# CONTENTS

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>04</td>
</tr>
<tr>
<td>AUSTRALIA</td>
<td>05</td>
</tr>
<tr>
<td>AUSTRIA</td>
<td>12</td>
</tr>
<tr>
<td>BAHRAIN</td>
<td>17</td>
</tr>
<tr>
<td>BELGIUM</td>
<td>23</td>
</tr>
<tr>
<td>BRAZIL</td>
<td>30</td>
</tr>
<tr>
<td>CANADA</td>
<td>35</td>
</tr>
<tr>
<td>CHINA</td>
<td>44</td>
</tr>
<tr>
<td>CZECH REPUBLIC</td>
<td>49</td>
</tr>
<tr>
<td>DENMARK</td>
<td>55</td>
</tr>
<tr>
<td>FINLAND</td>
<td>62</td>
</tr>
<tr>
<td>FRANCE</td>
<td>67</td>
</tr>
<tr>
<td>GERMANY</td>
<td>75</td>
</tr>
<tr>
<td>HONG KONG</td>
<td>81</td>
</tr>
<tr>
<td>HUNGARY</td>
<td>88</td>
</tr>
<tr>
<td>INDIA</td>
<td>95</td>
</tr>
<tr>
<td>INDONESIA</td>
<td>106</td>
</tr>
<tr>
<td>IRELAND</td>
<td>114</td>
</tr>
<tr>
<td>ISRAEL</td>
<td>119</td>
</tr>
<tr>
<td>ITALY</td>
<td>125</td>
</tr>
<tr>
<td>JAPAN</td>
<td>131</td>
</tr>
<tr>
<td>KUWAIT</td>
<td>139</td>
</tr>
<tr>
<td>LUXEMBOURG</td>
<td>145</td>
</tr>
<tr>
<td>MEXICO</td>
<td>152</td>
</tr>
<tr>
<td>NETHERLANDS</td>
<td>158</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>164</td>
</tr>
<tr>
<td>NORWAY</td>
<td>169</td>
</tr>
<tr>
<td>OMAN</td>
<td>175</td>
</tr>
<tr>
<td>POLAND</td>
<td>181</td>
</tr>
<tr>
<td>QATAR</td>
<td>189</td>
</tr>
<tr>
<td>ROMANIA</td>
<td>196</td>
</tr>
<tr>
<td>RUSSIA</td>
<td>203</td>
</tr>
<tr>
<td>SAUDI ARABIA</td>
<td>209</td>
</tr>
<tr>
<td>SINGAPORE</td>
<td>215</td>
</tr>
</tbody>
</table>
**CONTENTS – cont**

- SOUTH AFRICA ................................................................. 225
- SOUTH KOREA ............................................................... 232
- SPAIN ........................................................................ 238
- SWEDEN ....................................................................... 245
- SWITZERLAND ................................................................. 252
- TAIWAN ........................................................................ 258
- THAILAND ....................................................................... 264
- TURKEY ........................................................................ 273
- UNITED ARAB EMIRATES ........................................... 279
- UNITED KINGDOM ............................................................ 285
- UNITED STATES ............................................................... 291
- VENEZUELA .................................................................... 297
- COUNTRY CONTACTS ....................................................... 303
INTRODUCTION


GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The Guide to Going Global series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This third edition of our popular guide covers all of the employment and labor law basics in 45 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and, for the first time, Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper’s global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

KEY CONTACTS

Tim Marshall
Partner
Global Co-Chair, Employment Group
T +44 (0)20 7796 6617
tim.marshall@dlapiper.com

Michael Sheehan
Partner
Global Co-Chair, Employment Group
T +1 312 368 7024
michael.sheehan@dlapiper.com

Ute Krudewagen
Partner
Editor, Guide to Going Global – Employment
T +1 650 833 2245
ute.krudewagen@dlapiper.com
AUSTRALIA

LEGAL SYSTEM, CURRENCY, LANGUAGE
Common law jurisdiction with employment laws that operate at both the federal and state levels, Australian Dollar (AUD), English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage employees in Australia subject to business, corporate and tax considerations and proper payroll registration. Personal income tax must be paid by employees on their assessable income. However, employers are obliged to deduct tax from an employee’s remuneration (called Pay as You Go or PAYG tax withholding) and also to pay 9.50% of salary (which will gradually be increased to 12%) into the employee’s superannuation account (a form of pension system).

PRE-HIRE CHECKS

REQUIRED
Immigration compliance.

PERMISSIBLE
Permitted with applicant’s consent and subject to relevant discrimination laws. Offers of employment may be subject to criminal record checks or medical examination (if necessary to determine fitness for a particular job).

IMMIGRATION
Foreign nationals must apply for visas to visit, live and work in Australia. Application is through the various immigration programs and visas administered by the Australian the Department of Immigration and Border Protection (DIBP).

The subclass 457 Temporary Work (Skilled) Visa is the most commonly used visa for employers to sponsor foreign nationals who are skilled workers, and where there is a genuine skills shortage, to live and work in Australia for up to 4 years.

HIRING OPTIONS

EMPLOYEE
Individuals can be recruited on either a full-time, part-time or casual basis (which means that they are employed by hour or by day) or a fixed-term contract for a limited duration.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company.
AGENCY WORKER
Agency or temporary workers are used widely by some organizations for short periods. Agency staff are not engaged as employees of the business where they are placed on assignment.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
A contract can be oral, but written contracts are strongly recommended and all new employees must be given a Fair Work Information Statement containing key terms as soon as possible after the commencement of employment.

PROBATIONARY PERIODS
Permissible. No statutory limit, but 3-6 months is common.

POLICIES
Not mandatory, but some policies (especially regarding anti-discrimination & harassment, bullying and occupational health and safety) are strongly encouraged by laws and regulations.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third-party.

LANGUAGE REQUIREMENTS
No statutory requirements.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
Most employees are covered by federal minimum employment rights; a minority derive minimum rights from state jurisdictions.

WORKING HOURS
38 hours a week, although the employer may require an employee to work reasonable additional hours.

OVERTIME
Overtime payment (or overtime loading) may be required under an applicable award or enterprise agreement.

WAGES
National minimum wage as of 1 July 2015 is AUD656.90 per week or AUD17.29 per hour. This is reviewed annually.
VACATION
4 weeks’ paid annual leave for each year of service accruing progressively. In addition, an employee is entitled to be absent from work on a day that is a public holiday (8 days in total are observed nationally). Casual employees would not normally be paid for their vacation. To make up for this, they receive extra pay, called casual loading.

SICK LEAVE & PAY
Employees entitled to take 10 days of paid personal/carer’s leave for each year of service. An employee may take the leave if he/she is not fit for work because of personal illness or injury, or to provide support to a member of the employee’s immediate family who requires care or support because of personal illness/injury or an unexpected emergency. Casual employees would not normally be paid for their sick leave. To make up for this, they receive extra pay, called casual loading.

MATERNITY/PARENTAL LEAVE & PAY
Each member of an employee couple (not necessarily employed by the same employer) is entitled to be absent from work for separate periods of up to 12 months in a single continuous period in relation to the birth or adoption of a child. As a result, the couple employees may take up to a total of 24 months’ leave between them. However, if only one person is taking leave as opposed to both persons of the couple, or if one member of an employee couple wishes to take more than 12 months’ leave, the employee may request a longer period from the employer. The period of extension cannot exceed 12 months less any period of parental leave taken, or intended to be taken, by the other member of an employee couple.

If both members of the couple are taking unpaid leave, the leave entitlement has to be used in 2 separate periods. However, there are the exceptions of “concurrent leave” and “keeping in touch” days, where the couple is entitled to take up to 8 weeks of unpaid parental leave at the same time.

A paid parental leave scheme exists, entitling eligible employees to 18 weeks’ paid parental leave at the national minimum wage, to be paid by the government via employers.

DISCRIMINATION
The characteristics protected under equal opportunity and anti-discrimination legislation in the various states and territories of Australia, as well as in federal legislation, vary slightly from jurisdiction to jurisdiction. The protected characteristics common to all jurisdictions are: race, color, sex, sexual preference, age, physical or mental disability, marital or relationship status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction, social origin, gender identity, intersex status or trade union membership.
BENEFITS & PENSIONS

Under the Superannuation Guarantee scheme, employers are effectively required to contribute 9.25% of employees’ quarterly “earnings base” to employee superannuation funds. There is a minimum monthly wage that should be paid before an employee is entitled to the 9.50% and a maximum contribution base. Most employers make regular contributions to the employees’ superannuation fund rather than making lump sum quarterly or annual contributions.

Australian law also requires that all employers maintain adequate workers’ compensation insurance for the benefit of workers injured during the course of their employment.

DATA PRIVACY

Australia has very stringent data privacy obligations. As a general rule, personally identifiable data can only be processed if it is required for the performance of the employment contract and constitutes an employee record. Certain acts and practices are exempt from the application of Australia’s data privacy laws, but there are strict criteria which must be met for an exemption to apply. Employee records are generally exempt but this exemption will not apply to documents that come into existence prior to the employment relationship (such as pre-employment/hire documentation). At the time it collects personal information, the employer is required to provide the individual with a statement setting out the company’s obligations under Australia’s data privacy laws and the individual’s rights. Further restrictions apply for sensitive personal data.

The monitoring of individuals and their data is covered by various surveillance legislation in each state/territory. Essentially surveillance of employees is prohibited in sensitive areas such as washrooms and change rooms, unless the surveillance device is installed pursuant to a warrant or authorization. Surveillance is permitted in public areas if it conforms with relevant legislation. The monitoring of an employee’s use of a work computer (emails and Internet browsing) is governed by specific laws in some states.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

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

Under the Fair Work Act, there are rules which apply if there has been a “transfer of business”. The transfer of business rules apply when there is a connection between two employers (including the sale and purchase 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 and there has been no significant change to the work performed by those employees. The main effect of the transfer of business rules is that a transferrable instrument (i.e., a collective agreement) that covered 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 transfer of business rules if it deems it appropriate.
EMPLOYEE REPRESENTATION

Under federal law, employees can choose to be represented by a union or not. As a consequence, any union validly appointed to represent an employee or employees must be recognized and dealt with according to the law. There are no employee representatives or works councils.

TERMINATION

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 (resignation) by the employee.

WHO IS SUBJECT TO TERMINATION LAWS
Employees who have completed 6 months of service with their employer (or 12 months in the case of a small business employer with fewer than 15 employees) and earn less than the high income threshold (currently AUD136,700); or who are covered by a modern award or enterprise agreement, are eligible to make a claim for unfair dismissal.

PROHIBITED OR RESTRICTED TERMINATIONS
Employers are prohibited from taking “adverse action” (including termination) against other persons because the other person has, or exercises a “workplace right”, or engages 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 because of illness or injury.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
N/A.

MASS LAYOFF RULES
Reporting requirements apply where a decision is made to make 15 or more employees redundant, including notifying the relevant government agency and relevant unions.

NOTICE
Between 1 week and 4 weeks depending on length of continuous employment (although employment contract may specify longer notice period). Where an employee is over 45 years of age and has completed at least 2 years’ continuous service, he or she will be entitled to another week’s notice.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Employer can pay in lieu of notice. No right to garden leave unless specified in the contract.

SEVERANCE
The entitlement to severance as a result of a termination by reason of redundancy is based on a sliding scale and calculated by reference to the length of the employee’s period of continuous service on termination.
<table>
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<th>Period of continuous service</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Less than 12 months of service</td>
<td>0</td>
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<tr>
<td>12 months to less than 2 years of service</td>
<td>4 weeks’ pay</td>
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<td>2 years of service to less than 3 years of service</td>
<td>6 weeks’ pay</td>
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<td>3 years of service to less than 4 years of service</td>
<td>7 weeks’ pay</td>
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<td>4 years of service to less than 5 years of service</td>
<td>8 weeks’ pay</td>
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<td>6 years of service to less than 7 years of service</td>
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<td>7 years of service to less than 8 years of service</td>
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<td>8 years of service to less than 9 years of service</td>
<td>14 weeks’ pay</td>
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<tr>
<td>9 years of service to less than 10 years of service</td>
<td>16 weeks’ pay</td>
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<tr>
<td>10 years and over</td>
<td>12 weeks’ pay</td>
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(Note: The scale does drop from 16 weeks to 12 weeks. This is an odd historical anomaly that continues to be the case and is usually justified by the employee’s entitlement to long service leave after reaching 10 years’ service.)

A “week’s pay” is generally calculated on the basis of the employee’s entire compensation package (including cash equivalent components).

Service prior to 1 January 2010 is only counted if the employee had an entitlement to redundancy pay under some other instrument.

**POST-TERMINATION RESTRAINTS**

Those that protect the employer’s legitimate business interests can be enforced if reasonable in all the circumstances.

**NON-COMPETES**

Typically no longer than 12 months (with some exceptions).

**CUSTOMER NON-SOLICITS**

Permissible.

**EMPLOYEE NON-SOLICITS**

Permissible.

**WAIVERS**

Enforceable to waive contractual rights. Statutory entitlements cannot be waived or contracted out of.
REMEDIES

DISCRIMINATION
If an employee thinks they have been subject to “adverse action” (including dismissal) because of a protected attribute, they may apply for a remedy under the Fair Work Act. Remedies include compensation (there is no cap on the amount of compensation that can be awarded) and reinstatement. A civil penalty can also be ordered.

Compensatory remedies for discrimination can also be sought under Federal or State anti-discrimination legislation. Damages for economic loss and general damages (for hurt and suffering) may be ordered.

UNFAIR DISMISSAL
If the Commission decides that the employee has been unfairly dismissed, it may order the reinstatement of the dismissed employee or, if that is not practicable, the payment of compensation up to a maximum of 6 months’ remuneration.

FAILURE TO INFORM & CONSULT
An employer who breaches any of the general protections may incur a penalty. Further, an employee, or a union acting on behalf of a member, may seek an injunction to stop the prohibited conduct or seek compensation (noting there is no cap on the amount of compensation that can be awarded).

CRIMINAL SANCTIONS
There are criminal sanctions for breach of relevant work health and safety laws.
AUSTRIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil Law. Member of the European Union (EU), so required to implement relevant EU Directives. Euro (€). German.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in Austria with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for pay-as-you-earn (i.e., social insurance [employer and employee portion], Severance Payment Funds [1.53% to the so called BV-Kasse], local taxes) and income tax to be done through payroll.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance.

PERMISSIBLE
Criminal and credit reference checks are only permissible for specific roles (e.g., certain finance positions) and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

Nationals of the European Economic Area (EEA) and Switzerland have a right to work in Austria (with exceptions for Croatia). For other non-Austrian nationals an immigration permission and a work permit is required.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure.

AGENCY WORKER
Agency workers are common and typically will be either employees or workers. Agency workers have the right to equal treatment to employees in relation to pay and other benefits terms.
EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Employment contracts are not required per se, but employees must be provided with certain minimum terms defined by Austrian labor law. Accordingly, contracts are common.

PROBATIONARY PERIODS
Permissible for (in general) the first month of employment.

POLICIES
No mandatory policies.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third party.

LANGUAGE REQUIREMENTS
No statutory requirements as long as the employee understands the agreement.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All employees are entitled to minimum employment rights provided by law. In addition, most employees are entitled to minimum rights provided by the applicable collective bargaining agreement. Since in Austria almost every industry branch has its collective bargaining agreement, minimum rights may differ (e.g., minimum wages, annual leave, working time).

WORKING HOURS
In general, 40 hours a week and 8 hours a day limit on working time. Most collective bargaining agreements provide for a 38.5-hour week.

OVERTIME
Legal obligation to provide payment for overtime worked, but individual agreements for all-in salary in general possible (depending on the individual status of the employee).

WAGES
Mandatory minimum wages provided in collective bargaining agreements; not by law.

VACATION
25 working days per year (30 working days per year after 25 years’ seniority).

SICK LEAVE & PAY
Legal obligation to provide payment for 6 weeks; after that period, obligation to pay 1/2 for another 4 weeks.

Depending upon whether the employee is white or blue collar worker and seniority, those periods may differ slightly.
MATERNITY/PARENTAL LEAVE & PAY
Minimum maternity leave starting 8 weeks before giving birth (according to the calculated birth date by a physician) ending 8 weeks after birth. The mother is paid a portion of her wages from the social insurance in that period. Unpaid parental leave with the right to return to work for up to 2 years after birth of the child.

DISCRIMINATION
Characteristics protected from unlawful discrimination and harassment: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

BENEFITS & PENSIONS
Currently, no benefits required above those covered under social insurance contributions.

DATA PRIVACY
Employees must be generally notified of personal data processing (and in certain cases, give consent) if the data processing is not necessary in order to fulfill the employment contract or labour law obligations. Then, registration with the Austrian Data Protection Authority is mandatory. Strict rules apply to data transfer outside the EEA. Monitoring employees usually requires an agreement with the work counsel (if any) or an individual agreement with each employee.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
Automatic transfer under the Austrian rules implementing the EU Acquired Rights Directive in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employees and/or the works counsel (if any). Any dismissal connected to the transfer would be void unless for a good reason.

EMPLOYEE REPRESENTATION
Trade unions are prevalent in almost every sector. Collective bargaining agreements are very common, including industry-wide collective agreements. Every employee in an applicable sector by law is a member of his or her trade union. Works councils are very common and may be established in every business with at least 5 employees.

TERMINATION

GROUNDS
No grounds required. In special cases (e.g., if termination is exceptionally hard for the employee and therefore socially inadequate), the employee may claim unfair termination and reinstatement. Where the termination is deemed socially inadequate, the employer would need business reasons or reasons relating to the employee to justify the termination.

EMPLOYEES SUBJECT TO TERMINATION LAWS
Employees with fewer than 6 months’ seniority have no unfair dismissal protection.
**PROHIBITED OR RESTRICTED TERMINATIONS**
Certain employees, e.g., pregnant employees, disabled employees, members of works councils, etc., enjoy special protection and their termination requires prior approval by the competent court or institution.

**THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**
With the exceptions outlined above, generally, approval is not required to implement a termination. If a works council exists, the works council has a right of information and may give a statement. Special documents, e.g., termination in writing, are in general not mandatory (collective bargaining agreements or special legal provisions, e.g., with respect to trainees, may provide different regulations).

**MASS LAYOFF RULES**
Information of the competent Austrian authorities is mandatory for a mass layoff, that is, if the employer employs between 20 and 100 employees, termination of at least 5 employees, if the employer employs between 100 and 600 employees, termination of at least 5% of the employees, if the employer employs more than 600 employees, termination of at least 30 employees, triggers an obligation to inform the competent authorities. Termination of at least 5 employees each older than 50 years triggers an obligation to inform the competent authorities regardless of the threshold outlined above. Furthermore, redundancy programs must be implemented together with the respective works council.

**NOTICE**
For the employer, minimum of 6 weeks’ statutory notice to the end of every calendar quarter (possible agreement to 6 weeks to the end of every month and/or 15th of every month, which is common); additional notice due to seniority. Not required for terminations for cause.

For the employee, 1 month to the end of every month (if not agreed otherwise). Not required for terminations for cause.

**STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE**
No payment in lieu of notice. Right to place an employee on garden leave depends on contract terms.

**SEVERANCE**
Every month during employment, the employer is obliged to pay 1.53% of the gross salary to a public insurer (Mitarbeitervorsorgekasse). Employee then has a severance right against that insurer, but there is no additional severance payable by the employer.

**POST-TERMINATION RESTRAINTS**
Those that protect the employer’s legitimate business interests can be enforced if reasonable. Garden leave is common for senior employees.
NON-COMPETES
For special employees with a higher income permitted, but not longer than 12 months. If the non-competition clause is valid and enforceable (depending if the (i) employee terminates the employment or if (ii) the employee has been terminated for good reason with immediate effect or if (iii) the employee has terminated the employment with immediate effect without good reason), there is no requirement for payment during the non-competition period. If it is not enforceable (e.g., if the employer terminates the employment without good reason), the employer may pay the salary during the non-competition period in order to make the non-competition clause enforceable.

CUSTOMER NON-SOLICITS
Permissible in narrow circumstances.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS
Not enforceable for the future with respect to statutory rights. With respect to rights already accrued, Austrian courts usually are of the opinion that employees may not waive them.

REMEDIES

DISCRIMINATION
Compensation, based on the claimant’s financial loss and injury to feelings as well as recommendation that the employer takes action.

UNFAIR DISMISSAL
Claim for reinstatement of the employment agreement. Alternatively compensation based on the claimant’s financial loss as a result of the employer having failed to give proper notice.

FAILURE TO INFORM & CONSULT
Nullity of termination if information of work council or an authority is required.

CRIMINAL SANCTIONS
Criminal sanctions are not generally a concern.
BAHRAIN

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law system—employment matters are governed by Law No. 36 of 2012 (Labor Law) as amended. Bahraini Dinar (BHD). Official language is Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign employer cannot directly engage employees in Bahrain without being registered under the Commercial Registry in the Ministry of Industry and Commerce.

Foreign employers are required to register at the Labor Market Regulatory Authority (LMRA). Following the registration process, work permits will be allocated, whereby the number will depend on the type of activity of the establishment, through the Expats Management System (EMS).

As stipulated in the LMRA Law, establishments are required to pay monthly fees on every expatriate employee working for it.

Payroll Set-Up: (see Minimum Wage, below)

PRE-HIRE CHECKS

REQUIRED

Foreign employees must receive prior approval from the LMRA and Ministry of Interior before they can be hired on local employment contracts. The level of background checking and screening carried out by the Bahrain authorities varies according to the nationality and proposed position of an individual.

PERMISSIBLE

Generally, employers in Bahrain are not able to obtain the same level of information from background checks as they can in other jurisdictions and, in most cases, the employees themselves will be required to provide this information. As such, a Certificate of Good Conduct from the Criminal Investigation Directorate is the most commonly requested document.

IMMIGRATION

In order to legally work and reside in Bahrain, all employees except Bahrain and GCC (Gulf Cooperation Council) nationals are required to have a residence visa and work permit under the sponsorship of their employer, which must have an entity registered in Bahrain.

