissals

- Collective redundancies not governed by law, but may be governed by CBA
- Union should be involved in mass layoffs
- Process can take a few weeks to several months (years if the matter ends up in court)
- Social plan / selection depends on negotiation with the union
- Certain employees protected against dismissal
- Costs dependent on the sector and economic situation
- Injunction possible to reinstate employees / delay the process
Asia Pacific – Regional Overview

Asia Pacific – wide:

- Each jurisdiction has a different legal history and influences
- Hong Kong and China highlight key differences between common law and civil code systems
- The cultural context and impact cannot be underestimated
- The relationships locally are critical to success but the biggest risk
Asia Pacific – Managing Reductions in Force

- A total closure is invariably easier than restructuring in strict employment law terms
- Prohibited categories and criminal sanctions make practical solutions challenging
- Mutually agreed exits are common to avoid local redundancy obligations but impose additional costs
- Reinstatement and protected categories are real risks
Australia – Recent Development

- New, Important Bullying Laws, effective January 1, 2014:
  - A person is “bullied at work” where an individual or group repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member, and that behavior creates a risk to health and safety (includes bullying by clients or regular visitors)
  - Allows employees to apply directly to the Fair Work Commission for an order to stop bullying
  - Employers should review policies, implement complaints mechanisms, train employees
Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013, effective December 9, 2013:

- Seeks to protect women in the workplace from harassment
- Requires employers to institute an internal complaints committee, organize awareness programs, post information about harassment