When an employee is only required to work in Bahrain for a short period of time, there are alternative permits and visas that may be applied for, including the 72-hour visa, 7-day visa and business visas.
HIRING OPTIONS

EMPLOYEE
Unlimited or fixed term. Part-time employment is legally possible but is not common.

INDEPENDENT CONTRACTOR
There is no concept of a consultant, unless individuals have established their own professional licence and business, due to the requirement for employees to have sponsorship, which is generally obtained by the employer.

AGENCY WORKER
There is no general concept of an agency worker or “temp” in Bahrain. Some Bahraini-owned employment agencies are licensed to provide manpower on a temporary basis – such employees would remain under their sponsorship.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Unlike some other GCC countries, Bahrain has no requirement to sign a government contract. However, the contract entered into between the employer and the employee must be registered with the LMRA in order to obtain the employee’s work permit and residence visa. Under the Labor Law, the contract should be in Arabic, but in practice where contracts are drafted in another language, an Arabic translated version can be attached to fulfil this requirement.

PROBATIONARY PERIODS
Generally a duration of 3 months is allowed, although this may be increased up to a maximum of 6 months in respect of certain occupations.

POLICIES
Employees should be provided with any relevant staff handbook and the employer’s policies (if applicable) on commencement of employment. The Labor Law specifies that the company policies and internal regulations must be openly displayed to the employees.

THIRD-PARTY APPROVAL
The employment contract must be registered with the LMRA to obtain the employee’s work permit and residence visa. Strictly speaking, any contractual changes should be notified to the LMRA and amended on the filed employment contract copy.

LANGUAGE REQUIREMENTS
Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a contract has been drafted in a foreign language, an Arabic translated version can be attached to fulfil this requirement. If a document is registered in a dual language format and a dispute arises, then the Arabic version of the document will prevail.
MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All. Additional rights are also available to minor workers (those under the age of 18) and women.

WORKING HOURS
The maximum ordinary working hours is 48 hours per week at the rate of 8 hours per day. During the month of Ramadan, the maximum working hours is 36 hours per week at the rate of 6 hours per day.

OVERTIME
Not to exceed 2 hours per day.

WAGES
At present, Bahraini nationals, who hold high school diplomas, are entitled to a minimum wage of BHD270 monthly. Bahraini nationals, who hold diploma degrees, are entitled to a minimum wage of BHD350 monthly, and Bahraini nationals, who hold university degrees, are entitled to a minimum wage of BHD400.

VACATION
30 days’ vacation, where the employee’s period of service is at least 1 year accrued at a rate of 2.5 days a month. If an employee’s period of service is less than 1 year, leave is calculated on a pro-rated basis.

SICK LEAVE & PAY
Employees are not entitled to statutory sick leave until they have completed 3 months’ service and provided they have proved their sickness with a certificate from a physician approved by the employer. Employees are entitled to 55 days of sick leave per year of service thereafter (15 days at full pay, 20 days at half pay and the remaining 20 days without pay). The entitlement of a worker to sick leave on full or half pay may be accumulated for a period not exceeding 240 days.

MATERNITY/PARENTAL LEAVE & PAY
60 days’ maternity leave at full pay. An employee can take a further 15 consecutive or non-consecutive days if the employee falls ill as a result of her pregnancy or the delivery of her baby.

There is no concept of parental leave or pay in Bahrain.

DISCRIMINATION
The Labor Law prohibits discrimination in the payment of wages on the basis of sex, ethnic origin, language, religion or belief. Further, dismissals on the basis of sex, colour, religion, belief, social status, family responsibilities, a female worker’s pregnancy, childbirth or nursing her infant shall be deemed to be automatically unfair.
BENEFITS & PENSIONS

In respect of Bahraini national employees, the employer is required to set up (and contribute to) a pension fund. All other employees are entitled to receive an End of Service Gratuity (EOSG) on termination calculated by reference to age and length of service unless the employer contracts out of these arrangements with their employees by providing a savings scheme or pension scheme.

DATA PRIVACY

There are no clear laws in Bahrain comparable with those in the US or Europe concerning the handling and transmission of employees’ personal information, nor do any provisions address the cross-border flow of data. However, it is advisable to seek prior written consent to the processing of personal data from the employee to the extent necessary to address the various privacy protections set out in Bahrain’s laws, including the protections set out in the Bahrain Penal Code.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No automatic transfer principles and no laws covering business transfers. Employees transfer through termination and rehire in an asset deal.

EMPLOYEE REPRESENTATION

Trade unions are permissible in Bahrain and employers are required to consult with them in the event that an employee is re-trained to perform different job duties from the work originally agreed upon. Employees are also entitled to strike in defence of their interests according to the Labor Law.

TERMINATION

GROUNDS

Termination is possible on these grounds: during the probationary period, on the expiry of a fixed term contract, dismissal with notice provided it is for a valid reason, following a failure to improve performance after reasonable opportunity (60 days), resignation, incapacity or death, redundancy, retirement (age 60) and summary dismissal (by reason of any of the grounds listed in Article 107 of the Labor Law).

EMPLOYEES SUBJECT TO TERMINATION LAWS

All employees are subject to the Labor Law.

RESTRICTED OR PROHIBITED TERMINATIONS

Employees who have not exhausted their statutory sick leave entitlement are protected from dismissal on grounds of health, unless their full sick leave entitlement has been taken (i.e., 55 days per year of service). The worker may accumulate the balance of sick leave on full or partial pay to which the worker is entitled for a period not exceeding 240 days. Female employees are protected from dismissal during maternity leave and by reason of their marriage.
THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Any office closures must be reported to the Ministry of Labor. Bahrain nationals are generally entitled to higher protection from dismissal in such circumstances and may accordingly be awarded higher compensation payments by the authorities.

MASS LAYOFF RULES
Governed under Article 110 and 111 of the Labor Law.

NOTICE
30 days’ statutory notice.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Depends on Labor Law and contract of employment.

SEVERANCE
Unless terminated under Article 107 of the Labor Law, employees are entitled to salary and benefits up to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of a flight/air ticket to repatriate the employee to their home country unless the employee has obtained alternative sponsorship to remain in Bahrain, an end of service gratuity payment (EOSG) and reimbursement of unpaid business expenses.

In case of employer termination, employees are eligible for payment of an EOSG which accrues at the rate of half a month’s wage for each of the first 3 years of service and 1 month’s wage for each of the following years of service. The calculation is pro-rated for any fractions of a year of service that have not been completed.

POST-TERMINATION RESTRAINTS
It is permissible to have restrictive covenants contained in the contract of employment to the extent necessary to protect the legitimate interests of the employer, provided the nature of the employee’s work must have allowed them to know the company’s clients and/or know the secrets of the business.

The covenants must be restricted in relation to their duration (which must not exceed 1 year), geographical scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the contract of employment, as it is difficult to obtain an injunction in Bahrain, but contractual provisions imposing a penalty (rather than a genuine estimate of the loss incurred) are likely to be unenforceable.

NON-COMPETES
Typically no longer than 6 to 12 months.

CUSTOMER NON-SOLICITS
Typically no longer than 6 to 12 months.

EMPLOYEE NON-SOLICITS
Permissible.
**WAIVERS**
Waiver agreements are commonly used but there is no clear data to illustrate their positive effect.

**REMEDIES**

**DISCRIMINATION**
An employer’s termination shall be deemed to be automatically unfair if it is based on the employee’s sex, race, religion, belief, social status, family responsibilities, a female worker’s pregnancy, childbirth or nursing her infant. The employee will be entitled to compensation as detailed in arbitrary dismissal below.

**ARBITRARY DISMISSAL**
The employee is entitled to compensation equivalent to 3 days’ wages for each month of service and no less than 1.5 month’s wages up to a maximum of 18 month’s wages.

**FAILURE TO INFORM & CONSULT**
Not applicable.

**CRIMINAL SANCTIONS**
Criminal sanctions can be imposed for a variety of reasons, including but not limited to the breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.
BELGIUM

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil Law. Member of European Union (“EU”), so required to implement relevant EU Directives. Euro (EUR). Dutch, French and German.

CORPORATE PRESENCE REQUIREMENTS AND PAYROLL SET-UP

A foreign entity can engage employees in Belgium with proper registration as employer, proper payroll registrations and proper registration of the employees. Payment of social charges on remuneration, up to approximately 35% employer portion and up to approximately 13.07% employee portion) and income tax (up to 50%), to be done through payroll.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance (work permit and/or residence permit).

PERMISSIBLE
Criminal checks are only permissible for specific roles and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

Nationals of the European Economic Area (“EEA”) and Switzerland have a right to work in Belgium (with the exception of Croatia). For other non-Belgian nationals, work and/or residence permit likely to be required.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term (including specific assignment), full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status. (Also sales representatives, home and teleworkers, students, etc.).

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to requalification of the service agreement to an employment contract.
AGENCY WORKER
Agency workers are common, but can only be employed to temporarily replace an employee whose employment contract is terminated or suspended, to address an extraordinary increase of the work load, or to fill in a vacancy. Each type of agency work is subject to strict conditions and is limited in time. Agency workers have the right to equal treatment to employees in relation to pay and other benefits.

EMPLOYMENT CONTRACTS AND POLICIES

EMPLOYMENT CONTRACTS
Specific requirements for written employment contract with regard to specific clauses (e.g., trial period, non-compete, and notice) and specific contracts (e.g., fixed-term, part-time, and working from home arrangements).

PROBATIONARY PERIODS
It is no longer permissible to insert a trial period into an employment contract, except in an employment contract for students or for temporary work.

POLICIES
Work regulations, containing applicable work schedules, an overview of disciplinary measures, grievance procedure, a policy on alcohol and drug abuse, etc., as well as written health and safety policy (global prevention plan, yearly action plan, dynamic risk prevention system, risk analysis) are mandatory.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract with, or get approval from, any third-party. A copy of the work regulations and its annexes, as well as any modification of the work regulations and/or its annexes, have to be sent to the Social Inspection.

LANGUAGE REQUIREMENTS
Dutch, French or German mandatory, depending on the employee’s place of work or the location of the exploitation seat from which the employee is working.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All, but some categories of employees are excluded from the scope of the legislation on working time and overtime, such as employees with a managerial position or a position of trust, strictly defined by royal decree, sales representatives and home workers.

WORKING HOURS
Average of 38 hours per week limit on working time. Deviations based on industry level provided in collective bargaining agreements within the competent joint committees.
OVERTIME
In principle only allowed due to certain events (e.g., sudden, unexpected increase of the workload, work to prevent or repair damages to assets) under certain conditions (e.g., prior consent of the trade union delegation, notification to the Belgian Federal Government Service of Employment, Labor and Social Dialogue).

WAGES
At least EUR 1,559.38 gross per month; deviations on industry level and deviations for employees younger than 21 years or with limited seniority.

VACATION
30 days per year (which includes 10 public holidays); deviations on industry level possible.

SICK LEAVE AND PAY
Employees are entitled to sick leave in case of incapacity of work. Employees are entitled to 30 days guaranteed remuneration, paid by the employer: (i) if the employee is a white-collar worker: equal to 100% of the employee’s remuneration; (ii) if the employee is a blue-collar worker: equal to 100% of the remuneration during the first 7 days, reduced to 85.88% of the remuneration from day 8 until day 14 inclusive, further reduced from day 15 until day 30 inclusive. Afterwards, the employees are entitled to disability allowances paid by the National Health Service.

MATERNITY/PARENTAL LEAVE AND PAY
15 weeks of maternity leave (deviations in case of multiple birth). During leave, allowances paid by the National Health Service (82% of pay for first 30 days, then 75%); right to return to work and protection against dismissal. 10 days of paternity leave at birth; right to return to work and protection against dismissal. 4 months of paternal leave; possibility to take up part-time parental leave (1/2 or 1/5 of working time); right to return to work, protection against dismissal.

DISCRIMINATION
Characteristics protected from unlawful discrimination and harassment: age, disability, gender, marital status, religion or belief, sex or sexual orientation, political conviction, physical or genetic characteristic, language, current or future health, affiliation to trade union.

BENEFITS AND PENSIONS
Currently, no benefits obligatory above those covered under social insurance contributions. Sectorial pension schemes within some joint committees. Strict legal framework with regard to complementary pension schemes.

DATA PRIVACY
Employees generally must be notified of personal data processing (and in certain cases, give consent). Registrations with the Privacy Commission are required in certain cases. Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring email and Internet use and use of cameras at the work place.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive/ Collective Bargaining Agreement no 32 bis in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employee representative bodies, or in absence of employee representative bodies, information to employees. Any dismissal connected to the transfer is unfair unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

Trade unions are prevalent. Approximately 50% of workers are members. Works councils have to be installed by social elections if the company has an average of 100 employees. Committees for Prevention and Protection at Work have to be installed by social elections if the company has an average of 50 employees. Industry level collective bargaining agreements, concluded within the joint committees (permanent bodies on the industry level in which an equal number of employer’s federations and trade unions are represented and that have as their main task concluding industry-wide collective bargaining agreements and mediate in social conflicts) are common.

TERMINATION

GROUNDS

In principle no obligation to justify the dismissal, except in case of a dismissal for serious cause. However, on the request of the employee, the employer will have to explain the dismissal on grounds which relate to the employee’s work ability, his/her behavior at work or the employer’s business necessities, or the employee may be entitled to a complementary indemnity.

EMPLOYEES SUBJECT TO TERMINATION LAWS

All.

RESTRICTED OR PROHIBITED TERMINATIONS

Specific protection against dismissal applies in the following circumstances: application for time credit leave; application for maternity or paternity leave, parental leave or adoption leave; formulation of observations in the register in the framework of the procedure for introducing or amending the work regulations; being a holder of or a candidate for a political mandate; redundancy or threatened redundancy due to the introduction of new technologies; application for paid educational leave; application for leave in order to assist a person with palliative care, in order to assist a person who is suffering a serious disease or in order to take up the education of a child; request by a night worker to return into a daytime schedule; prevention consultant; lodging of a claim in relation to violence, harassment or sexual harassment or testifying in the framework of such a claim; lodging of a claim in relation to discrimination; appointment as union delegate; and being a candidate in the election process for the appointment of employee representatives within the works council or the committee for prevention and protection at work. Other protections against dismissal can exist on industry level.

In case of a protection against dismissal, the employer will either have to prove that the grounds of dismissal are not related to the reason why the employee is protected (e.g., in case of maternity leave) or will have to comply with a strict dismissal procedure before terminating the employment contract (e.g., in case of the contemplated dismissal of a candidate or employee representative).
THIRD-PARTY APPROVAL FOR TERMINATION
Required in the event of a dismissal of a candidate or employee representative in the works council or the Committee for Prevention and Protection at Work: (i) in case of a dismissal for economic or technical reasons, an approval by the competent joint committee, or in absence of such approval, an approval by the president of the employment tribunal is required; (ii) in case of a dismissal for serious cause, an approval by the president of the employment tribunal is required.

A prevention advisor can only be dismissed in case of approval by the Committee for Prevention and Protection of Work, unless the employment contract is terminated for serious cause.

MASS LAYOFF RULES
Yes, strict information and consultation rules apply where 10 or more employees (depending on the total number of employees) are to be made redundant over 60 days or less and in case of a closure of an undertaking or a department thereof. Failure to do so is a criminal offence.

NOTICE
As of January 1, 2014, the following notice periods will apply in case of dismissal of an employee:

<table>
<thead>
<tr>
<th>Period Of Continuous Service</th>
<th>Notice Period</th>
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<tbody>
<tr>
<td>Less than 3 months</td>
<td>2 weeks</td>
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<tr>
<td>3 months up to less than 6 months</td>
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<td>21 months up to less than 24 months</td>
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<td>2 years up to less than 3 years</td>
<td>12 weeks</td>
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<td>3 years up to less than 4 years</td>
<td>13 weeks</td>
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<tr>
<td>4 years up to less than 5 years</td>
<td>15 weeks</td>
</tr>
<tr>
<td>As of 5 years</td>
<td>plus 3 weeks per commenced year of continuous service</td>
</tr>
<tr>
<td>As of 20 years</td>
<td>plus 2 weeks per commenced year of continuous service</td>
</tr>
<tr>
<td>As of 21 years</td>
<td>plus 1 week per commenced year of continuous service</td>
</tr>
</tbody>
</table>

Transitional provisions apply to employees who entered in service prior to January 1, 2014. Deviations within certain industry sectors (e.g., construction sector).

No notice period to be observed in case of a dismissal for serious cause.
STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
The employer can terminate the employment contract with immediate effect, by payment of an indemnity in lieu of notice equal to the remuneration due for the notice period. Garden leave is in principle not allowed under Belgian law, except in case of an agreement between the employer and the employee.

SEVERANCE
No general statutory severance, but clientele indemnity in case of the dismissal of a sales representative; closure indemnity in case of the closure of an undertaking or a department of an undertaking; mobilization indemnity within the framework of a mass layoff (collective dismissal); protection indemnity; etc.

POST-TERMINATION RESTRAINTS
Those that protect the employer’s legitimate business interests can be enforced if reasonable.

NON-COMPETES
Strict conditions. In principle no longer than 12 months. Non-compete indemnity due equal to 1/2 of the remuneration due for the period of non-compete obligation, except for a non-compete in an employment contract for sales representatives.

CUSTOMER NON-SOLICITS
Permissible, but only enforceable if reasonable.

EMPLOYEE NON-SOLICITS
Permissible, but only enforceable if reasonable.

WAIVERS
Enforceable, but employees can only sign a settlement agreement with regard to acquired rights, and not with regard to future rights.

REMEDIES

DISCRIMINATION
Uncapped compensation, based on the claimant’s financial loss or lump sum indemnity equal to 6 months’ remuneration.

FLAGRANT AND UNREASONABLE DISMISSAL
If the employer cannot motivate the dismissal of the employee on grounds related to the employee’s work ability, his/her behavior at work or the employer’s business necessities, and if a normal and reasonable employer would not have dismissed the employee in the case at hand, the dismissal will be considered flagrant and unreasonable. The employee will be entitled to an additional indemnity equal to 3 up to maximum 17 weeks’ remuneration.
FAILURE TO INFORM AND CONSULT
Re-employment of the employees in case of a collective dismissal (mass layoff). Compensation for moral damages.

CRIMINAL SANCTIONS
Most legal dispositions with regard to labor law are subject to criminal or administrative sanctions in case of breach.
BRAZIL

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity cannot hire employees in Brazil without a local corporate presence. Employers must pay social security contributions and labor charges on top of compensation, which represent an additional cost of approximately 65% on top of salaries. Employees will have income tax (up to 27.5%) and social security contributions (up to 11% of the compensation, subject to a legal cap) withheld at source from compensation.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance. Valid ID. Pre-hire medical examination.

PERMISSIBLE
Background checks for education, prior employment and basic personal information such as proof of identity and residential address are accepted in certain circumstances. Criminal checks are limited to certain circumstances.

IMMIGRATION
Nationals of the Mercosul (Argentina, Paraguay, Uruguay, Bolivia and Chile) have a right to work in Brazil. For other non-Mercosul nationals immigration permission is likely to be required.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time or part-time.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or through an entity. Engagement may be subject to misclassification exposure.

AGENCY WORKER
Agency workers are hired by temporary work agencies to render services to the temporary agencies’ clients. Agency workers are entitled to various employment rights.

EMPLOYMENT CONTRACTS AND POLICIES

EMPLOYMENT CONTRACTS
Written agreement not legally required, but usual. Basic terms and conditions of employment are recorded in the employee’s booklet (Carteira de Trabalho e Previdência Social or CTPS) and in other mandatory documents upon hiring.
PROBATIONARY PERIODS
Permissible. Statutory limit of 90 days.

POLICIES
Written Employment Health and Safety policies such as Occupational Health Medical Control Program (PCMSO) and an Environmental Risk Prevention Program (PPRA) are legally required.

THIRD-PARTY APPROVAL
The employment relationship with foreign employees must be submitted to the Ministry of Labor’s approval.

LANGUAGE REQUIREMENTS
Although not required by statute, all employment documents should be in Portuguese.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
As a general rule, full time employees’ working hours cannot exceed 8 hours per day or 44 hours per week. Collective bargaining agreements may set forth that the employees subject to them will work fewer than 44 hours per week. Certain types of employees are not subject to control of work hours.

OVERTIME
Maximum 2 hours per day. Compensation for overtime hours must exceed the compensation for normal hours in at least 50%. Collective bargaining agreement may set forth higher amounts of overtime compensation. It is not possible to make a fixed payment in lieu of overtime.

WAGES
Currently, the national minimum wage is BRL 880.00 per month. Regional minimum salaries and minimum salaries set forth by collective bargaining agreements often apply.

VACATION
Employees are entitled to remunerated vacations (30 days) after every 12 months of work as from their hiring date. The vacation payment is equivalent to one month’s wage, plus at least 1/3 of the monthly wage. Granting of vacation is subject to specific terms and conditions set forth by law.

SICK LEAVE AND PAY
The company must pay the wages corresponding to the first 15 days of sick leave absence. After the 15th day of absence, the employee will be entitled to social security benefits. Collective bargaining agreements may require payments in addition to the social security benefit for a limited period of time.
MA TERN I TY / P A R E N T A L L E A V E A N D P A Y
Women are entitled to a paid maternity leave of 120 days starting on the date of the birth of their children or 28 days before such event. Adopting mothers have the same right. After the birth of a child, fathers are entitled to a paid 5-day leave.

Collective bargaining agreements may set forth additional requirements.

D IS CR IM I NA T I O N
Characteristics protected by statute from unlawful discrimination: gender, origin, race, color, marital status, family situation, age, pregnancy, religion, disability. Case law has also protected homosexuals, transgender individuals and individuals with severe illnesses from discriminatory termination.

B E N EF I TS A N D P EN SI ONS
All Brazilian employees must be enrolled with the Brazilian Social Security System, which provides for pension and disability benefits, and public health coverage.

Employees must be granted transportation vouchers and benefits set forth by collective bargaining agreements. Granting meal vouchers and private health plan is not uncommon.

D ATA P RIVACY
Notification and consent is recommended. The National Congress is reviewing some bills addressing data privacy matters and the Executive Branch has presented a new proposal for a specific data protection law.

Monitoring of corporate e-mail and Internet use is allowed but employees should be notified that they shall not expect privacy in the use of such work tool.

R U LE S I N T R A N S A C T I O N S / B U S I N E S S T R A N S F E R S
There is no obligation to notify the government before asset or share deals. There are significant restrictions on changing terms and conditions of employment.

E M P L O Y E E R E P R E S E N T AT I O N
Union representation is mandatory and all employees are subject to industry-wide collective agreements. Works councils are very uncommon.

T E R M I N AT I O N
G R O U N D S
As a rule, termination does not require a cause, but severance payments for terminations without cause are higher than those owed in cases of termination for cause. Certain circumstances protect employees against unmotivated dismissal.
EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees.

RESTRICTED OR PROHIBITED TERMINATIONS
Certain circumstances prevent the termination of the employment relationship without cause or cause an increase in the severance payments, such as: (i) pregnancy; (ii) application by the employee or election of the employee for a position at the Internal Commission for Accident Prevention (Comissão Interna de Prevenção de Acidentes or CIPA); (iii) application by the employees or their election for a management position at the employees’ union; (iv) work accident (the employee who suffers a work-related accident shall not be dismissed until one year after the illness allowance has ceased); (v) acceptance by the employee of a position in the conciliation commission in charge of settling labor disputes. Other events provided under collective conventions or collective agreements may lead to the temporary job tenure protection.

THIRD-PARTY APPROVAL FOR TERMINATION
The union may be required to be involved in the termination process of employees in circumstances preventing termination per collective bargaining rules.

The union (or the labor authority) is required to ratify terminations of employees with one year or more of service to the employer.

MASS LAYOFF RULES
Not governed by law, but may be governed by collective bargaining agreement. Due to relevant case law precedents, involvement of the labor union is a condition for mass layoffs.

The Program for Employment Protection allows a temporary reduction in working hours with a corresponding salary reduction. One condition for implementation of the program is collective negotiation with the labor union.

NOTICE
Termination without cause by employer’s initiative: 30 days during the first year plus 3 days per additional year of service for the same company, limited to 90 days. Additional collective bargaining agreement provisions may apply.

Termination for cause: Not applicable, effective immediately.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
The company has the statutory right to pay in lieu of notice. Garden leave not allowed.

SEVERANCE
In case of termination without cause, the employee is entitled to severance, amounting to the equivalent to 40% of the balance in the employee’s Unemployment Guarantee Fund (Fundo de Garantia do Tempo de Serviço) (FGTS) accrued during the employment relationship. Additional payments will be due, such as one month’s salary if the termination takes place in the 30 days before the expected date of the collective bargaining agreement for the following period, payout of accrued vacation plus 1/3 vacation bonus, pro-rated 13 months’ pay, and other payments required by the applicable collective bargaining agreement or contract.
In case of termination with cause, accrued non used vacation plus vacation bonus, and other payments required by the applicable collective bargaining agreement or contract are still required, but no FGTS payout or additional one month’s salary.

POST-TERMINATION RESTRAINTS

Brazilian law does not address post-termination restraints, so enforcement of post-termination restraints can be challenging.

NON-COMPETES

Periods of up to 24 months have been accepted, but enforceability is more likely for shorter periods (6-12 months). Case law has upheld non-competes that were limited with regards to scope, territory, timeframe and fair and reasonable payment.

CUSTOMER NON-SOLICITS

Generally permissible.

EMPLOYEE NON-SOLICITS

Generally permissible, but case law is very scarce in this regard.

WAIVERS

Not enforceable unless in a settlement ratified at court.

REMEDIES

DISCRIMINATION

Indemnification based on the claimant’s damages in case of labor lawsuit, plus recommendation that the employer takes action.

UNFAIR DISMISSAL

Severance in case of termination without cause in which the employee is not protected by job tenure is set forth by law. In case of termination without cause of employees protected by job tenure can trigger damages and reinstatement.

FAILURE TO INFORM AND CONSULT

As a rule there is no obligation to inform and consult the union about terminations, unless so required by the collective bargaining agreement. In such case, failure triggers the consequences set forth by the collective bargaining agreement.

Failure to inform and consult in mass terminations may trigger reinstatement orders and financial consequences.

CRIMINAL SANCTIONS

Violation of employment laws and discrimination can trigger criminal sanctions.
CANADA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law throughout the majority of the country, civil law for in the province of Quebec. Canadian dollar (CA$). English and French are both official languages.

CORPORATE PRESENCE REQUIREMENTS AND PAYROLL SET-UP

A foreign entity can engage employees in Canada, but the entity must have proper corporate and payroll registrations. Business and corporate tax planning considerations are often paramount and consideration should be given to creating a corporate subsidiary as an alternative to registering a foreign entity.

Payroll registration is done through the Canada Revenue Agency (and, if applicable, through Revenue Quebec) by obtaining a business number. Employers must withhold and remit income tax, as well as various social security programs such as the Canada Pension Plan (or in Quebec, the Quebec Pension Plan) and Employment Insurance. In some cases additional taxes and remittances may apply or be required under worker’s compensation legislation and as part of the public health care system (e.g., in Ontario, the Employer Health Tax).

PRE-HIRE CHECKS

REQUIRED

All employers should verify that individual employees are legally entitled to work in Canada by obtaining the employee’s Social Insurance Number (SIN) but only after a conditional offer of employment is made. Certain employers may also require criminal records checks through a Canadian Police Information Check (CPIC). In some industries, a more comprehensive check may be required by law (e.g., persons who work with vulnerable individuals such as children).

Where a criminal record check is required by the employer, the prospective employee may have grounds to claim discrimination if a decision not to hire is based on (i) a conviction of a provincial offence revealed by the check; (ii) a criminal offence for which a pardon has been granted; or (iii) a criminal conviction unrelated to the individual’s employment. Criminal records checks should not be done without the prospective employee’s consent and, in any event, it is recommended that a conditional offer of employment be made before a criminal record check is performed.

PERMISSIBLE

Verifying references, past employment and education is common and permissible, provided that (i) the applicant has consented, and (ii) the employer conducts the verification in a consistent and non-discriminatory manner. Caution must be exercised in undertaking more detailed background checks to ensure that the scope of the detailed background check is not excessive and that proper consent has been obtained in accordance with applicable privacy laws.
Credit checks are generally permissible when the candidate’s credit history is relevant to the position (e.g., positions which involve handling money or involve financial decision making). Credit checks must be conducted in accordance with applicable consumer protection legislation, which requires that (i) consent be obtained from the individual, and (ii) a proper process be followed when the credit check is undertaken. It is recommended that a conditional offer of employment be made before a credit check is performed.

**IMMIGRATION**

Canadian citizens and permanent residents have a right to work in Canada. For other non-Canadian nationals, a valid work permit will usually be required. The process for obtaining work permits is managed by Canada’s federal government through Immigration, Refugees, and Citizenship Canada. There are special rules under the North American Free Trade Agreement (NAFTA), which make it easier for certain categories of North American workers to work in Canada.

**HIRING OPTIONS**

**EMPLOYEE**
Indefinite, fixed-term, full-time, part-time or casual. Employers can generally provide for differential treatment between these categories of employees; however, basic employment standards apply to all categories in most Canadian jurisdictions.

**INDEPENDENT CONTRACTOR**
Independent contractors can be engaged directly by the company or via a personal services corporation. The use of independent contractors creates misclassification exposure, which can give rise to tax, social security contribution and workers compensation liabilities. It can also create potential claims for overtime, vacation, holiday pay and notice of termination. Classification may be different under different statutory schemes and care needs to be taken to ensure the relationship is not truly one of employer/employee.

**DEPENDENT CONTRACTOR**
In some Canadian jurisdictions, courts have recognized the concept of a dependent contractor, which is similar to an independent contractor except for the fact that the individual or entity provides regular and exclusive service to the company on a full-time basis. Like the use of independent contractors, the use of dependent contractors creates misclassification exposure, which can give rise to tax, social security contribution and workers compensation liabilities. It can also create potential claims for overtime, vacation, holiday pay and notice of termination. Classification may be different under different statutory schemes and care needs to be taken to ensure the relationship is not truly one of employer/employee.

**AGENCY WORKER**
The use of agency workers is common in some industries. Certain jurisdictions in Canada have special rules intended to provide protections to agency workers and may deem the contracting company liable if the agency fails to pay wages or provide required benefits to its workers. Many statutory regimes also have a mechanism for declaring a contracting company the true employer, a co-employer or common employer under applicable legislation.
TEMPORARY FOREIGN WORKER
Canada also has a program that permits employers to hire temporary foreign workers to fill temporary labour and skills shortages when qualified Canadian citizens or permanent residents are not available.

In Canada, the hiring of temporary foreign workers is regulated by the Temporary Foreign Worker Program (TFWP). In some cases, when hiring a temporary foreign worker, an employer may be required to demonstrate, after having met specific advertising requirements, that the hiring of the temporary foreign worker will not have a negative impact on the Canadian labour market. Some Canadian jurisdictions have statutes and regulations that apply specifically to the employment of foreign nationals working in particular industries.

EMPLOYMENT CONTRACTS AND POLICIES

EMPLOYMENT CONTRACTS
Written employment contracts are recommended but are not required by law.

PROBATIONARY PERIODS
In most jurisdictions, a probationary period of up to 3 months is permitted. During the probationary period, an employer may be able to terminate an employee without being required to provide statutory notice of termination or pay in lieu. Employees terminated during a probation period may still allege discrimination, and recover damages from the employer arising from the employer’s discriminatory conduct. In addition, absent a clear contractual limit on an employee’s right to notice of termination during the probationary period, an employee may still have a claim for notice of termination or pay in lieu of notice.

POLICIES
Most jurisdictions require a written health and safety policy, with contents based on the number of employees and/or the scope of the employer’s operations. Various jurisdictions require specific training for employees on health and safety standards. Several jurisdictions require workplace violence, workplace harassment or anti-bullying policies. In Ontario, specific accessibility policies are required that apply not only to employees but also to interactions with the public and other third parties. Privacy policies are also required and, in a number of jurisdictions, must address the protection of employee personal information.

Harassment and anti-discrimination policies are highly recommended.

A number of jurisdictions require the posting of information on basic employment laws and health and safety standards.

THIRD-PARTY APPROVAL
Generally, there is no requirement to file employment contracts or policies or have them approved; however, in Ontario, regular compliance filings are required of most employers under accessibility legislation.
LANGUAGE REQUIREMENTS

Canada has two official languages, English and French. Individuals are entitled to receive certain government services in either official language. In Quebec, language laws require that all written communications to employees (including offers of employment and promotion) must be prepared in French. In some instances, this can be avoided by having the employee consent to English documentation. In some jurisdictions, posting of basic workplace rights must be done in English and the majority language of the workplace.

In Quebec, employers are prohibited from requiring a candidate to be proficient in a language other than French in order to be qualified for a role, unless the nature of the duties requires such knowledge.

In addition to an employer’s statutory obligations, it is recommended that essential employment documents (including, for example, health and safety materials) be translated into other languages if an employee or group of employees is unable to understand the contents of the document as published in English or French.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS

In most cases, all employees are subject to minimum labour and employment standards legislation, however, there are a number of common exceptions to some or all of these standards based on the nature of the employee’s position/work and the employee’s qualifications. For example, professionals (lawyers, doctors, etc.) are often exempt from some or all of the minimum standards; supervisors and managers are often exempt from hours of work and overtime rules; and various jurisdictions have exemptions for IT professionals or special rules for particular industries.

WORKING HOURS

Daily and weekly maximums vary by jurisdiction. Standard working hours are on average 40 hours per week.

OVERTIME

Overtime rules vary by jurisdiction with some jurisdictions having daily overtime thresholds (often 8 hours) and others having weekly overtime thresholds (often 40 to 44 hours per week). Overtime is generally payable at 1.5 times the employee’s regular rate and in some jurisdictions, after a certain threshold is reached, 2 times the employee’s regular rate. Overtime eligibility is not restricted to employees paid on an hourly basis. Salaried employees may also be eligible for overtime.

WAGES

Minimum wage varies by jurisdiction. In addition, many jurisdictions have different minimum wages for certain categories of employees such as food servers and students.
**VACATION**

Amounts and related requirements vary by jurisdiction. In many jurisdictions, vacation entitlement starts at 2 weeks of vacation time following 12 complete months of service; however, vacation pay (e.g., a corresponding 4%) begins to accrue immediately upon the commencement of employment. In a number of jurisdictions, vacation entitlement increases to 3 weeks (and 6% vacation pay) after 5 years. Many employers provide a greater vacation entitlement and allow vacation to be taken in the first year of employment. “Use it or lose it” policies are not permissible in most jurisdictions.

In addition, paid time off for public/statutory holidays is also required and certain requirements must be met if employees will work on a public/statutory holiday.

**SICK LEAVE AND PAY**

Entitlements vary by jurisdiction but are generally without pay.

Employees in most jurisdictions have rights to a certain number of days (in some jurisdictions up to 10 days per calendar year) of statutorily protected but unpaid sick leave. Although not required to do so, many employers provide paid sick days as well as short and long term disability benefits. Employees without access to such benefits may have the right to claim Employment Insurance sick leave benefits.

Notwithstanding applicable statutory sick leave entitlements, employers also have a duty to accommodate an employee on the basis of, among other things, disability and family status. Therefore, an employer may be required to permit an employee to be absent (without pay) for more than his/her statutory sick leave days.

**MATERNITY/PARENTAL LEAVE AND PAY**

Entitlements differ slightly by jurisdiction. In most jurisdictions, pregnant employees have the right to take pregnancy (maternity) leave of up to 17 weeks (18 weeks in Quebec) of unpaid time off work.

In addition, in most jurisdictions, new parents (whether by birth or adoption) have the right to take up to 37 weeks’ unpaid parental leave (except in Quebec, where parental leave can be up to 52 weeks) when a child is born or first comes into their care or control for the first time. (Birth mothers who have taken pregnancy leave are entitled to only 35 weeks of parental leave, except in Quebec, where parental leave can be up to 52 weeks). Parental leave does not need to be commenced immediately upon the birth of the child or when the child first comes into the employee’s care or control and an employee may have up to one year to commence the leave.

Employers must generally maintain benefits for the pregnancy/paternal leave, however, the employee can usually be required to pay his or her share of the premiums. Subject to certain narrow exemptions, employees have a right to reinstatement at the end of the leave and continue to earn credit for length of service and seniority during the leave.

An employer cannot penalize an employee in any way because the employee is or will be eligible to take a pregnancy/parental leave, or for taking or planning to take a pregnancy/paternal leave.

In Quebec, birth fathers are also eligible for up to 5 weeks of unpaid paternity leave and all employees are eligible for 5 days (2 of which are paid days where the employee has 60 days of service) of leave upon the birth or adoption of a child or the termination of a pregnancy.
DISCRIMINATION

All Canadian jurisdictions have legislation which prohibits harassment and discrimination based on a number of grounds. Protected categories vary by jurisdiction but generally include: race, religion, age, disability, sex, sexual orientation, national/ethnic origin, record of (criminal) offences, marital status and family status. Employees who suffer harassment or discrimination may have a civil cause of action and/or access to a specialized tribunal/commission.

BENEFITS AND PENSIONS

Employers are not required to provide health and welfare benefits or pensions other than those provided through social security contributions (Canada Pension Plan/Quebec Pension Plan and Employment Insurance regimes) and, in most jurisdictions, workers compensation insurance. Many Canadian employers do, however, provide health and welfare benefits and some form of retirement savings program.

DATA PRIVACY

Legislative requirements vary by jurisdiction. Where privacy laws apply, personal information must only be collected with consent and only used for the purposes for which it was collected. In most jurisdictions, email and Internet use may be monitored where notice has been given through clear employer policies.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

In most jurisdictions, legislation exists which will either (i) require the transfer of employees as a result of a sale of a business; and/or (ii) provide that employees who accept an offer of employment with the purchaser will have their employment deemed continuous and their past service honoured. Unless a contract or collective agreement provides a right or option to claim termination amounts, employees accepting a purchaser’s offer of employment will not be entitled to claim termination amounts from the purchaser.

EMPLOYEE REPRESENTATION

In Canada, the level of union density continues to decline, particularly in the private sector. Unions continue to have high levels of representation in the public sector and the broader public sector in certain traditionally unionized industries such as automotive, construction and transportation. Many businesses have no union or other worker representation. There are no works councils. Industry level collective bargaining agreements are rare outside of certain industries in Quebec and the construction industry.
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TERMINATION

GROUNDS
Termination for cause without notice or pay in lieu is permissible but the standard is high, requiring gross and willful misconduct, willful neglect of duty, fraud, serious breach of applicable policies or material or repeated insubordination. Termination without cause is permissible in most jurisdictions, provided that proper notice of termination or pay in lieu is provided and provided that the termination was not a reprisal for the exercise of a statutory right or related to a protected ground under human rights legislation.

In Quebec and Nova Scotia, additional protections exist for certain employees who have acquired tenure and, in those circumstances, termination may not be possible except for bona fide reasons, such as position elimination or lack of work.

EMPLOYEES ENTITLED TO TERMINATION PROTECTION
Generally, employees in Canada cannot be terminated without cause without proper notice or pay in lieu and severance pay, if applicable, under statute and at common/civil law. The right to reinstatement, however, is generally limited to unionized employees, employees terminated contrary to human rights legislation, employees terminated for exercising a statutory right with respect to working conditions or legislated employment standards (such as the right to a pregnancy leave) or for certain employees who both have requisite service and are working in federally regulated industries or the provinces of Quebec or Nova Scotia.

PROHIBITED TERMINATIONS
Employees may not be terminated based on a prohibited ground, for complaining of harassment or as an act of reprisal for asserting a statutory right with respect to working conditions or legislated employment standards.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Approval is not required, however, for group terminations, notice in a prescribed form must generally be provided to the applicable Ministry of Labour and may need to be posted in the workplace (in some cases before the termination can be affected).

MASS LAYOFF RULES?
Yes. Most jurisdictions provide for increased statutory notice or pay in lieu in the event of a group termination, and may require the provision of notice to a government ministry. In most jurisdictions, the threshold is 50 or more employees within a specified period, however, in some cases the threshold is much lower (e.g., in Quebec, the threshold is more than 9 employees) There is generally not a consultation obligation; however, notice may need to be given to a governmental authority.

NOTICE
Minimum statutorily required notice of termination varies by jurisdiction and, for individual terminations, is based on an employee’s length of service. For individual terminations, most jurisdictions limit notice of termination to 8 weeks, however, some provide for up to 10 weeks. Significantly longer notice periods (up to 2 years or more) can be awarded at common law unless there is a valid employment agreement which limits the entitlement. In Quebec, similar entitlements exist and generally cannot be limited by contract at the outset of the employment relationship.
STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Pay in lieu of notice is permitted. “Garden leave” is becoming more common and, with appropriate care and planning, an employer can often achieve this objective for a reasonable period.

SEVERANCE
Eligible employees in Ontario and the federal jurisdiction are eligible for severance pay. In Ontario, eligible employees receive 1 week for each year of service, with partial years prorated to a maximum of 26 weeks. In the federal jurisdiction, eligible employees receive 2 days per year of service but no less than 5 days.

POST-TERMINATION RESTRAINTS
These are increasingly difficult to enforce. Restrictions must go no further than necessary to protect the employer’s legitimate business interests. Garden leave is becoming more common.

NON-COMPETES
Will generally not be enforceable for mere employees and not where a non-solicitation provision would have been sufficient. Must be reasonable in scope geographically and temporally and, in some jurisdictions, must also specify the type of restricted employment and the restricted job functions. Must be clear and unambiguous. A requirement not to interfere with business relationships might also be enforced if reasonable, clear and unambiguous.

CUSTOMER NON-SOLICITS
More likely to be enforced than a non-competition agreement, non-solicitation agreements must still be reasonable in scope and temporally. Must be clear and unambiguous.

EMPLOYEE NON-SOLICITS
Likely to be enforced if reasonable, clear and unambiguous.

WAIVERS
Generally, employees may not waive statutory rights or benefits unless they are doing so in exchange for a “greater right or benefit” with respect to the same subject matter of the right being waived.

REMEDIES
DISCRIMINATION
In most jurisdictions, general damages for breach of the legislation, injury to dignity or mental distress can be awarded in discrimination cases in addition to lost wages and compensation for the loss of employment. Damage awards in this regard are increasing as many jurisdictions have removed legislative caps on the amounts which can be awarded.

UNFAIR DISMISSAL
As noted above, only employees in the federal jurisdiction and who have certain service requirements in Quebec and Nova Scotia have this type of right. Damage awards can vary widely based on individual circumstances. Reinstatement is possible.
FAILURE TO INFORM AND CONSULT
This is not a relevant consideration.

CRIMINAL SANCTIONS
The main areas where criminal sanctions arise are under occupational health and safety legislation and related Criminal Code provisions. The scope of criminal sanctions can include employees and directors.
CHINA

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS AND PAYROLL SET-UP
A foreign entity cannot engage employees in China without setting up a representative office or a subsidiary. Once established, payroll has to be set up. Note that representative offices of foreign companies need to engage an agency to engage its workforce.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance.

PERMISSIBLE
Reference and education checks are common, even without applicant consent. There is no restriction on criminal record checks.

IMMIGRATION
A work permit is required for any non-PRC-passport holder.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time or part-time (note that, after 2 fixed-term contracts, the employee may be entitled to an indefinite term contract).

INDEPENDENT CONTRACTOR
It is very uncommon for independent contractors to be engaged directly. Such a relationship is likely to be considered de facto employment.

AGENCY WORKER
Labor dispatch arrangements are becoming increasingly regulated (in terms of treatment of labor dispatch workers and the numbers that can be hired within any one workplace) so this is becoming a less attractive hiring option. The rules are more relaxed for representative offices as they cannot hire local staff directly so must rely on agencies.
EMPLOYMENT CONTRACTS AND POLICIES

EMPLOYMENT CONTRACTS
A written contract in Chinese is required. A translation into Mandarin is highly recommended and the risk of not translating the contract can be significant.

PROBATIONARY PERIODS
The PRC labor laws only allow a maximum of probation period of 1 month for contracts less than 1 year, 2 months for contracts longer than 1 year but less than 3 years, and 6 months for contracts of 3 years or longer.

POLICIES
No mandatory policies, but the absence of a disciplinary policy might make a termination based on misconduct difficult.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third-party, but the employer must go through a consultation process with relevant representatives to implement and vary employment policies.

LANGUAGE REQUIREMENTS
The written employment contract must be in Chinese. There are no statutory requirements for other documents.

MINIMUM EMPLOYMENT RIGHTS
EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
40 hours per week and 8 hours per day, with the exception of flexible working hour system and comprehensive working hour system, which requires approval from the local labor authority.

OVERTIME
For work in excess of the standard working hours, overtime is due (of between 150% and 300% of the employee’s daily salary rate or hourly salary rate depending on when the employee carried out the overtime).

WAGES
Minimum wage stipulated by local regulations.

VACATION
Employees who have worked for one full year or more are entitled to 5-15 days annual leave with pay. The duration of leave for each employee is determined by reference to his/her accumulated years of work (with all employers, not just the current employer).
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SICK LEAVE AND PAY
Reduced pay should be paid for sick leave days according to the local standard.

MATERNITY/PARENTAL LEAVE AND PAY
98 days of maternity leave. Employees that experience a difficult childbirth get 15 extra days. For multiple births (twins, triplets, etc.), 15 extra days may be added for each child. After giving birth, female employees are entitled to 1 paid working hour per day for nursing purposes until the baby is 1 year old. Parental leave varies from 3-10 days, depending on location.

DISCRIMINATION
Characteristics protected from unlawful discrimination and harassment: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion, belief or sex. However, the legal remedy in this respect is limited in China.

BENEFITS AND PENSIONS
Employers and employees are required to contribute to certain mandatory social insurance and housing fund schemes in China. Social insurance includes pension, medical insurance, unemployment insurance, work-related injury insurance and maternity insurance. The minimum contributions required by employers and employees are determined by the local labor and social security bureaus.

DATA PRIVACY
China does not presently have a general data protection law. However, the Regulations on Employment Services and Employment Management require that an employee’s personal data be kept confidential and not be made public without the employee’s consent.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
No automatic transfer of employment in an associated company transfer or change of business ownership. Therefore, the previous employer will need to terminate the employee’s employment contract and the new employer will need to offer (and the employee accept) employment. If the new employer recognizes the service years with the previous employer, then the previous employer may be able to avoid liability for a severance payment.

EMPLOYEE REPRESENTATION
Trade unions are prevalent in state-owned enterprises. In most cities, local regulations require employers to set up Employee Representative Councils (ERC). However, failure to set up an ERC is not subject to penalties. Many businesses have no union or other worker representation. Industry level collective bargaining agreements are uncommon.
TERMINATION

GROUNDS
There is no “at-will” employment in China and termination of employees must be for cause.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees.

RESTRICTED OR PROHIBITED TERMINATIONS
Employees (a) who are pregnant, on maternity leave or in the nursing period; (b) who are suffering from work-related injuries or occupational diseases; (c) who have been employed by the employer for more than 15 years and have less than 5 years from the statutory retirement age (60 for male employees, 55 for female employees holding office positions, and 50 for female factory workers); and (d) who are on sick leave (for certain cumulative periods depending on the employee’s seniority), may not be unilaterally terminated.

THIRD-PARTY APPROVAL FOR TERMINATION
The trade union’s opinion should be solicited for any unilateral termination.

MASS LAYOFF RULES
Yes, strict information and consultation rules apply where 20 or 10% or more employees are to be made redundant. The employer must also notify the trade union/all employees of the redundancies and report to the local labor bureau.

NOTICE
30 days prior notice. Not required for misconduct case or termination due to failure to meet the conditions employment during the probation period.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
There is a statutory right to make a payment in lieu of notice. Garden leave with full pay is also permissible.

SEVERANCE
Severance pay is based on the number of years an employee has worked with the employer at the rate of 1 month’s wage for each full year worked. The wages used for calculation during the service years after 2008 are subject to a statutory cap.

POST-TERMINATION RESTRAINTS
Those that protect the employer’s legitimate business interests can be enforced if reasonable.

NON-COMPETES
No more than 2 years. Compensation is required per local rules.

CUSTOMER NON-SOLICITS
Permissible, but relatively difficult to enforce.
EMPLOYEE NON-SOLICITS
Permissible, but relatively difficult to enforce.

WAIVERS
Enforceable to waive contractual rights. While an employee can be asked to waive statutory rights, there is some uncertainty as to whether such a waiver would be effective to prevent an employee from subsequently bringing a claim for statutory rights.

REMEDIES

DISCRIMINATION
Compensation for direct losses.

UNFAIR DISMISSAL
The Court or Labor Tribunal may make an order for reinstatement or double severance pay.

FAILURE TO INFORM AND CONSULT
May be deemed as illegal dismissal.

CRIMINAL SANCTIONS
Limited circumstances, such as failure to pay salary in bad faith, may result in criminal sanctions.
CZECH REPUBLIC

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
Foreign entities can engage employees in the Czech Republic if they have proper registrations with the competent financial authority, social security administration and the health insurance company. The registered entity must pay income tax (15%; deducted from the employee’s salary), health insurance (13.5%; 9% is paid by the employer) and social security contributions (31.5%; 25% is paid by the employer). Employers are obliged to maintain a payroll. Independent contractors are responsible for their own taxation.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance. Entry health check. Where required by law, criminal records check or information about pregnancy (e.g. where certain work cannot be performed by a pregnant employee).

PERMISSIBLE
Reference and education checks are common and permissible. Criminal records’ and credit reference checks may be requested if justified by the specific nature of the work performed and subject to the proportionality principle. Subject to the same conditions, the employer may also request information concerning pregnancy, financial and family affairs of the applicant.

IMMIGRATION
Nationals of the EU, EEA and Switzerland enjoy the right to work in the Czech Republic. Third-country nationals must typically obtain a residence/work permit. Employers employing non-EU/EEA/Swiss employees must notify the relevant labor authority and comply with the given procedure.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against on the basis of such status.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly or via a personal services company. Such an engagement may be subject to the risk of exposure for misclassification (as an employee).
AGENCY WORKER
Agency employees have a right treatment equal to other employees in relation to pay and other employment terms.

OTHER OPTIONS
Agreement on work performance – maximum 300 hours/calendar year; less administratively burdensome; social and health insurance contributions payable only from certain remuneration thresholds.

Agreement on work activity – the hours worked must not exceed on average one half of regular working hours (20 hours/week); less administratively burdensome; social and health insurance contributions payable only from certain remuneration thresholds.

EMPLOYMENT CONTRACTS & POLICIES

REQUIREMENTS
Obligatory written employment contract. It must include (i) type of work, (ii) place of performance of work, (iii) date of commencement of work. Certain additional information must be provided to the employee in writing within 1 month from commencement of employment if not included in the employment contract.

PROBATIONARY
Permissible – maximum 3 months for regular employees, maximum 6 months for so-called managerial employees.

POLICIES
Mandatory health and safety policy.

THIRD PARTY APPROVAL
Not required.

LANGUAGE REQUIREMENTS
No statutory language requirement. However, all documents must be comprehensible to the employee to whom they are addressed (i.e., language to be determined on a case-by-case basis).

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
Standard regular working time is 40 hours/week with limited statutory exceptions. Rules on rest breaks, night work and rest periods between shifts apply.
**OVERTIME**

Some limits on the extent of overtime to be performed by employees. The employer may request overtime only up to 150 hours/calendar year. Parties may agree to overtime of up to 416 hours/calendar year if the average overtime in 26 consecutive weeks (52 if stipulated in a collective agreement) does not exceed 8 hours/week.

Obligation to provide salary plus premium or time off for overtime. Option to include future overtime in the employee’s salary (up to 150 hours/calendar year for regular employees and up to 416 hours/calendar year for managerial employees).

**WAGES**

The base rate of minimum wage is CZK9,900/month or CZK58.70/hour.

**VACATION**

Statutory minimum of 4 weeks (20 working days) per calendar year (excluding public holidays).

**SICK LEAVE & PAY**

Statutory sick leave and pay (subject to participation in the social security scheme and additional obligations). During the first 14 days of sickness (excluding the first 3 days), the employee is entitled to salary compensation (60% of average earnings) from the employer. After this period, sick leave is funded from the social security system.

**MATERNITY/PARENTAL LEAVE & PAY**

Maternity leave of 28 weeks (37 weeks for multiple births), paid for the entire duration of maternity leave (at the rate of approx. 70% of daily salary). Protection against termination.

Parental leave available for women after the end of maternity leave, for men after childbirth, until the child reaches the age of 3 (duration to be determined by employees). Parental pay available until the child reaches the age of 4 up to CZK220,000. Protection against termination.

**DISCRIMINATION**

Direct and indirect discrimination, harassment and sexual harassment, victimization, incitement to discrimination and instruction to discriminate are prohibited. Employers are under a duty to make reasonable adjustments for persons with disabilities.

Protected characteristics: race, ethnic origin, nationality, sex (including pregnancy, maternity, paternity and sexual identification), sexual orientation, age, disability, religion, belief or world views.

**BENEFITS & PENSIONS**

Obligatory pension insurance scheme (21.5% paid by the employer; 6.5% paid by the employee). No additional benefits required.
DATA PRIVACY

Generally, employees must be notified of personal data processing (e.g., camera recordings) and, in certain cases, give their consent. Employers as data administrators must generally register with the Data Protection Authority and notify any intended data processing. Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring employees, including email and internet use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the Transfer of Undertakings Directive 2001/23/EC and the Czech Labor Code where there is a transfer of an employer’s activities or tasks (or part thereof). Duty to inform and consult with employee representatives. Protection of employees against significant deterioration of working conditions (significant restrictions on changing terms of employment following transfer, rights to claim severance pay in case of deterioration). Employees cannot be dismissed by virtue of a transfer.

EMPLOYEE REPRESENTATION

Czech labor law recognizes several types of employee representatives: trade unions, works councils, and occupational health and safety representatives. Trade unions are most common (15% of employees are union members). Many businesses have no union or other worker representation.

TERMINATION

GROUNDS

Termination with notice permissible on the following grounds only: organizational change (dissolution, relocation, other organizational change), incapability (ill health, failure to meet conditions, unsatisfactory performance), misconduct, breach of obligation to remain at home during sick leave.

Immediate dismissal permissible on the following grounds: criminal conduct, gross misconduct.

EMPLOYEES SUBJECT TO TERMINATION LAWS

All.

PROHIBITED OR RESTRICTED TERMINATIONS

Protection against termination for certain employees/in certain circumstances (e.g., sick leave, military exercise, discharge of public office, pregnancy, maternity or parental leave). Certain statutory exceptions apply.

THIRD PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS

If the employee is a trade union representative of a recognized union, the trade union’s consent to the termination (on notice or immediate) is required.
MASS LAYOFF RULES
Mandatory consultation rules apply where the threshold number of employees will be made redundant over a 30-day period for organizational reasons. The thresholds are 10 employees if the employer has 20-100 employees; 10% of employees if the employer has 101 – 300 employees; 30 employees if the employer has more than 300 employees) Obligatory notification must be given to the relevant labor authority and to the employee representative bodies.

NOTICE
No notice required in case of termination during probationary period and immediate dismissal. Statutory minimum notice period of 2 months for both employee and employer. Notice period may be extended via agreement of the parties (must be the same for employer and employee).

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Not applicable.

SEVERANCE
Payable to all employees depending on the length of employment (1 times average monthly earnings if employment lasted less than 1 year; 2 times average monthly earnings if employment lasted at least 1 year; 3 times average monthly earnings if employment exceeded 2 years) provided that termination occurred on organizational grounds. If termination occurs due to accident at work or occupational disease of the employee, 12 times average monthly earnings are owed. More generous terms are possible.

POST-TERMINATION RESTRAINTS
Only non-compete clauses are regulated by Czech law. Enforceability of other restrictive covenants is uncertain but should be permissible if reasonable, proportionate and tailored to the situation of the particular employee. Garden leave is not expressly regulated but increasingly common.

NON-COMPETES
Permissible subject to compliance with statutory conditions (i.e., maximum duration of 1 year, obligatory compensation of minimum of one half of average earnings per month, justifiability given the position of the employee, obligatory written form).

CUSTOMER NON-SOLICITS
Not regulated. Enforceability is uncertain but should be permissible if reasonable, proportionate and tailored to the situation of the particular employee.

EMPLOYEE NON-SOLICITS
Not regulated. Enforceability is uncertain but should be permissible if reasonable, proportionate and tailored to the situation of the particular employee.

WAIVERS
Waivers of rights stemming from employment law provisions are legally ineffective.
GUIDE TO GOING GLOBAL • EMPLOYMENT

REMEDIES

DISCRIMINATION
Right to request that the discriminatory conduct is halted, its consequences removed, right to appropriate compensation (including uncapped monetary compensation). The amount of compensation is assessed with view to seriousness of the damage caused and the particular circumstances of the case.

UNFAIR DISMISSAL
Right to bring an action to challenge the validity of such a dismissal (statutory time limit of 2 months applies). If upheld by court, the employee remains employed with the company and is entitled to salary compensation for a specified time period (the salary compensation may be capped to 6 multiples of the average monthly wage by the court with view to particular circumstances of the case).

FAILURE TO INFORM & CONSULT
The State Labour Inspection Office may impose a penalty on the employer up to CZK400,000 for failure to inform or to consult.

CRIMINAL SANCTIONS
Illegal employment of foreigners may under limited circumstances constitute a criminal offence.
DENMARK

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law. Danish kroner (DKK). Member of the EU and required to implement relevant EU Directives. Danish.

CORPORATE PRESENCE REQUIREMENTS AND PAYROLL SET-UP
A foreign entity can engage employees in Denmark, subject to business, corporate and tax considerations. The business is responsible for withholding income tax and labour market contribution via payroll for any employees in Denmark.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance and, for any occupations involving work with children under the age of 15, an employer must ask for a record that specifies whether the employee is fit to work with children.

PERMISSIBLE
An employer may ask the prospective employee to produce a copy of their criminal record if this is considered necessary and proportionate in relation to the job. Information on a prospective employee’s health may only be requested if this is of significant importance to the ability to perform the job in question. It is also usual for prospective employers to ask job applicants for references and to check educational qualifications. Credit checks are allowed for employees in special trusted positions.

IMMIGRATION
Employees from an EU/EEA country may stay in Denmark for a period of 3 months without a residence permit. If the employee is searching for a job while staying in Denmark, the period is prolonged to 6 months. If the foreign national intends to stay for more than 3 or 6 months, he/she must apply for an EU/EEA residence certificate. EU/EEA nationals do not need a work permit.

Other foreign nationals must, as a general rule, have a residence and work permit before they arrive in Denmark.
HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees may not be discriminated against on the basis of such status. White collar workers are typically covered by the Salaried Employees Act.

INDEPENDENT CONTRACTOR
May be engaged directly by the company or via a personal services company. Has to be an actual independent contractor and not a de facto employee.

AGENCY WORKER
Must receive minimum pay and benefits corresponding to what they would have received had they been in regular employment.

EMPLOYMENT CONTRACTS AND POLICIES

EMPLOYMENT CONTRACTS
A written employment certificate is required containing all material terms and conditions of the employment and must be issued within 1 month of the date of commencement of the employment. An employment contract containing all relevant terms can, and commonly will, serve as a certificate.

PROBATIONARY PERIOD
Permissible. No longer than 3 months for salaried employees.

POLICIES
Many businesses have an employee manual or similar containing internal guidelines and rules on health, safety and other relevant areas. Such policies are not mandatory.

THIRD PARTY APPROVAL
None required.

LANGUAGE REQUIREMENTS
There are no general statutory requirements and employment contracts may be provided in any relevant language. However, special rules do apply with regard to e.g. stock options with legislation requiring that the terms of a stock option scheme are provided to employees in Danish.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
Most employment legislation sets out mandatory rules with regard to employment terms which may not be derogated from to the detriment of the employee. Most of these mandatory rules apply to all employees regardless of, for example, length of service.
WORKING HOURS
Maximum average working hours are 48 hours per week calculated as an average over a period of 4 months. A period of 24 hours off work is required each week which must, if possible, fall on a Sunday.

Usually, a working week will consist of 37 hours divided over 5 working days.

OVERTIME
No statutory obligation to provide additional pay for overtime, but most collective agreements require this.

WAGES
No statutory minimum pay rate.

Usually fixed by collective agreements or individually negotiated.

VACATION
2.08 days of paid holiday are accrued for each month of employment during a calendar year and 12 public holidays, 3 of which always fall on a Sunday.

SICK LEAVE AND PAY
Right to take time off for sick leave without pay. However, employees covered by the Salaried Employees Act and the majority of employees covered by collective agreements are entitled to receive full salary during illness. There is no limit on the duration for which employees receive full salary. However, long-term absence may justify termination of employment.

MATERNITY/PARENTAL LEAVE AND PAY
A pregnant employee is entitled to leave of 4 weeks prior to the birth of the child and 14 weeks after the birth, of which she is obliged to use the first 2 weeks. During this entire leave period, the employee is entitled to receive subsistence allowance.

Salaried employees are entitled to receive an allowance amounting to 50% of their salary during pregnancy and maternity leave.

Often, collective bargaining agreements or internal guidelines provide terms on salary payment during maternity/paternity/parental leave.

A father is entitled to 2 consecutive weeks of paternity leave following the birth of the child or, if agreed with the employer, within the first 14 weeks after the birth. The employee is entitled to subsistence allowance during this leave.

After the initial period of 14 weeks after the birth, both parents are entitled to an additional 32 weeks of parental leave, which may be extended to 40 or 46 weeks with payment of subsistence allowance for a total of 32 weeks.

The same rights apply to adoptive parents and same sex parents.
DISCRIMINATION

Discrimination, both direct and indirect, victimization and harassment due to age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, nationality, religion or belief, sex or sexual orientation is prohibited.

Employers are under a duty to make reasonable adjustments for persons with disabilities.

BENEFITS AND PENSIONS

All employees must pay tax and labour market contributions which are deducted from the employee’s gross salary. These deductions go to fund State benefits.

There is a mandatory Danish Labour Market Supplementary Pension to which an employer pays DKK180 per month for full time employees and the employees pay DKK90 per month. There is no requirement imposed on an employer to contribute to additional pension schemes unless this requirement is specified in a collective agreement or imposed by the employer’s internal guidelines.

DATA PRIVACY

Generally, employees must be notified if their personal data is processed and in some cases must give their consent to such processing.

Monitoring and registration of employees’ e-mails and internet use may only be done if there is an explicitly specified and objective purpose and the employee has clearly and explicitly been informed of the collection of information in advance and of the purpose for which it is being collected.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

According to the Danish Transfer of Undertakings Act, employees transfer automatically in the event of a business transfer or service provision change.

There is a duty for the employers involved in the transfer to inform and consult with the employee representatives.

Dismissals due to the transfer which are not for an economic, technical or organisational reason are prohibited.

EMPLOYEE REPRESENTATION

The Danish labour market is dominated by employer and employee organisations. Collective agreements determining wage rates and other terms of employment are very common in Denmark. Approximately 75% of the Danish workforce is covered by collective arrangements and approximately 90% of manual workers are members of a union. Even among white collar workers (depending on sector), union density is around 80%. If the workplace is a party to a collective agreement, the employees are entitled to choose a representative/shop steward who will safeguard the interests of the employees.
TERMINATION

GROUNDS
Employers have a managerial prerogative under which they may terminate employment with notice due to the employer’s circumstances, and terminations due to, eg, redundancy will usually be considered fair. Termination due to an employee’s circumstances must (for salaried employees and for most employees covered by a collective bargaining agreement) be fair and may require prior warning in some cases.

An employer may dismiss an employee without notice (summary dismissal) where the employee is guilty of behaviour which amounts to serious misconduct.

EMPLOYEES SUBJECT TO TERMINATION LAWS
Employees not covered by the Salaried Employees Act or a collective agreement, or who have been employed for less than 12 months have no legal protection against unfair dismissal.

PROHIBITED OR RESTRICTED TERMINATIONS
Certain employees, such as safety and employee representatives, pregnant employees or employees on maternity or paternity leave, are offered special protection in relation to termination. An employer must comply with specific regulations which aim to protect such employees, when terminating an employee from one of those categories.

THIRD PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Generally not required.

MASS LAYOFF RULES
If a certain number of employees are dismissed in an establishment with 20 employees or more, within a specific period of time, there are statutory rules that require consultation with the employees and compliance with certain procedures.

NOTICE
Statutory notice for salaried employees or as stipulated in the contract. If no notice has been agreed for a non-salaried employee, ‘reasonable’ notice is required.

Salaried employees are entitled to receive 1 month’s notice in the first 6 months of employment and then between 3 and 6 months’ notice, based on length of service.

An employer may dismiss an employee without notice (summary dismissal) where the employee is guilty of behaviour which amounts to serious misconduct.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
There is no statutory right for an employer to pay in lieu of notice, but an employer has the right to put the employee on garden leave for the duration of the notice period.

If the employee is on garden leave the employer may, with certain limitations, reduce the salary paid during the notice period if the employee finds new employment.
SEVERANCE
Salaried employees with a high level of seniority are generally entitled to receive a special statutory severance payment. Such severance payment amounts to 1 or 3 months’ salary subject to no less than 12 or 17 years’ continuous employment with the company. The rule applies where the employer terminates the employment.

POST-TERMINATION RESTRAINTS

NON-COMPETES
On 1 January 2016, the Danish Act on Employment Clauses entered into force.

An employee may only be subject to a non-competition clause if he or she holds a very special position of trust, and it must be specified in the agreement what the specific circumstances are that make it necessary to enter into the agreement.

Compensation is at the rate of 40% / 60% and the clause may be upheld for 6/12 months after expiry of employment, depending on the type and duration of the restriction.

Non-competition clauses entered into prior to 1 January 2016 are covered by the rules applicable at the contracting time, which only concern salaried employees. These rules set out a compensation level of 50% and there is no explicit application period for these clauses.

CUSTOMER NON-SOLICITS
After 1 January 2016, an employee may only be subject to a non-solicitation clause in relation to customers and business connections with whom the employee has had business relations within the last 12 months prior to the termination. In terms of compensation, the same requirements apply as for non-competition clauses.

EMPLOYEE NON-SOLICITS
As of 1 January 2016, it is no longer possible, except in relation to business transfers, to enter into agreements on non-solicitation of employees or non-poaching clauses. Pre-existing clauses will remain valid until 1 January 2021.

Pre-existing clauses are only enforceable if all of the employees whose employment opportunities are affected by the non-hire clause have been informed of the scope of the clause and given their written consent. In addition, they must receive compensation as stipulated in the relevant legislation. These conditions must be fulfilled for every single employee affected by the clause for the clause to be upheld in relation to any employee.

WAIVERS
Most employment law statutes contain mandatory provisions, in which case a waiver by the employee will not be enforceable. A release upon termination by mutual agreement is possible providing that the agreement is sufficiently balanced.
REMEDIES

DISCRIMINATION
Discrimination on any of the following grounds is prohibited: sex, race, age, disability, skin colour, religious or political beliefs, faith, national, ethnical or social origin and sexual orientation. Compensation for an employer’s violation of the anti-discrimination acts normally ranges from DKK10,000 to DKK25,000 if a potential employee has been subject to discrimination and for actual employees, 6 to 12 months’ salary in connection with termination of employment depending on the severity of the discrimination and the seniority of the employee.

UNFAIR DISMISSAL
For salaried employees, the law provides for a relatively modest compensation, typically 1 to 3 months’ salary. This may be increased to 6 months’ salary in special situations. Collective agreements usually provide the possibility of compensation of up to 52 weeks’ salary.

FAILURE TO INFORM AND CONSULT
Redundancy (mass layoff): Payment of compensation of between 30 days’ and 8 weeks’ salary to the employees made redundant if they do not receive pay during a notice period of equivalent duration. Fines may also be imposed.

Transfer of undertakings: Fine imposed by the courts.

Different compensation and consequences may be provided for by collective agreement; usually these are allowances of more substantial amounts.

CRIMINAL SANCTIONS
Employping a person without a valid work permit is a criminal offence which may result in a substantial fine.

Several of the anti-discrimination provisions may be enforced by criminal prosecutions. Failure to inform and consult in connection with collective redundancies and business transfers is a criminal offence which may result in a fine.
FINLAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
Foreign entities can engage employees in Finland, subject to business and corporate tax planning considerations, as well as compliance with payroll, tax, etc. requirements. Proper payroll operation includes making income tax, social security and other necessary deductions at source.

PRE-HIRE CHECKS

REQUIRED
Under the Employer Sanction Directive and the Finnish Employment Contracts Act, employers are required to ensure that non-European Economic Area (EEA) nationals comply with residency/immigration requirements or face fines for non-compliance. Certain positions may also require criminal record checks.

PERMISSIBLE
Reference and education checks are common and carried out with the applicant’s consent.

IMMIGRATION
EEA citizens have the right to work in Finland. They can stay for up to 3 months before having to register their right of residence. Non-EEA nationals require a residence permit to work in Finland, granted on the basis of temporary or permanent employment.

HIRING OPTIONS

EMPLOYEE
Permanent, fixed-term, full-time or part-time, or by invitation.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged by the company. They are not considered to be in an employment relationship, but may be engaged directly by companies or via a personal services company.

AGENCY WORKER
Agency workers are used in Finland. Temporary agency employment contracts are typically governed by fixed-term contracts. Agency workers are entitled to the same or no less favorable treatment to comparable employees.
EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Common best practice to provide employees with an employment contract. Employers are required to at least provide employment terms by the end of the first pay period.

PROBATIONARY PERIODS
Maximum probationary period is 4 months. Collective agreements may provide for a shorter period. If a fixed-term contract is for less than 8 months, the trial period cannot exceed half the contract period.

POLICIES
Policies are not mandatory but often used by employers, especially where there is no collective agreement in place.

THIRD-PARTY APPROVAL
No requirement for third-party approval for employment contracts or policies unless in case of a minor.

LANGUAGE REQUIREMENTS
Finland’s official languages are Finnish and Swedish. However, employment contracts can be in another language understood by the employee.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All employees are entitled to minimum employment rights under statute. Collective agreements in place across most employment sectors set forth minimum employment conditions. Employers that do not belong to an employer union with a collective agreement must still observe the minimum collective sector conditions. In the absence of binding sector conditions employers must provide terms which would be considered “normal” and “reasonable.”

WORKING HOURS
Working hours are specified by law or under the relevant collective agreement. Regular working hours are usually at most 8 hours per day and 40 hours per week. Weekly hours may be arranged for longer periods provided the average does not exceed 40 hours per week. Certain senior and independent positions are not subject to working hour restrictions.

OVERTIME
In case working hours apply, overtime is compensated with additional pay. The first 2 hours of overtime are paid with a 50% increase on normal pay and thereafter a 100% increase. Work on Sundays and public holidays is paid with double wages. Collective agreements may include provisions regarding pay increases on other days as well.
GUIDE TO GOING GLOBAL • EMPLOYMENT

**WAGES**
There is no universal level of minimum pay. Minimum wages are specified in the relevant collective agreement (if applicable). Otherwise wages must be “reasonable.”

**VACATION**
Holiday accrues at a minimum rate of 2 holiday days per month. If the employment relationship has been in place for at least 1 year before March 31, the rate is 2 1/2 days per month. This equals to either 4 or 5 weeks of paid annual holiday. 1 week of holiday corresponds to 6 accrued days of holiday.

**SICK LEAVE & PAY**
Employees are legally entitled to sick leave. The relevant rate is either specified under the Employment Contracts Act and/or in the relevant collective agreement (if applicable). Based on the Employment Contracts Act, employees are entitled to full pay from the employer for the day they become sick and the 9 days thereafter.

**MATERNITY/PARENTAL LEAVE & PAY**
Maternity leave amounts to 105 working days. 158 working days of parental leave can be shared between the mother and father. Benefits during parental leave are either earnings-related or subject to a minimum amount for unemployed parents, which in 2015 equated to around EUR 600 per month. All parental leaves are paid by the state, unless provided for otherwise in the applicable collective agreement (if any).

**DISCRIMINATION**
All employees have the right to equal treatment. Employers must not discriminate on the basis of: gender, ethnic or national origin, nationality, language, religion, belief, opinion, age, health, disability, sexual orientation, political activity, trade union activity, family relations; or other similar personal characteristics.

**BENEFITS & PENSIONS**
There is an earnings-based mandatory state pension which accrues on the basis of paid employment. Such pension payments are compulsory and cannot be opted-out of. The contributions are shared between the employee and the employer.

**DATA PRIVACY**
Employees must usually be notified of personal data processing (and give consent where necessary). Special rules apply to data transfers outside of the EEA. Significant restrictions on monitoring email and Internet use.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Business transfer rules apply, i.e., in a business transfer, the rights and duties of the employer are transferred to the new owner, who may not dismiss employees merely because of the business transfer. Employer having more than 20 employees has consultation requirements prior the business transfer under the Co-operation Act irrespective of the number of employees to be transferred.

EMPLOYEE REPRESENTATION

Trade unions are prevalent across all sectors and membership is high. Trade unions negotiate collective bargaining agreements among themselves that specify minimum conditions (such as salary) for their relevant trade sector. There are 3 ways in which collective agreements are made binding on the employers, either by company specific collective agreement, membership of the employer’s association or through the generally applicable collective agreement system, which covers all employers operating in the relevant sector. Trade unions typically have representatives in the workplace. The number of representatives varies depending on the applicable collective agreements for each relevant trade sector. These representatives enjoy special protection from termination.

TERMINATION

GROUNDS
Employers cannot terminate an indefinite employment contract without proper and weighty reason as referred to in the Employment Contracts Act, such as serious breach or neglect of obligations or specified economic reasons.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees are protected, meaning the employer must have weighty legal grounds for termination.

RESTRICTED OR PROHIBITED TERMINATIONS
Fixed-term employment cannot be terminated due to redundancy. Furthermore, certain employee representatives and employees on parental leave have special employee protection.

THIRD-PARTY APPROVAL FOR TERMINATION
No approval required.

MASS LAYOFF RULES
Consultation and negotiation requirements need to be followed for mass redundancies as set out in the Co-operation Act, if the company regularly employs at least 20 employees.

NOTICE
May be specified under the relevant collective agreement (if applicable) or an individual’s employment contract. Otherwise, notice periods depend upon the length of employment and are specified under the Employment Contracts Act as follows: 14 days if less than 1 year, 1 month if between 1 and 4 years, 2 months if between 4 and 8 years, 4 months if between 8 and 12 years and 6 months if longer than 12 years.
STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No statutory right to pay in lieu of notice. Employees can be placed on garden leave.

SEVERANCE
No statutory right to severance pay although this may be provided for in individual employment contracts.

POST-TERMINATION RESTRAINTS

NON-COMPETES
Only if there is a particular weighty reason for enforcement. Typical period would be 6 – 12 months. The employee must receive reasonable compensation for a non-competition period exceeding 6 months. Do not apply in case of redundancies.

CUSTOMER NON-SOLICITS
Only if there is a particular weighty reason for enforcement. Typical period would be 6 – 12 months. Do not apply in case of redundancies.

EMPLOYEE NON-SOLICITS
Treated in a similar manner to customer non-solicits.

WAIVERS
Possible to waive statutory or contractual rights in Finland as long as it is not deemed unreasonable.

REMEDIES

DISCRIMINATION
No limit to the amount of compensation for discrimination.

UNFAIR DISMISSAL
Compensation varies between 0 and 24 months’ salary in case of redundancies and 3 to 24 months’ salary in case of termination due to personal reasons. The court cannot order reinstatement.

FAILURE TO INFORM & CONSULT
Maximum is now EUR 34,140.

CRIMINAL SANCTIONS
Possible in case of breach of various employer obligations.
FRANCE

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil Law. Member of the European Union (“EU”), so required to implement relevant EU Directives. Euro (EUR). French language.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in France with payroll registrations subject to business and corporate tax planning considerations. Registration as an employer with labor authorities and “Pôle Emploi” via the Declaration Prior to Hiring (DPAE) to be made within 8 days before the effective starting date.

The employee share of social contributions amounts to 25% – 28% of his or her gross monthly compensation.

The employer share amounts to approximately 45% of each employee's gross compensation in companies with fewer than 10 employees and approximately 50% in companies with 10 employees or more.

PRE-HIRE CHECKS

REQUIRED

If the individual to be employed is a foreigner, the employer is required to check the validity of his or her work permit.

Employers must set-up a mandatory medical examination before employment commences and at the latest before the end of the trial period.

PERMISSIBLE

Pre-hire checks may be permissible subject to data privacy laws and if the information is related to the job position.

Reference checks are permissible, provided the applicant is informed. A criminal record check is permissible for specific job positions only (e.g., those involving the handling of cash).

IMMIGRATION

Nationals of the EU, the European Economic Area (EEA), and Switzerland have the right to work in France provided they have a valid ID (except for Croatia until January 1st, 2020).

Citizens of other countries need a valid work permit.
HIRING OPTIONS

EMPLOYEE
Indefinite-term employment contract (CDI) (which is the rule) or fixed-term contract (CDD), which is only permissible in limited circumstances.

The employment contract may be full-time or part-time.

Part-time and fixed-term employees enjoy the same rights as regular employees.

INDEPENDENT CONTRACTOR
Independent contractor relationships are permissible. Risk of reclassification into an employment contract and a finding of “concealed” work if a relationship of subordination is demonstrated.

AGENCY WORKER
Agency workers are strictly regulated by the French Labour Code.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Within 2 months of commencement of employment, the employee must be provided with certain minimum terms (in principle mentioned on their pay slips). Written employment agreements are highly recommended.

Certain types of employment contracts must be established in writing, e.g., fixed-term and part-time employment contracts.

PROBATIONARY PERIODS
2 months for blue-collar employees and standard employees; 3 months for supervisors and technicians; 4 months for management-level employees. Collective Bargaining Agreements (CBAs) may provide for differentiating terms.

Trial period renewable once for 2, 3 and 4 months respectively if a CBA and the employment contract expressly provide for it.

POLICIES
Internal rules (règlement intérieur) mandatory in companies or establishments employing at least 20 employees.

THIRD-PARTY APPROVAL
Implementation of the internal rules subject to consultation of staff representatives, submission to the labour inspector and posting at the company’s premises.

LANGUAGE REQUIREMENTS
All employment documents must be drafted in French to be binding.
MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
Legal working time is 35 hours per week. Other working time schemes available depending upon the terms of the CBA.

Employees may be entitled to RTT/resting days, i.e., resting days to compensate for days worked above the legal working time, under the conditions set by CBAs.

OVERTIME
Annual limit of 220 hours, unless the applicable CBA provides for a lower ceiling.

WAGES
Minimum wage set at EUR 1,466.62 gross per month for 2016, for a 35 hour week. In addition, minimum (higher) salaries provided by applicable CBAs.

VACATION
5 weeks i.e., 25 working days (if Monday – Friday working) or 30 working days (if Monday – Saturday working).

Additional RTT/resting days may apply (see above).

SICK LEAVE & PAY
Daily indemnity paid by the Social Security Authorities as from the 4th day of absence. For employees having at least 1 year of seniority within the company, social security indemnity to be supplemented with an employer-paid indemnity, depending on certain conditions and within certain limits, as from the 8th day of absence (1st day in case of occupational accident or sickness):
(i) 90% of the employee’s gross compensation for the first 30 days of absence, (ii) 2/3 of such compensation for the next 30 days, each of these two 30-day periods increased by 10 days per full period of 5 additional years’ seniority, up to 90 days for each compensation period.

MATERNITY/PARENTAL LEAVE & PAY
Maternity leave: The minimum amount of maternity leave is 16 weeks. Maternity insurance daily indemnity paid by the Social Security Authorities under certain conditions.

The employer is not required by law to maintain the employee’s salary in whole or in part, but is often required to do so by the applicable CBA or common practice.

Paternity leave: Up to 11 consecutive days (18 days in case of multiple births), to be taken in principle within 4 months as from the birth date.

Parental leave: Upon the expiry of the maternity leave, 1 year to be extended up to 3 years. Full-time leave or part-time work permissible during the leave period.
DISCRIMINATION

Protected characteristics: origins, sex, customs, sexual orientation, age, family situation, pregnancy, general characteristics, affiliation or non-affiliation, whether actual or assumed, to an ethnic group, a nation or a race, political opinions, activities linked to a union or a mutual benefit company, religious beliefs, physical appearance, family name, health and disability, and place of residence.

BENEFITS & PENSIONS

State social system provides for social security, welfare and pension coverage. In addition, since 1 January 2016, employers must offer healthcare insurance coverage to all employees. All employers, regardless of the size of the company, including small and medium enterprises (SMEs) and associations, are covered (with some rare exceptions).

CBAs and/or employment contracts can provide for additional mandatory benefits: complementary welfare coverage for all employees, supra-complementary pension plan, etc. CBAs can also provide for minimum benefits entitlements (minimum welfare contribution rates, insurance bodies to be affiliated to, etc.).

Retirement upon the employee’s initiative: initial entitlement to base retirement set at the age of 62 for employees born as from January 1st, 1955; for those born between July 1st, 1951 and December 31st, 1954, the legal retirement age is gradually increased.

Retirement upon the employer’s initiative: restricted under 70 years old. “Clause couperet,” i.e., clauses under which the employment relationship will automatically terminate at a specific age limit, are prohibited under French labor law.

DATA PRIVACY

Various restrictions, declaration or authorization requirements towards the French data protection authority (CNIL).

Data transfers outside of France are subject to additional requirements. Significant restriction on monitoring Internet and e-mail use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of the employment contract under the EU Acquired Rights Directive/Article L. 1224-1 of the French Labour Code in case of a modification in the employer’s legal situation (e.g., sale, merger) and provided the criteria set by case law are met, meaning that it is a transfer of a standalone business that maintains its identity within the transferee.

In share or asset deals, there is a requirement for the impacted company to consult with their works council and also very likely, in the case of an asset deal, with their Health, Safety and Working Conditions Committee.

Under certain circumstances, employees of SMEs must be informed of a proposed sale of the business or of shares to give them the opportunity to make an offer (Hamon Law).
EMPLOYEE REPRESENTATION

Workers’ delegates mandatory in establishments with at least 11 employees.

Works council mandatory in establishments with at least 50 employees.

Health, Safety and Working Conditions Committee (CHSCT) mandatory in establishments with at least 50 employees.

Union representatives may be appointed in establishments with at least 50 employees.

Under the recent Macron Law, companies with between 50 and 299 employees can set up a joint employee representative body (DUP) bringing together Workers’ delegates, Works council and the Health and Safety Committee with the result that there will be a reduced number of representatives/protected employees. Although joined into a single representative body, the different members still retain their own prerogatives.

This option also exists in companies with more than 299 employees subject to specific rules and a collective agreement.

Virtually all companies are subject to industry-wide CBAs.

TERMINATION

GROUNDS
Termination of an indefinite-term employment contract is permissible on personal grounds (e.g., misconduct, poor performance) and economic grounds (e.g., economic difficulties, technological changes, reorganization to safeguard competitiveness). Economic grounds are assessed at the group level worldwide in the relevant business sector.

Early termination of a fixed-term employment contract permissible only in limited circumstances as stated by the French Labour Code.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees.

RESTRICTED OR PROHIBITED TERMINATIONS
Restrictions on terminations and specific procedures (labor inspector authorization) required for termination of protected employees:

• Termination of workers’ representatives (workers’ delegates, members of the works council, union delegates and union section representatives).

• Termination while the employment contract is suspended as a result of an occupational disease or accident, save on the grounds of serious misconduct or the impossibility to maintain the contract for a reason unrelated to the occupational disease or accident.

• Termination during pregnancy, maternity/adoption leave and for 4 weeks following maternity leave, save on the grounds of serious misconduct or the impossibility to maintain the contract for a reason unrelated to the pregnancy, childbirth or adoption.

Termination on discriminatory grounds is prohibited.
THIRD-PARTY APPROVAL FOR TERMINATION
Need for the Labour Inspector’s authorization in case of termination of a protected employee.

MASS LAYOFF RULES
Applicable rules differ depending on the number of employees made redundant over 30 days (+/- 10) and the number of employees within the company (+/- 50).

If fewer than 10 employees made redundant over 30 days in a company employing at least 50 employees: information/consultation of the Works council and usually also the Health and Safety Committee is required.

If at least 10 employees made redundant over 30 days in a company employing at least 50 employees: the employer needs to implement an employment safeguard plan (PSE); inform/consult the Works council and Health and Safety Committee; with the procedure under the control of the Labour Administration.

In companies employing fewer than 50 employees: information/consultation of Workers’ delegates (if any) is required.

NOTICE
Under 6 months’ seniority: as determined by law, the CBA or geographical and professional common practice.

Between 6 months and less than 2 years’ seniority: 1 month.

At least 2 years’ seniority: 2 months.

Subject to differentiating provisions in the CBA, employment contract or common practice, whichever is more favorable to the employee.

No notice period in case of dismissal for gross or wilful misconduct.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Employee can be paid in lieu of notice. Alternatively, employee can be paid his/her usual salary for the duration of the notice period even if not performed.

SEVERANCE
Employee with at least 1 year of seniority entitled to 1/5th of his or her average monthly salary per year of seniority for the first 10 years and 1/3rd of his or her average monthly salary per year of seniority for each following year, subject to more favorable provisions in the applicable CBA.

POST-TERMINATION RESTRAINTS
Restrictive covenants are allowed if justified by the company’s business and employee’s role.
NON-COMPETES
Allowed under 5 conditions: it must (i) be essential to the protection of the company’s legitimate interests, (ii) be limited in time, (iii) be limited in space, (iv) take into account the specificities of the employee’s duties and (v) provide for a financial compensation (commonly at least 33% of the employee’s compensation for the duration of the non-compete, but depends on the applicable CBA). CBAs may provide specific terms.

CUSTOMER NON-SOLICITS
No legal requirement for a financial compensation, although their validity is currently challenged by the courts, which often consider that they in fact constitute a non-compete restriction and as such should be duly compensated.

EMPLOYEE NON-SOLICITS
Allowed.

WAIVERS
An employee may waive his or her rights in a settlement agreement concluded with his or her employer, after termination of his or her employment contract. Criminal claims are not covered. A settlement indemnity is to be paid on top of mandatory severance.

A mutual termination ("rupture conventionnelle") does not result in a settlement agreement/waiver.

REMEDIES
DISCRIMINATION
Any measure taken on discriminatory grounds would be held null and void and entail criminal sanctions (up to 3 years’ imprisonment and a fine of up to EUR 45,000 for the company’s legal representative and EUR 225,000 for the company as a legal entity), in addition to potential damages for the harm sustained.

UNFAIR DISMISSAL
Dismissal without “real and serious” cause: if the employee has at least 2 years’ seniority and the company employs at least 11 employees, the court may order his/her reinstatement in his/her former position; if either party disagrees, the employee will be awarded damages amounting to at least 6 months’ salary. The company will also be ordered to reimburse up to 6 months of unemployment allowances.

If the employee has less than 2 years’ seniority and/or the company employs fewer than 11 employees, he or she will be awarded damages for the harm sustained as determined by the court.

Damages to be appraised by the court based on the employee’s age, length of service, circumstances of dismissal, etc. No cap applicable but it is likely that an indicative damages scale will be set by the new Labour Law to be passed in the course of 2016.

Additional claims are often raised by dismissed employees along with unfair dismissal, which will be taken into consideration for compensation purposes.
FAILURE TO INFORM & CONSULT
Offence of obstruction, which entails criminal liability (up to 1 year of imprisonment in some cases and a fine of up to EUR 7,500 for the company’s legal representative and EUR 37,500 for the company as a legal entity).

CRIMINAL SANCTIONS
Yes (e.g., for discrimination, harassment, offence of obstruction, or where an employee is discovered undertaking “concealed” work).

Both the company’s representative and the company as a legal entity can be held criminally liable.
GERMANY

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil law. Member of the European Union (EU), so required to implement relevant EU Directives. Euro (€). German.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign company can engage employees in Germany without local corporate presence, subject to doing business and corporate tax considerations. For employment purposes, registrations with tax and social security authorities are required for payroll purposes.

Employee earnings are subject to withholdings for social security (19.875% employer and employee portion each, up to a ceiling of €6,200 per month) and wage tax (from 14% to 45%) to be done through payroll.

PRE-HIRE CHECKS
REQUIRED
Immigration compliance. For certain employment positions (e.g., public services, education sector, medical sector, security services), statement of good standing (Führungszeugnis) from the Federal Central Register (Bundeszentralregister).

PERMISSIBLE
Requiring a credit reference check or of a statement of good standing is only permissible for roles justifying interest in such information and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION
Free movement of employees for all countries of the European Economic Area (EAA) (EU, Iceland, Liechtenstein, Norway) and Switzerland. All other nationals require a residence and work permit. Nationals of, inter alia, the US, Israel and Japan, and skilled workers enjoy favorable immigration treatment and have access to fast-track procedures.

HIRING OPTIONS
EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.
INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure with high financial risk. Work instructions and organizational integration, in particular, will jeopardize the independent contractor position.

AGENCY WORKER
Agency workers shall not work for unlimited periods of time at the same business, although German law does not define the maximum permissible term. The agency is required to hold a special permit granted by the Federal Employment Agency. Agency workers have the right to equal treatment to employees in relation to pay and other benefits terms, unless a specific collective agreement provides otherwise. The law on agency workers is under review.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Written employment agreements are common, but not mandatory, except for fixed-term contracts. A written statement of the core working conditions has to be provided by the employer within 1 month of commencement of employment.

PROBATIONARY PERIODS
Permissible, subject to proportionality, for a term of up to 6 months. Statutory dismissal protection will start after 6 months only.

POLICIES
No mandatory policy requirements. If a works council exists, works agreements will largely replace policies. Without a works council, policies are common, but subject to standard contract term provisions, which means they cannot be changed unilaterally to the detriment of the workforce.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third party.

LANGUAGE REQUIREMENTS
No statutory requirements. Employees are often open to English agreements or policies. In case of litigation, the courts would request official translations.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
48 work hours per week as average in any 6 months’ period. Minimum break of 11 hours per day. Work on Sundays and official holidays requires special permission.
OVERTIME
No overtime rate set forth by statute, instead subject to contractual agreement, which is largely regulated by standard contract term provisions. The agreement needs to be fair; any provision incorporating overtime into overall wages needs to be related to a defined amount of overtime.

WAGES
The statutory minimum wage amounts to €8.50 gross per hour. A few exceptions are made for wages agreed in some collective bargaining agreements (up until 31 December 2017 only) and for arrangements regarding trainees, apprentices and volunteers.

VACATION
4 weeks per year plus local public holidays (between 9 – 12 days depending on the state).

SICK LEAVE & PAY
Statutory sick leave and pay provisions allow for up to 6 weeks of employer paid sick leave, followed by 72 weeks of sick allowance paid through the public health fund.

MATERNITY/PARENTAL LEAVE & PAY
14 weeks maternity leave fully paid by the employer. Parental leave paid by the state for 12 months (14 months if the other parent takes at least 2 months) with a 67% net payment rate. Further 24 months of unpaid parental leave possible with full protection of the workplace and right to return to work.

DISCRIMINATION
Statutory protection against unlawful discrimination and harassment based on: race or ethnic origin, gender, religion or belief, disability, age, or sexual orientation.

BENEFITS & PENSIONS
No benefits required above those covered under social insurance contributions. Employers are required to provide all employees with an option to enrol in a deferred salary pension insurance and the administration costs borne by the employer.

DATA PRIVACY
Covered by the Federal Data Protection Act and EU rules. Processing of personal data generally unlawful except as listed by the Act, a works council agreement or free and individual consent. Appointment of data protection officers required if more than 9 individuals deal with electronically saved personal data. Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring email and Internet use.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive/Germany’s transfer of business (sec. 613a Civil Code) rules in case of an asset deal or service provision change. Employees shall receive detailed written information prior to the transfer and may object to the transfer within 1 month after receipt thereof. Duty to inform and consult with the works council. Significant restrictions on changing terms and conditions following a transfer. Any dismissal connected to the transfer would be unfair; dismissals for other reasons are possible.

EMPLOYEE REPRESENTATION

Works Council: The elected works council plays a major role in everyday life of larger German businesses. By law, employees in every business of at least 5 employees may form a works council at their own initiative. The works council has information, consultation and co-decision rights in the area of hiring, positioning and dismissals, internal organization of the business, restructuring and personal planning, among others. Employer and works council shall form works agreements to regulate the affairs of the business, except working time and remuneration, which are reserved for collective agreements with a trade union. Works councils may not call any industrial action.

Co-Determination on Supervisory Board Level: Companies with a regular workforce above 500 employees in Germany establish a supervisory board with 1/3 elected employee representation and a fairly limited scope of duties. If the regular workforce in Germany exceeds 2,000, 1/2 of the members of the supervisory board are elected employee representatives with a fixed list of duties. The chairman of the supervisory board is by law always nominated from the shareholder’s side and has a casting vote, ensuring control by the business owners.

Trade Unions: 18% of the German workforce are members of a trade union. Trade unions are prevalent in certain sectors (manufacturing, building, transport and the public sector). Trade unions deal with employer associations or individual employers. Once represented businesses agree on a collective agreement, those are widely used by other businesses as reference. Formation of collective labor organizations is a constitutional freedom, as is the right to stay away.

TERMINATION

GROUNDS

In a business with up to 10 employees no dismissal protection and termination can generally be for any reason, over 10 employees dismissal protection unless dismissal is justified by compelling operational reasons, conduct related reasons (in particular misconduct) or personal reasons (unable to work due to health or new job requirements).

EMPLOYEES SUBJECT TO TERMINATION LAWS

Employees with fewer than 6 months’ seniority have no unfair dismissal protection (save in certain circumstances where no seniority is required, including dismissals connected to family/pregnancy rights, works council membership or discrimination).

RESTRICTED OR PROHIBITED TERMINATIONS

Pregnant employees, mothers during maternity leave, employees on parental leave, works council members, candidates during elections, data protection officer, severely disabled employees.
THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
The works council, if established, has to be consulted about each termination. Dismissal of disabled employees, employees on maternity or parental leave can be permitted by specific authorities. Collective redundancies require consultation with the works council about a restructuring agreement and a social plan, whereby consent is only mandatory for the social plan; in case of a tie, the employer’s decision on the restructuring plan prevails.

MASS LAYOFF RULES
Yes, strict information and consultation rules apply where 6 or more employees in a business between 20 – 60 employees are to be made redundant within 30 days, in larger businesses the threshold is 10% or 25 individuals. The employer must file an application with the Federal Employment Agency; failure to do comply will render all notices and agreed terminations invalid.

NOTICE
4 weeks’ statutory notice; after 2 years of employment 1 month effective to the end of a calendar month; with a sliding scale of up to 7 months’ notice after 20 years of service. Not required for terminations for very serious misconduct.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No statutory right to pay in lieu of notice. As to garden leave, the right depends on contract terms and merits of the case, applying a weighting of interests between both parties.

SEVERANCE
No statutory severance. A valid dismissal will end the employment without compensation, unless it is part of a collective restructuring covered by a social plan agreed with the works council. Invalid dismissal leads to enforced reinstatement by the labor courts, unless the parties settle the dispute. Settlements are standard; the general formula is between 0.5 and 1.5 monthly salaries per year of service. There is no maximum threshold on settlements.

POST-TERMINATION RESTRAINTS
Need to be in writing. Those that protect the employer’s legitimate business interests can be enforced if reasonable. Garden leave is common for senior employees.

NON-COMPETES
Typically no longer than 6-12 months, with a statutory maximum of 2 years. Compensation of 50% of the employee’s wages required during the non-compete period.

CUSTOMER NON-SOLICITS
Permissible in narrow circumstances.

EMPLOYEE NON-SOLICITS
Permissible only if related to illegal poaching; an agreement not to hire employees from a certain business is not enforceable.
WAIVERS
Enforceable, subject to legal review if, for instance, employees were not given time to consider.

REMEDIES

DISCRIMINATION
Injunction to continue or repeat discriminating actions. Compensation capped at 3 monthly salary if discrimination is related to the recruitment process. Uncapped compensation in all other cases, based on the claimant’s financial loss and injury to feelings. German courts tend to award limited compensation; awards of €30,000 have been seen but are an extreme exception.

UNFAIR DISMISSAL
Reinstatement. Therefore, most cases are settled.

FAILURE TO INFORM & CONSULT
The works council can bring legal action, which could result in administrative fines of up to €10,000.

CRIMINAL SANCTIONS
Significant frequent violation of works council information and consultation rights could lead to criminal charges; however, this rarely occurs.
HONG KONG

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common Law. The Basic Law of the Hong Kong Special Administrative Region (HKSAR) provides that courts of HKSAR may refer to the precedents of other common law jurisdictions when making decisions. Hong Kong dollar (HK$). English and Chinese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can engage employees in Hong Kong subject to business, corporate, tax considerations and proper payroll registration.

Payment of Hong Kong tax is the employee’s responsibility. Therefore, Hong Kong employers are not required to withhold tax through the payroll system.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance.

PERMISSIBLE
Any data collected as a result of pre-hire checks must be necessary and not excessive. In order to comply with the Personal Data (Privacy) Ordinance (PD(P)O), candidates are to be expressly informed of the collection, use and disclosure of any personal data in relation to them by their employer (or prospective employer). Asking a candidate to sign a Personal Information Collection Statement will assist an employer in complying with those obligations. A candidate can be asked to have a medical examination, but this should only be after the employer has made a conditional offer of employment to a selected candidate. If criminal checks are carried out, an employer must be careful not to dismiss, exclude or show prejudice against the candidate on the basis of any spent conviction (that is, where a person was previously convicted of an offence for which he or she was not sentenced to imprisonment of more than 3 months or a fine of more than HK$10,000, and the person has not been convicted of any other offence and he or she has not been convicted for at least 3 years).

IMMIGRATION

Any person who does not have the right of abode in Hong Kong and who undertakes work of any kind (whether paid or unpaid) must hold a valid employment visa. Processing time is generally 6 to 8 weeks.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time, part-time or casual.
INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company.

AGENCY WORKER
Typically, agreements between the agency and the end-user will stipulate that the end-user is not the employer, while the agreement between the worker and the agency will stipulate that the worker is either self-employed or an employee of the agency. The placement may be for a fixed term or open-ended. The Employment Ordinance (“EO”) and Employment Agency Regulations regulate employment agencies.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
A prospective employee must be provided with certain information (wages and wage period, any end-of-year payment, and length of notice) prior to commencing employment. There is no requirement to have an employment contract in writing, but it is common practice to have a written contract signed by both parties.

PROBATIONARY PERIODS
Permissible. No statutory limit but 3 to 6 months is common. Regardless of what the employment contract states, either party can terminate the employment contract without notice or payment in lieu during the first month of the probationary period.

POLICIES
No mandatory policies.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or obtain approval from any third-party.

LANGUAGE REQUIREMENTS
No statutory requirements.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
The EO applies to every employee engaged under a contract of employment, to an employer of such an employee, and to a contract of employment between such parties. For employees to whom the EO applies, they will be entitled to the basic protections including payment of wages, restrictions on wage deductions, the granting of statutory holidays (albeit not necessarily paid), and employment protection in respect of unreasonable and unlawful dismissal. Employees who are employed under a continuous contract (i.e., for 18 hours a week for 4 consecutive weeks or where the parties agree that the employee will be continuously employed) (“continuous employment”) are entitled to further benefits, such as rest days, paid annual leave, sickness allowance, paid statutory holidays, maternity leave, paternity leave, severance payments and long service payments.
**WORKING HOURS**
Currently no restrictions, but there is a proposal in Hong Kong to introduce standard working hours.

**OVERTIME**
No obligation to provide pay for overtime worked.

**WAGES**
Minimum wage requirements, currently at least HKD32.5 per hour.

**VACATION**
Between 7 and 14 days, depending on length of service. In addition, there are 12 statutory holidays. Banks, educational institutions, governmental departments and many private employers also elect to observe general holidays (rather than the minimum 12 statutory holidays). General holidays are declared to be every Sunday and 17 other days (which include the 12 statutory holidays).

**SICK LEAVE & PAY**
Employees in continuous employment will accrue paid sickness allowance at a rate of 2 paid sickness days for each completed month of service in the first year of employment and 4 paid sickness days for each completed month of service thereafter, up to a maximum accrual of 120 sickness days. Sickness allowance is paid by the employer and payment is only due for sickness days taken by an employee if the employee has taken 4 or more consecutive sickness days off. Once the employee is off for at least 4 sickness days, all of the sickness days are deemed subject to be paid the sickness allowance (including the first 3 days) up to the maximum accrual. The sick leave must also be supported by a valid medical certificate. Sickness allowance is paid at a daily rate equivalent to 4/5 of the daily average of the wages earned by the employee during the period of 12 months immediately before the sickness day or the first sickness day (as appropriate) (or if the employee has been employed by the employer for a period shorter than 12 months immediately before the sickness day, the shorter period) (“daily average wages”).

**MATERNITY/PARENTAL LEAVE & PAY**
10 weeks’ maternity leave. This will be paid at 4/5 of the employee’s average daily wages if the employee has been in continuous employment for not less than 40 weeks at the commencement of maternity leave. For employees without 40 weeks’ continuous employment, the maternity leave is unpaid. Where an employee gives birth later than expected, an employee can also extend the period of maternity leave by the number of days between the expected date of birth and the actual date of birth. This period is unpaid. Finally, an employee can take a further period of up to 4 weeks, for illness or disability arising out of the pregnancy or childbirth. This period is unpaid and is in addition to sickness allowance.

The EO grants 3 days’ paternity leave to male employees who are employed under a continuous contract in Hong Kong in respect of the birth of each child of which he is the father. Provided the employee has been in continuous employment for not less than 40 weeks at the commencement of the paternity leave, the paternity leave will be paid at 4/5 of the employee’s average daily wages. For employees without 40 weeks’ continuous employment, the paternity leave is unpaid.
DISCRIMINATION

Characteristics protected from unlawful discrimination, victimization and harassment: sex, pregnancy, marital status, family status (i.e., having the responsibility for the care of an immediate family member), disability, race and union affiliation.

BENEFITS & PENSIONS

Subject to certain exemptions (for example, for people from overseas who enter Hong Kong for employment for fewer than 13 months, or who are covered by an overseas retirement scheme), once an employee has been employed for 60 days, the employer is required to enroll the employee into a Mandatory Provident Fund (MPF) scheme. Generally, both the employer and the employee are required to contribute a minimum of 5% of the employee’s “relevant income” up to a capped maximum amount of HK$1,500. Relevant income includes wages, salaries, leave pay, fee, commission, bonus, gratuity, housing allowance, housing benefits, any perquisite or allowance. It does not include any non-monetary benefits, severance payments or long service payments.

DATA PRIVACY

The PD(P)O is principally concerned with 6 data protection principles (DPPs). Broadly, these require that personal data is only collected for a lawful purpose and that only personal data which is necessary and not excessive for that purpose may be collected and that individuals are informed of certain things before data is collected or used (DPP 1); that all reasonably practicable steps need to be taken to ensure that personal data is accurate and that it should only be retained for as long as necessary to fulfill its purpose (DPP 2); that personal data must not, without the prescribed consent of the job applicant or employee, be used for a purpose other than the purpose for which it was collected (DPP 3); that all reasonably practicable steps must be taken to ensure that the personal data is secure and protected against unauthorized or accidental access, processing, erasure or other use (DPP 4); that all reasonably practicable steps must be taken to ensure that an individual can access information about the data user’s policies and practices in relation to the personal data, the kind of personal data about him or her that is being held, and the purposes for which it will be used (DPP 5); and that, with some exceptions, an individual is entitled to request access to all personal data held by a data user and to correct that data if it is inaccurate (DPP 6). There are provisions in the PD(P)O restricting the transfer of personal data outside of Hong Kong, but these are not currently in force.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No automatic transfer of employment. This includes an associated company transfer or change of business ownership, or a merger situation where the employment entity will be changed. Therefore, the previous employer will need to terminate the employee’s employment contract and the new employer will need to offer (and the employee accept) employment. If the employee accepts employment with the new employer or unreasonably refuses employment with the new employer in circumstances where the offer of new employment is on the same terms or terms and conditions no less favorable when compared to the terms and conditions with the previous employer, then the previous employer may be able to avoid liability for a severance payment. There is no duty to consult (either individually or collectively) with employees or employee representatives.
EMPLOYEE REPRESENTATION

Although Hong Kong residents have the right and freedom to form and join trade unions, the level of employee participation in trade unions is relatively low and Hong Kong enjoys a relatively harmonious climate of industrial relations. Collective bargaining agreements are uncommon.

There are no employee representatives or works councils.

TERMINATION

GROUNDS
Termination is permissible on these grounds: the conduct of the employee; the capability or qualifications of the employee for performing work of a kind which he or she was employed by the employer to do; redundancy; illegality or some other substantial reason.

EMPLOYEES SUBJECT TO TERMINATION LAWS
Employees with continuous employment of 2 years or more are protected against unreasonable termination (i.e., terminated in order to extinguish or reduce any right, benefit or protection that the employee has under the contract or the EO). Presumption of unreasonable termination can be rebutted by showing that the termination was for one of the permissible grounds. No requirement to show that the termination was “reasonable” or “fair” in the circumstances.

RESTRICTED OR PROHIBITED TERMINATIONS
Female employees who are pregnant or on statutory maternity leave; any employee who is absent from work on sick leave and is in receipt of sickness allowance; any employee who has suffered a work related injury entitling him or her to compensation under the Employees’ Compensation Ordinance; any employee who is undertaking jury service; any employee who has given evidence under the Factories and Industrial Undertaking Ordinance; and any employee with a spent conviction.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Not required.

MASS LAYOFF RULES
None.

NOTICE
Minimum 7 days’ notice after the first month of the probationary period and during subsequent employment. If the notice is specified in the employment agreement, the notice will be the agreed period. If no notice period is specified, it is presumed to be 1 month. Not required for termination for serious misconduct (i.e., gross misconduct or cause).

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
There is a statutory right to make a payment in lieu of notice. Right to place on garden leave depends on the terms of the contract.
SEVERANCE
Statutory severance payment payable to redundant employees with continuous service for 2 years or more. Calculated using a base amount per year of service of 2/3 of the employee’s last full month’s wages (being the monthly average of the wages earned by the employee during the previous 12 months, or such shorter period where the employee has been employed for less than 12 month, or 2/3 of HK$22,500, whichever is less). Total severance payment is capped at HK$390,000. Employers are entitled to offset from the liability to pay a severance payment, any gratuity or retirement scheme payment that has been made to the employee in respect of any years of service for which the severance payment is payable. For the purposes of a severance payment, there is a statutory presumption that the termination arose by reason of redundancy. This presumption can only be rebutted by an employer proving that the employment was terminated for reasons wholly unrelated to redundancy.

POST-TERMINATION RESTRAINTS
Those restraints that protect the employer’s legitimate business interests can be enforced if reasonable. Garden leave is common for senior employees.

NON-COMPETES
Typically no longer than 3-6 months.

CUSTOMER NON-SOLICITS
Permissible in limited circumstances. Typically no longer than 6-12 months.

EMPLOYEE NON-SOLICITS
Permissible in limited circumstances. Typically no longer than 6-12 months.

WAIVERS
Enforceable to waive contractual rights. While an employee can be asked to waive statutory rights, there is some uncertainty as to whether such a waiver would be effective to prevent an employee from subsequently bringing a claim to exercise his or her statutory rights.

REMEDIES
DISCRIMINATION
Uncapped compensation, which can include the claimant’s financial loss, injury to feelings compensation of between HK$7,800 and HK$390,000 (based on the Vento guidelines in the United Kingdom, which set out the guidelines used by tribunals to decide how much they should award for injuries to feelings) and in some instances exemplary damages.
UNFAIR DISMISSAL
The EO provides a statutory right to remedies which differ depending on the circumstances in which the unlawful termination took place. In addition to these remedies, an employee is able to claim reinstatement, reengagement or terminal payments. However, for an order of reinstatement or reengagement to be made, both the employee and employer must agree.

Where no order for reinstatement or reengagement has been made, the court or Labor Tribunal may also make an award of compensation (up to HK$150,000) to the employee if termination was in contravention of the EO and the Tribunal considers it just and appropriate.

FAILURE TO INFORM & CONSULT
The court or Labor Tribunal may make an order for reinstatement, reengagement or for termination payments. Failure to inform and consult not applicable. As set out above, both parties must consent for an order of reinstatement or reengagement to be made.

CRIMINAL SANCTIONS
The provisions of the EO are enforced, first by criminal law sanctions (where the usual penalty is a fine, except for payment of wages offences, which can give rise to a sentence of imprisonment) and second by way of extensive civil remedies at the instance of the aggrieved employee. Further, in some instances, liability can be passed to the individual decision-maker of the employing company.
HUNGARY

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU). Hungarian Forint (HUF). Hungarian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

In order to employ employees in Hungary, the employing entity must have an established branch in Hungary. The employment of employees has to be notified to the tax authority and is subject to tax payment obligations (social security tax to be paid by the employer: 28.5%, contribution payable by the employee but deducted by the employer: 18.5%).

PRE-HIRE CHECKS

REQUIRED

Immigration compliance is required. Criminal records are also checked in relation to certain occupations, such as judges, attorneys, public servants, auditors.

PERMISSIBLE

Apart from the above, a check of criminal records is only allowed if it provides important information with respect to the given position or work to be carried out.

Further checks (e.g., education, reference) are also permitted but may only be carried out if aiming to obtain important information for the purposes of entering into the employment.

IMMIGRATION

Nationals of the EEA and Switzerland have the right to work in Hungary without a visa or a work permit.

Third-country citizens must have a residence permit for the purpose of work before starting to work in Hungary.

HIRING OPTIONS

EMPLOYEE

Employment can be established for either an indefinite or fixed term, as full-time or part-time employment.

INDEPENDENT CONTRACTOR

Independent contractors can be engaged through a company using service contracts on a civil law basis. There are several criteria which help to decide whether a specific service can be provided by an independent contractor or if an employment relationship must be established.
AGENCY WORKER
Employers may enter into crew leasing agreements with temporary workers agencies in order to employ temporary agency workers. The engagement of a temporary agency worker by the same receiving employer is limited to a maximum of 5 years.

Equal conditions of work and employment have to be given to employees employed directly by the receiving employer and to temporary agency workers. Equal treatment in respect of remuneration and benefits is required from the 184th day of employment of a temporary agency worker.

ANY OTHER EMPLOYMENT OPTION
Not applicable.

EMPLOYMENT CONTRACTS & POLICIES

REQUIREMENTS
Employment contracts must be entered into in writing and have to contain the base salary and the position of the employee as mandatory elements. It is also recommended to specify the place of work. The employer and the employee may agree further terms in the employment contract.

PROBATIONARY PERIODS
Permissible, and commonly used. The statutory limit is 3 months, which can be extended up to 6 months by collective agreement.

POLICIES
An employee must be informed, in writing, within 15 days from the start of employment of, among other information, daily working hours, other components of remuneration, the date of payment of salary, the duration of paid holiday, and detailed duties of the employee (job description), etc.

An employer is permitted to set rules in relation to other subjects in its own internal policies if these are properly communicated to staff.

THIRD PARTY APPROVAL
Approval from a third party is usually not required to enter into an employment contract. In special cases, eg for non-EU citizens, specific permits may be required.

LANGUAGE REQUIREMENTS
The employment contract is only valid if the contracting parties understand the language it is written in.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All employees are entitled to minimum employment rights.
WORKING HOURS
Normal working time for full-time employees is 8 hours per day. The parties may stipulate shorter, or, in specific cases (eg stand-by duty or those working in a family business) longer, working hours for full time employment. Rules apply in relation to rest breaks and rest periods between working days.

OVERTIME
The maximum overtime limit is 250 hours annually, or 300 hours where provided by collective agreement. Any overtime worked must also not breach the daily/weekly maximum working time which (including overtime) on a specific working day must not exceed 12 hours and must not exceed 48 hours per working week.

An employee is entitled to a wage supplement for overtime, which is 50% of base salary in case of overtime above the regular daily working time. A wage supplement must also be paid in return for any “extraordinary” work completed on weekly rest days or public holidays (50% plus a day off or 100%).

WAGES
The mandatory minimum wage is HUF111,000 from 1 January 2016. A higher minimum wage, the so-called guaranteed wage minimum of HUF129,000, applies to jobs requiring higher education (eg, a secondary school or vocational training).

VACATION
The amount of the paid basic holiday is 20 days per year which is increased according to the age of the employee, up to 30 days for employees over 45 years of age.

Also, special holiday entitlements apply (eg for employees with children, etc.)

SICK LEAVE & PAY
Employees are entitled to 15 days of sick leave per year, during which they receive 70% of their salary by way of an “absence fee” which is entirely borne by the employer. After the first 15 days of sick leave in a calendar year, the social security takes over payment of sick pay; however, 1/3 of the cost is borne by the employer.

MATERNITY/PARENTAL LEAVE & PAY
Maternity leave is 24 weeks during the pregnancy period and after giving birth. Leave should be scheduled by the employer so that a maximum of four weeks’ leave is taken before the planned date of childbirth. If eligible, employees receive 70% of their average salary for this period, which is covered by the social security system.

A father is entitled to 5 days off within the 2-month period following the date of the child’s birth.

Employees are entitled to parental leave without pay until the child reaches the age of 3 in order to care for the child at home (longer for disabled or sick children). During this period, the employee receives child care pay from the social security system amounting to 70% of average salary until the child reaches 2 years of age, and the minimum amount of old age pension after the 2nd birthday of the child until it reaches the age of 3 years.
DISCRIMINATION

Direct and indirect discrimination, victimization, unlawful segregation and harassment are prohibited.

Employers are forbidden to discriminate against employees on grounds of sex, race, colour, nationality, national or ethnic origin, mother tongue, disability, health status, religion or belief, political or other opinion, marital status, sexual orientation, age, or any other circumstances which are not connected to work.

The principle of equal treatment is not violated if the differences applied are based on a difference in the nature, the quality or the quantity of the work, the difference in working conditions, required training, experience, responsibility or based on differences in the labour market conditions.

BENEFITS & PENSIONS

The benefits offered to an employee will usually depend on their seniority within the organisation. At manager or director level employees are likely to be offered company car and/or mobile telephone, etc.

It is usual to provide employees with a range of optional fringe benefits (eg, contribution to a pension/healthcare fund, contribution to travel expenses, food vouchers, vouchers for holiday etc) on the basis of the respective Fringe Benefit Policy. Commonly, up to a pre-defined maximum amount, employees can select from among the options offered in line with their own preferences.

The Hungarian pension system consists of 2 pillars: (i) the state pillar is the social security pension scheme; and (ii) the private pillars, which might be a privately managed pension scheme with voluntary contributions; a pension advance-saving account kept by a bank; or an employer’s pension scheme (which are non-existent in practice).

DATA PRIVACY

Employers must balance their need to obtain, use, store and disclose information for effective management and business purposes with their employees’ right to privacy. The law distinguishes between “personal data” and “sensitive personal data”. Special rules apply for the transfer of personal data within and outside of the EEA. The National Authority for Data Protection and Freedom of Information is responsible for ensuring compliance and enforcing data protection.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Where there is the transfer of a business, there will be an automatic transfer of the employment relationships, existing at the time of the transfer. The entire employment relationship, with all rights and obligations, will transfer.

Duties to inform the authorities and to inform and consult with the works council exist.

Any dismissal based purely on the fact of the transfer will be unfair and unlawful.
These rules do not apply to share deals or to a business transfer when the transferor is subject to a liquidation (insolvency) procedure.

**EMPLOYEE REPRESENTATION**

Employees are entitled to establish trade unions within the work organisation.

A works council may be elected where an employer employs more than 50 employees. If the number of employees exceeds 15 but does not reach 51, then a works council representative may be elected.

**TERMINATION**

**GROUNDS**

Termination by notice is possible in cases of indefinite term employment. In case of fixed-term employment, termination by notice is less common.

For indefinite term employment, dismissal is only permitted for a reason connected with (i) the employee’s performance; (ii) the employee’s behaviour relating to the employment; or (iii) the operations of the employer.

For fixed-term employment, the employer may only terminate the employment by notice (i) during a liquidation or bankruptcy procedure; (ii) for reasons relating to an employee’s performance; or (iii) if maintaining the employment is no longer possible due to an unavoidable external reason. In the event of a dispute, the employer is obliged to prove that the reason for dismissal is fair, true and reasonable.

**EMPLOYEES SUBJECT TO TERMINATION LAWS**

All employees are protected against unfair and unlawful termination of employment.

**PROHIBITED OR RESTRICTED TERMINATIONS**

For some special groups of employees, further termination restrictions apply; thus, the employer may not terminate employment by notice during pregnancy, maternity leave, a leave of absence taken without pay to care for a child, during military service, and, in the case of women, while participating in human fertilization procedures. Termination of employment by mutual agreement is permitted during these periods.

**THIRD PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**

Not required.

**MASS LAYOFF RULES**

The dismissal of a certain large number of employees due to a change in the employer’s operation constitutes a mass layoff and is subject to special information and consultation rules.

**NOTICE**

In case of dismissal with notice, the employment relationship is terminated at the end of a notice period, which will be a minimum of 30 days and a maximum of 6 months, depending on length of service or in line with the parties’ agreement.
STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Not applicable.

SEVERANCE
Employees are entitled to a severance payment if their employment is terminated on notice by the employer by operational reason. The amount of severance pay is a minimum of one month's and a maximum of 6 months’ “absence fee”, depending on length of service. The employment contract may stipulate a higher amount of severance.

POST-TERMINATION RESTRAINTS
Post-termination restraints are common in Hungary for employees in senior positions in order to protect the employer’s economic interests for a period post termination. Such restraints should always be tailored to individual employees.

NON-COMPETES
Permissible for up to 2 years, if specifically included in the parties’ agreement, if reasonable in geographical reach and scope, and if the employer pays a sufficient amount of compensation in exchange which, for restraints entered into after 1 July 2012, must be at least 1/3 of the employee's salary.

CUSTOMER NON-SOLICITS
Permissible, if included in the parties’ agreement. Compensation is payable but as separate compensation is not required for each different type of covenant, compensation for a non-compete will also cover a customer covenant.

EMPLOYEE NON-SOLICITS
Permissible, if included in the parties’ agreement. Compensation is payable but as separate compensation is not required for each different type of covenant, compensation for a non-compete will also cover an employee covenant.

WAIVERS
Enforceable, if expressed in a written agreement. Waivers cannot be broadly interpreted.

REMEDIES
DISCRIMINATION
The Equal Treatment Authority is entitled to decide if there has been a violation of law, may prohibit the violating behaviour and also impose a fine on the employer, the maximum amount of which is HUF6, million by law.

Individual lawsuits can also be brought, where the court is entitled to award compensation for pecuniary and non-pecuniary damages.
UNFAIR DISMISSAL
Where the court decides that a termination is unlawful, the employer must pay the employee compensation for damages. Lost salary will form part of the damages, subject to a maximum of 12 months “absence fee”. Any amount earned by the employee during the period after the termination has to be deducted.

Reinstatement is also possible but in specific cases only, if the breach is considered to be serious (e.g., violation of termination protection).

FAILURE TO INFORM & CONSULT
In case of failure to inform and consult in connection with a mass layoff or the transfer of a business, the action taken may be considered unlawful, thus carrying a risk of invalidity or a legal dispute. Also the labour authorities may impose sanctions, including a labour fine.

CRIMINAL SANCTIONS
Not applicable.
India

Legal System, Currency, Language

India uses a common law legal system, except in the State of Goa, which has a civil code. Indian Rupee (INR). India is a multi-linguistic country with many languages and dialects across the country. The official languages of the Union Government are Hindi and English. Individual states are able to set their own official language.

Corporate Presence Requirements & Payroll Set-Up

A foreign company without local registration cannot directly engage employees in India. Employers can be formed as sole proprietorship, or as a partnership or an incorporated entity. Offshore entities that wish to carry on business in India either set up subsidiaries or joint venture companies in partnership with other local or offshore entities, or with the approval of the Reserve Bank of India set up a liaison office, branch office or project office. Also, proper payroll needs to be set up to make withholdings and deductions.

Both central and state labour laws impose various procedural requirements on employers, such as obtaining registration, maintenance of registers and records (including muster rolls for employees who present themselves for work), display of notices and filing of returns which are to be available for inspection by inspectors/appropriate government authorities.

Pre-Hire Checks

Required

There is no statutory requirement on an employer to carry out pre-hire background checks. However, the visa stamp/sticker in the employee’s passport will include the name of the employer, and the employer will be required to provide an undertaking to the Foreigners Regional Registration Office (FRRO) on behalf of the employee to register the employee with the FRRO. Therefore, it is advisable for the employer to undertake a basic immigration check at a minimum. It is also common for employers to also verify the professional and educational qualifications of the candidate.

Permissible

Background checks for applicants can be conducted as long as they comply with the fundamental right to privacy, which means that applicant/employee consent should be obtained. Establishments usually have a pre-hire background check policy in place for new hires. Background screening is generally done for education qualification verification, previous employment status, address verification, criminal background verification, reference verification, and applicable database verification.

Immigration

The Government of India issues various types of visas for expatriates (foreigners) visiting India. A person who is not an Indian citizen who wishes to undertake any work in India must obtain a
valid visa. There are 2 key work-related visas:

(i) Business Visa, designated as “B” Visa and

(ii) Employment Visa, designated as “E” Visa.

The duration of such visas depends on the purpose of the visit and is granted at the discretion of the government. Business visas are usually granted to foreigners coming to India on short visits for trainings, business meetings, etc. Employment visas are granted to foreigners desiring to come to India for the purpose of employment.

If the stay in India will be for more than 180 days, the visa holder must register with the Foreigners Regional Registration Offices (FRRO) or the Foreigners Registration Offices (FRO) within 14 days of arrival.

HIRING OPTIONS

EMPLOYEE

2 categories of employees: workmen and non-workmen. A workman, as defined under the Industrial Disputes Act, 1947 (ID Act), is any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. Those mainly employed in a managerial or administrative capacity, or those employed in a supervisory capacity (and earning more than INR 10,000 per month) and sales employees other than those employed in certain notified industries such as the pharmaceutical industry are non-workmen.

Whether an employee is a workman or a non-workman is a matter of fact which can be determined on the basis of the nature of the employee's duties and the job description. If the employee is a workman, the employer will have to comply with certain labour and industrial laws, such as the ID Act. If the employee is a non-workman, the terms and conditions of his/her employment are primarily governed by his/her contract of employment with the employer. However, in some circumstances, employees (both workman and non-workmen) may still be governed by the state specific shops and establishment legislation (S&E Acts), which apply to most companies engaged in commercial activity. Employment can be indefinite, for a temporary term, full-time or part-time.

Legislation has established various Employment Exchanges which public establishments and certain private establishments must notify of any vacancy before a post is filled. No employer is, however, obliged to recruit any person through the Exchanges.

Recruitment may also be conducted through recruitment agencies, labour contractors, advertisements in newspapers and on site recruitment at the establishment.

INDEPENDENT CONTRACTOR

Independent contractors can be engaged. A person is an independent contractor when a company designates the deliverables sought, and the person is free to carry out the work in the manner he/she deems fit, as long as the timelines and the quality of deliverables are met.

Establishments tend to engage independent contractors/consultants especially for activities where professional expertise is required for the business. Some employers also engage contractors to augment their workforce. However, if in reality the nature of the working relationship is one of employment, there is a risk of misclassification. If misclassified, such “contractors” will be entitled to the same employment benefits as the regular workforce.
AGENCY WORKER
The practice of employing agency workers or contract labour is prevalent to varying degrees in almost all industries and services. It is more prevalent in labour intensive sectors such as manufacturing, mining and construction industries.

Legislation regulates the employment of labour through intermediary contractors; regulates the manner of their deployment (including obtaining requisite registration certificates and licenses); and empowers the appropriate government to abolish such arrangements in certain circumstances. The intermediary agency is liable to provide amenities and pay wages to its employees deployed at the client’s (referred to as the principal employer) workplace and if it fails to do so, the principal employer is responsible but can recover its costs from the intermediary agency.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
No requirement for a formal written contract of employment, although generally, employers enter into written employment agreements. Some state-specific S&E Acts provide a template employment agreement for employers to use.

The Industrial Employment (Standing Orders) Act applies to employees classified as “workmen” and regulates the terms of the contract to ensure uniformity and protection for that class of employee. In the event of any change in certain conditions of service of workmen (such as wages, working hours) which is prejudicial to them, the employer is required to give 21 days’ notice (or more depending on the state where the workmen are located) before implementing the change.

A collective agreement is an understanding between trade unions, who represent the interest of the workmen, and employers. Under IDA, it is unfair for a recognised trade union or the employer to refuse to bargain collectively in good faith with the other party.

PROBATIONARY PERIODS
The duration of any trial or probationary period is determined by the contract of employment or the model standing orders. Typically, a trial or probation period will be for 3 months but may be extended by the employer if it is not satisfied with the progress of the employee.

It is usually easier to terminate the service of a probationer as he/she does not enjoy all the statutory protection from retrenchment accorded to workmen.

POLICIES
Policies are optional and may be amended without employee consent, if drafted appropriately. However, for workmen employees, certain terms and conditions of service can only be modified after giving 21 days’ notice. In addition to employment contracts, an employer will usually have various policies that govern its employees’ various rights and obligations, for example leave policies.

THIRD-PARTY APPROVAL
No approvals are required for entering into contracts with employees, with the exception of the Standing Orders, which must be certified by the labour department.
LANGUAGE REQUIREMENTS

The contract must be in a language understood by both contracting parties. Contracts are generally in English, provided both parties understand it.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS

Depends on the category of employee and other factors, including remuneration, location of employee and type of industry. However, pursuant to various labour statutes that govern the workforce, an employee will at a minimum be entitled to minimum wages as framed by the relevant state government. Additionally, an employee will be entitled to a statutory bonus, provident fund contributions, insurance coverage, maternity benefits and severance dues, if he/she meets the eligibility norms as set out under these statutes.

WORKING HOURS

Working hours are governed by a variety of statutes depending on the nature of the activity undertaken by the establishment and the location of the establishment.

Working hours are governed either by the Factories Act 1948 or the relevant State specific S&E Act, depending on the nature of the activity undertaken by the establishment. For example, if the establishment is a factory, the Factories Act applies, and if the establishment is involved in a commercial activity, then the local S&E Act applicable in the region in which the establishment is located will apply. Generally, these statutes provide for working hour limits both on a daily and weekly basis. The normal daily hour limits range from between eight to nine hours, and the usual weekly limit is 48 hours. Under the Factories Act, the daily limit cannot be exceeded without the prior permission of the authorities. Under the local S&E Act, the normal working hour limits can only be exceeded up to certain prescribed limits.

Some local S&E Acts exempt certain categories of employees (such as managerial employees) or certain establishments (such as establishments involved in information technology) from all or some of the provisions of the statute.

OVERTIME

If employees are required to work more than the prescribed minimum working hours, they are normally required to be paid at a prescribed overtime rate. Overtime wages are generally calculated at the rate of twice the employee’s ordinary rate of pay.

WAGES

India follows the standard of a “minimum wage” as opposed to living wage. State government under the Minimum Wages Act, 1948 fixes minimum wages for time work, piece work and overtime work. The minimum wage to which an employee is entitled will be dictated by a variety of factors, including the (i) nature of employment; (ii) the industry in which the employee works; and (iii) the geographic location where the employee works.

The Payment of Wages Act, 1936 provides that wages should be paid at intervals of no longer than a month. Consequently, it is the duty of every employer to ensure that wages are paid to its employees on a monthly basis, the prescribed registers are maintained and that the prescribed notices are displayed on the premises. The Act also regulates the scope and extent of deductions.
an employer may make from wages. This Act is currently applicable to employees whose monthly wages do not exceed INR18,000. Some local S&E Acts provide for similar restrictions in relation to permissible deductions that may be made from wages.

**VACATION, HOLIDAYS AND TIME OFF**

Generally, all employees are entitled to a weekly day off.

Leave entitlement is generally covered by the employment contract. However, where the employer is involved in a commercial activity, the local S&E Acts will apply and these determine the minimum thresholds concerning holiday entitlement. The thresholds usually range from 12 to 21 days’ holiday per year.

Further, the Factories Act, 1948 provides that every adult worker who has worked in a factory for at least 240 days in a calendar year is entitled to one day’s leave with wages for every 20 days of work.

**SICK LEAVE & PAY**

Sick leave varies from state to state. Certain local S&E Acts contain provisions concerning sick leave and casual leave (which generally ranges from 12 to 24 days). Also, the Standing Orders Act, if applicable, may contain sick leave requirements. Generally, an employee is entitled to the most beneficial leave entitlement provisions that are provided under the Standing Orders Act or S&E Act or the employer’s service rules.

**MATERNITY/PARENTAL LEAVE & PAY**

Indian law provides for maternity and associated leave for female employees. The law does not provide for paternity or parental leave for male employees and such leave, if provided, would be in accordance with any contractual arrangement entered into with the employer.

Maternity leave is governed by the Maternity Benefit Act, 1961 (MBA) and Employees’ State Insurance Act, 1948 (ESI Act). The ESI Act currently applies to employees whose monthly salary does not exceed INR15,000; employees who are not covered by the ESI Act receive their maternity benefits in accordance with the MBA.

Under the MBA, the employee is entitled to maternity leave of 12 weeks, of which not more than 6 weeks can precede the date of her delivery.

A pregnant woman suffering from an illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation is entitled to leave with payment of maternity benefit for an additional period of 1 month.

A female employee is also entitled to leave with maternity benefit for an additional 6 weeks in the case of miscarriage or medical termination of the pregnancy, and for 2 weeks with payment of maternity leave for a tubectomy operation.

The MBA also provides for nursing breaks and a medical bonus of INR3,500 to the employee where the employer does not provide for post-natal confinement and post natal-care.
DISCRIMINATION

The right to equality is a fundamental right under the Indian Constitution and state institutions are expressly prohibited from discriminating on the basis of sex, caste, religion, race and place of birth. Although these provisions do not strictly apply to employment in the private sector, employers in the private sector are bound by the Equal Remuneration Act, 1976. This guarantees equal pay to employees performing the same work, or work of similar nature regardless of gender. It prohibits discrimination against women in the context of recruitment, promotion, training and transfer.

The Sexual Harassment of Women at Workplace Act, 2013 (POSH Act) also protects and provides a means of redress for women who suffer from sexual harassment at work. The POSH Act has wide application because its definition of “workplace” covers both public and private establishments and covers regular, ad-hoc or temporary employees, either employed directly or through an agent. The POSH Act requires all offices, hospitals, institutions and other workplaces to have an internal mechanism for addressing complaints related to sexual harassment, including providing for settlement by way of conciliation. The employer has to have an internal complaints committee look into complaints, hold an inquiry and submit a report. The District Officer can establish a local complaints committee for establishments who do not have internal complaints committee due to having less than ten workers or when the complaint is against the employer.

The employer is also prohibited from committing any unfair trade practises listed in the IDA, including discriminating against workmen.

BENEFITS & PENSIONS

Benefits

Benefits depend on a number of factors, such as the size of the employer, the industry and the employee’s length of service, including:

(i) Payment of Gratuity Act, 1972 provides for a lump sum amount payable on termination of employment after 5 years of service. In case of termination due to death or disablement, the employee will be entitled to the lump sum amount irrespective of length of service. The rate of gratuity payable is calculated at the rate of 15 days’ wages for every completed year of service or part thereof in excess of 6 months and is currently capped at INR 1 million.

(ii) Health benefits: The ESI Act provides for comprehensive medical care to eligible employees and their families. It also provides for cash benefits during sickness and maternity and monthly payments in case of death or disablement.

(iii) Employees Compensation Act, 1923 provides for the payment of compensation to an employee or his family in cases of employment related injuries, death and temporary or permanent disability.

Pensions

Pension/s in India can be divided into three categories: (i) Government pensions covering government employees; (ii) schemes governed by Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act); and (iii) voluntary pensions.
It is mandatory for every Indian employee drawing a monthly salary capped at INR15,000 per month to be enrolled under Employment Provident Fund Scheme (EPFS) and in case of expatriate workers, they mandatorily have to be enrolled under the EPFS irrespective of their salary.

**DATA PRIVACY**

**Employee Records and Employee Access to Data:**

The Information Technology Act, 2000 covers data protection and violation of personal privacy. This statute safeguards against certain breaches in relation to data from computer systems, prevents unauthorised use of computers and creates liability for damage suffered in the event of unauthorised access, downloading, extraction and copying of data from a computer system/network. It stipulates the penalty for breaches of confidentiality and privacy.

The storage, management and handling of sensitive personal data or information belonging to persons located in India is regulated by the Sensitive Information Rules enacted under the Information Technology Act 2000. Sensitive personal data or information is defined under the Sensitive Information Rules to include passwords, financial information, physical, psychological and mental health conditions, sexual orientation, medical records and history, biometric information.

Any body corporate receiving any of the above types of information as a result of either using the services of an individual or employing an individual must comply with the Sensitive Information Rules regarding processing and storing that information.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Indian employment law does not provide for the automatic transfer of employees. IDA provides that upon transfer of the ownership or management of an undertaking every “workman” who has been in continuous service in any industry for at least 1 year (i.e., 240 days) will be deemed to have been retrenched (i.e., terminated) and will be entitled to retrenchment compensation (equivalent to 15 days’ average pay for every completed year of continuous service or any part thereof in excess of 6 months) and to receive 1 month’s notice or wages in lieu thereof, unless the following applies:

- the employee consents to their employment being transferred to the transferee and
- the transferee agrees to provide the employee with continuity of service on terms no less favourable than those which applied prior to the transfer.

On and from the date of transfer, the transferee steps into the shoes of the transferor and becomes responsible for liabilities and obligations relating to such workmen including central and state taxes, provident fund contribution, gratuity, accident compensation, employee state insurance contribution.

With respect to liabilities prior to the date of transfer, the transferor and transferee both shall, in accordance with ESI Act and EPF Act, be jointly and severally liable to make provident fund and insurance contributions in respect of the period up to the date of the transfer, provided the liability of the transferee is restricted to an amount equivalent to the value of the assets obtained by way of the transfer.

With respect to employees other than workmen, they will usually resign from their service and will be reappointed by the transferee unless they do not wish to transfer. In the event the transferee agrees to provide continuity of service, that continuity will then be reflected in the employment contract.
EMPLOYEE REPRESENTATION

In India, the right to form a trade union flows from the fundamental right to freedom of association in the Constitution. Seven or more persons may form a union and apply to have the union registered. Indian trade unions are conferred the same status as a body corporate and enjoy perpetual succession and have a common seal; they may sue and be sued in their name.

IDA renders both employers and trades unions liable for penal sanctions in the event they engage in unfair labour practices.

A collective agreement is an understanding between workmen represented by their trade unions and employers. Under the IDA, it is unfair for a recognised trade union and employer to refuse to bargain collectively in good faith with the other party.

TERMINATION

GROUNDS

Dismissals should be for “reasonable cause” – e.g., redundancy, poor performance, continued ill health, etc. – especially in certain states where the local S&E Act stipulates such a requirement. Otherwise, employees may be dismissed for misconduct (or “for cause”). For workmen, the IDA defines “retrenchment” as the termination by the employer of the service of a workman for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action. However, “retrenchment” does not include voluntary retirement, reaching the stipulated superannuation age, non-renewal of a contract on expiry of its term, termination arising under such fixed-term contracts, or termination of service on the ground of an employee’s continued ill health.

An employer may for economic reasons reduce the number of its workmen, provided the process as stipulated in the IDA is followed. The process to be followed will depend on whether the workmen to be retrenched have at least 1 year’s (i.e., 240 days) continuous employment and are:

(a) employed in (i) factories/mines/plantations with less than 100 employees and (ii) other establishments or

(b) employed in factories/mines/plantations where the number of workmen employed in the last year is 100 or more.

For the “non-workmen” category of employees:

Their services may be terminated in the manner provided in their employment contracts and subject to complying with the provisions of the relevant S&E Act of the state.

EMPLOYEES SUBJECT TO TERMINATION LAWS

Where an employer plans to retrench a workman who has been in continuous service for at least 1 year (i.e., 240 days) and who is employed in (i) factories/mines/plantations with less than 100 employees; or (ii) other establishments, prescribed steps must be taken:

(i) where the workman belongs to a particular category of workmen, in the absence of any agreement otherwise, the employer shall ordinarily retrench the workman who was the last person to be employed in that category. If the employer retrenches any other workman it must record the reason for doing so (“Last in First Out Rule”)

(ii) the workman must be given the requisite period of notice or payment in lieu of notice
(iii) retrenchment compensation must be paid to the workman) and

(iv) notice in the prescribed manner must be served upon the appropriate government authority.

Where an employer plans to retrench a workman who has been in continuous service for at least 1 year (i.e., 240 days) in factories/mines/plantation where the number of workmen employed in the last year is 100 or more, the following steps should be taken:

(i) the Last in First Out Rule has to be followed before retrenching the service of a workman

(ii) the workman must be given the requisite period of notice or payment in lieu of notice

(iii) prior permission of the appropriate government authority must been obtained (see below) and

(iv) retrenchment compensation must be paid to the workman.

For ‘non-workmen’, the steps which the employer must take will be as stated in the employment contract and the provisions of the relevant S&E Act of the state.

RESTRICTED OR PROHIBITED TERMINATIONS

The level of protection granted to workmen in relation to the termination of their employment is higher where they are employed in factories/mines/plantations where the number of workmen employed in the last year is 100 or more. The IDA prohibits termination of certain categories of workmen while a dispute is pending between them and their employer except with the approval of a designated authority. Under MBA it is unlawful for an employer to discharge or dismiss a female employee whilst they are on statutory leave. Similar protection is provided under ESI Act to employees who earn a monthly salary not exceeding IRS15,000 and who may be in receipt of certain statutory medical benefits provided under ESI Act.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS

Where an employer plans to retrench a workman who has been in continuous service where the number of workmen employed in the last year is 100 or more, prior permission of the appropriate government authority must been obtained by the employer. The appropriate government authority, after making enquiries with the parties and considering the genuineness and adequacy of the relevant factors, will make an order either granting or refusing to grant permission. The order of the appropriate government authority is final and binding on all parties and remains in force for one year.

MASS LAYOFF RULES

The retrenchment procedure described above will equally apply to mass terminations.

NOTICE

Notice is required to be given prior to termination. The notice period may vary from state to state, but it is normally 1 month for ordinary dismissal, unless the employment contract provides for a longer notice period.

Where: (i) an employer plans to retrench a workman who is employed in factories/mines/plantations with less than 100 employees; or (ii) other establishments, the employee is entitled to receive one month's notice or payment in lieu of such notice period. Where an employer plans to retrench a workman who is employed in factories/mines/plantations where the number of workmen employed
in the last year is 100 or more, the employee is entitled to receive 3 months’ notice or payment in lieu of such notice period. In both cases, the notice of termination must be in writing and must indicate the reason for retrenchment.

**STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE**

Employers may make a payment in lieu of notice. The right of workmen to receive retrenchment compensation is based on their length of service as on their last working day (irrespective of whether the termination is with immediate effect or after the employee has been asked to serve the notice period).

Garden leave is possible, though there is little case law to suggest how it will be enforced by the courts. It is preferable to include a specific garden leave in the contract of employment and company policy.

**SEVERANCE**

In case of a termination due to redundancy, employers are required to pay retrenchment compensation. Severance or retrenchment compensation equal to 15 days’ average pay for every completed year of continuous service or part thereof in excess of six months must be paid to a workman on termination of employment.

In addition, the employer must pay certain termination benefits to employees who are dismissed, including: leave encashment; gratuity payment (for employees, whether workmen or not, with 5 years or more of seniority); payment in lieu of notice (if no notice is given); and any other amounts due under the employment contract. Employees who are being terminated on account of misconduct will not be entitled to notice pay or retrenchment compensation.

**POST-TERMINATION RESTRAINTS**

**NON-COMPETES**

The Indian Contract Act 1872 provides that every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is void. Therefore, non-competition clauses which operate during the course of employment are generally not regarded as restraint of trade. However, post-termination non-competition clauses are void and unenforceable.

**CUSTOMER NON-SOLICITS**

Possibly enforceable. With post-termination non-dealing/non-solicit provisions, it can be argued that a restriction on activities with customers is a restraint of trade, if by complying the former employee is prejudicially affected from carrying out any trade. Whether such a clause is enforceable or not is, therefore, dependant on the facts of the case.

Non-solicitation provisions, even if they are upheld, generally only entitle the employer to damages and it is highly uncommon for an Indian Court to grant an injunction preventing the customer from taking his/her business elsewhere. At best, a claim for damages may succeed against the employee for breach of their contractual agreement if the employer can show that the enforcement of the provision is essential to protect its confidential information as well as that the provision does not prejudice the former employee’s ability to carry on a business/ trade and therefore is not in restraint of trade.
EMPLOYEE NON-SOLICITS
Non-solicitation provisions in relation to other employees can be enforced against a former employee but the courts will not generally grant injunctive relief restraining the employees who are being solicited from leaving the company.

WAIVERS
The doctrine of waiver is recognized in Indian contract law. A waiver must amount to an unambiguous representation arising as the result of a positive and intentional act done by the party granting the concession with knowledge of all the material circumstances. Though any waiver against statutory entitlements given by an employee is unlikely to be enforceable, a generic waiver of contractual rights may be enforced.

REMEDIES

DISCRIMINATION
Complaints against unfair labour practices under IDA on grounds of discrimination may be filed by a workman or a trade union before the Labour courts. Damages for wrongful dismissal will be assessed in accordance with what the employee would have received if the contract had been properly terminated on its terms.

Complaints of sexual harassment under the POSH Act may be filed by the victim with the internal complaints committee (if against another employee) or the local complaints committee (if against the employer). The victim of sexual harassment may directly file a complaint with the police station having jurisdiction or under the Indian Penal Code before the criminal courts.

UNFAIR DISMISSAL
Complaints of unfair dismissal are filed before the Labour courts/tribunals. The courts can grant an employee reinstatement with full back wages with continuity in service, or reinstatement without back wages, or only back wages without reinstatement, or only monetary compensation and consequential benefits.

FAILURE TO INFORM & CONSULT
The IDA stipulates that an employer who proposes to effect any change in its conditions of service including wages, compensatory and other allowances, hours of work, or any rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen; may not effect such a change without giving those workmen likely to be affected 21 days’ notice. In some states, the period of notice required is longer and no notice is required where the change is effected in pursuance of a settlement or award. Notice of change is required only where the change in the terms of service is to the detriment of the workman. Any failure on the part of the employer to adhere to this notice process will render any such change void.

CRIMINAL SANCTIONS
Sanctions for violating labour statutes include both imprisonment and fine. The extent of such penal provisions will depend on the statute and the nature of the breach.
INDONESIA

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law system, Indonesian Rupiah (IDR), Bahasa Indonesia.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign company cannot directly engage employees in Indonesia without having a presence there, for example a corporate or tax presence. A “tax presence” requires there to be a permanent establishment (as defined in the relevant legislation) in Indonesia and will commonly take the form of a representative office. The most common structure is to establish a local Indonesian subsidiary in the form of a limited liability company.

An employer must set up payroll in Indonesia and make withholdings for income taxes and social charges under the National Social Security (Sistem Jaminan Sosial Nasional or SJSN) program.

PRE-HIRE CHECKS

REQUIRED
Indonesian legislation is silent on pre-hire checks. Thus, there are no requirements or prohibitions on background checks on applicants.

PERMISSIBLE
Yes.

IMMIGRATION
All expatriates coming to Indonesia will need a visa and those working in the country will also need a work permit. Fines and imprisonment may be imposed on those who breach immigration requirements.

HIRING OPTIONS
EMPLOYEE
Law No 13 of 2003 (Manpower Law) divides employees into 2 categories:

Definite-term Employees: employees under a definite or fixed-term employment agreement. Also known as “contract workers.” May perform work to be performed and completed at once or work which is temporary; work the completion of which is estimated to be accomplished within a period of time (in practice, not longer than 3 years); seasonal work; work that is related to a new product, new activity or additional product which is still in the experimental stage or try out process. A foreigner may only work under a definite term of employment and cannot therefore be a permanent worker.
Indefinite-term Employees: employees who do not fall into the category of definite-term employees. Also known as “permanent workers.”

Employees can be engaged on a full-time or part-time basis.

**INDEPENDENT CONTRACTOR**
Can be engaged but should not be provided with fees or benefits which could be deemed as salary or employment benefits as they may be deemed to be employees. The independent contractor should also not be treated as an employee, e.g., by imposing statutory working hours. Not separately regulated but will fall under general contract law.

**AGENCY WORKER**
Outsourcing of labor or business services is subject to significant regulatory restrictions and requirements which, if not met, may mean that the agency worker becomes an employee of the outsourcing user.

**EMPLOYMENT CONTRACTS & POLICIES**

**EMPLOYMENT CONTRACTS**
Fixed-term agreements (i.e., those for definite-term employees) must be made in writing and registered with the Ministry of Manpower and Transmigration within 7 days after the signing. Employment agreements of indefinite term can be made either orally or in writing. Both must contain certain required provisions.

**PROBATIONARY PERIODS**
Any employment relationship that includes a probationary period must be documented in writing, and the probationary period cannot be longer than a single period of 3 months. A fixed-term employment contract cannot contain a probationary period, otherwise it will be deemed a permanent employment.

**POLICIES**
No mandatory policies, but the following clauses and policies are recommended: gifts and favors policies for compliance with anti-bribery rules; policy on conflicts of interest with external parties; policies on electronic communications, email/Internet abuse and software copyright; policy on code of conduct; policy on data privacy and changes in personal data; clause in contemplation of natural disaster; political activities; clause on rotation and relocation (mutasi); clause on demotion; clause on suspension (without termination); clause on personal leave.

**THIRD-PARTY APPROVAL**
Subject to the Employment Contracts section above, there is generally no requirement to lodge employment contracts or policies with, or get approval from, any third party. However, company regulations (similar to an employee handbook) and collective labor agreements are filed with the authorities.

**LANGUAGE REQUIREMENTS**
Written agreements must be in the Indonesian language using the Latin alphabet. Dual language contracts can be prepared, but the Indonesian language contract will prevail.
GUIDE TO GOING GLOBAL • EMPLOYMENT

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All (with certain exceptions in respect of expatriate employees).

WORKING HOURS
7 hours a day or 40 hours a week limit (in a 6-day week); or 8 hours a day or 40 hours a week (in a 5-day week).

OVERTIME
An employer who employs workers in excess of the standard work hours is obliged to pay overtime (with limited exceptions). Under current regulations, an employer is not obliged to pay overtime to those in certain positions of responsibility. The overtime payment rate is dependent on how many hours are worked overtime and the timing of such overtime work. Normally the overtime rate per hour is 1/173 of monthly salary. The maximum overtime is 3 hours per day and 14 hours per week.

WAGES
No national minimum wage. Provinces settle their own minimum wage every year. The minimum wage is intended to cover employees working a 40-hour week in the formal sector (that is, any job sector or industry that is recognized, monitored and regulated by the government).

VACATION
Minimum of 12 days of paid vacation/annual leave per year after 1 year (12 months) of uninterrupted service.

SICK LEAVE & PAY
Paid sick leave in the case of illness or injury evidenced by a medical certificate or statement. Sickness pay is paid by the employer. The employee will receive 100% of his salary for the first 4 months; the percentage of pay decreases thereafter. If the sickness continues after 12 months then the employee may be terminated with severance payment. Female employees are also entitled to 2 days of menstrual leave during the first and second day of menstruation. Female employees generally do not take such leave.

MATERNITY/PARENTAL LEAVE & PAY
Pregnant employees are entitled to take 3 months of fully-paid maternity leave, of which 1.5 months is to be taken in the pre-natal period and the remaining 1.5 months in the post-natal period (a period of 1.5 months of fully paid rest must be given to those who have miscarried).

A male worker is entitled to 2 days of paid paternity leave if his wife gives birth or miscarries.

An employee is entitled to 2 days of paid leave for his or her child’s wedding, circumcision, baptism or death.

Muslim employees may take “long leave” of up to 3 months (this can be restricted by the employer’s policy to 40 days) in order to fulfil religious duties – that is, a pilgrimage to Mecca. During this time, the full salary must be paid. This entitlement may only be taken once.
DISCRIMINATION
Characteristics protected from unlawful discrimination: sex, ethnicity, race, religion and political orientation.

No regulated protection from harassment for employees. Employees wishing to take action against sexual harassment in the workplace can file a claim on the basis of the civil tort law.

BENEFITS & PENSIONS
It is mandatory for every company or individual employer to register its employees with the SJSN programs (subject to the minimum number of employees below). The SJSN programs are divided into 2 main categories, namely (i) public health security, which is applicable for all Indonesian citizens, and (ii) social security, which covers occupational accident security, death security, old age (pension) security, and health maintenance. The programs are run by the Social Security Agency (BPJS). The public health security program is managed by BPJS Kesehatan, whereas the social security programs, including occupational accident, death, pension and old age securities are managed by BPJS Ketenagakerjaan. Employers should register their employees with the BPJS Ketenagakerjaan social security programs which are relevant to the employer’s business scale. All employers should register their employees with the BPJS Kesehatan public health security program regardless of the number of employees in their company. The SJSN programs also extend to cover foreign employees who work in Indonesia for at least 6 months.

DATA PRIVACY
Law No. 11 of 2008 on Electronic Information and Transactions restricts the electronic use of private data without the data subject’s consent. Under Law No. 39/1999 on Human Rights, each individual has the right to their own privacy, and cannot be subjected to an investigation in relation to personal data without their agreement, except on the order of a court or other legitimate authority under prevailing legislation. A new draft of the Data Privacy Law has been prepared, but it is not clear when it will be introduced.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
Employees are not automatically transferred on a business transfer, which includes a merger. Employees should be consulted and the following 3 options are possible in relation to permanent employees:

- The employee is not willing to continue their employment with the new employer, in which case they must be paid a stipulated severance pay, plus long service pay (if applicable) and compensation (if applicable);
- The new employer is not willing to accept the employee, in which case the employee is entitled to 2 times the stipulated severance pay, plus long service pay (if applicable) and compensation (if applicable)
• The new employer and the employee are willing to continue the employment as if no business transfer has occurred, with the employment relationship continuing on the basis of the same terms and conditions (or better) as before the transfer and usually carrying forward accrued seniority. Employees cannot be given less beneficial terms unless they are terminated by the former employer/made redundant and rehired by the new employer. In that case, the new employer may rehire on its own terms.

A non-permanent worker who chooses not to accept a transfer of employment offer, or who is not offered a transfer, is generally entitled to receive the wages for the remaining period of his or her fixed-term contract.

No protection against dismissal for employees in a business transfer. However, as with nearly all terminations of employment, Industrial Relations Court (IRC) approval is required before the employee’s employment can be terminated and severance entitlements must be paid.

EMPLOYEE REPRESENTATION

Any group of at least 10 employees can establish a labor union which will have the right to (i) enter into a Collective Labor Agreement with the employer; (ii) represent workers in industrial disputes and at manpower institutions; (iii) establish institutions (e.g., cooperatives) or carry out activities relating to the improvement of the welfare of the workers; and (iv) carry out other legal activities in the area of industrial relations. Criminal sanctions can be imposed on anyone, including the employer, who engages in certain anti-union activity.

TERMINATION

grounds

Termination is possible on the following grounds but in each of these cases, IRC approval is required:

• Termination without cause (i.e., where dismissal cannot be avoided, such as in the case of a merger, a reorganization of the company, or bankruptcy of the employer; note that the employer still has to show grounds for termination)

• Termination with cause (e.g., where the employee breaches the employment contract or company regulation, or commits gross misconduct) although this is now subject to some uncertainty due to a recent constitutional court decision

• Where the employee has been unable to work for over 6 months due to legal proceedings brought against him or her (however, if the court finds the employee not at fault, the employer must re-employ the employee)

• Where the employee has been absent from work for 5 or more consecutive working days without providing reasons or evidence and 2 notices have been given.

employees subject to termination laws

All.
RESTRICTED OR PROHIBITED TERMINATIONS
Termination cannot be on the basis of the following circumstances: a worker is absent due to illness according to the physician’s statement for a period of not more than 12 months; a worker is unable to carry out work due to the fulfillment of state duties; a worker performs his or her religious rituals; a worker gets married; a female worker is pregnant, in delivery, experiences miscarriage or breastfeeds her baby; a worker has a blood relationship and/or a marital relationship with another worker within one company (except if it is prohibited in the employment agreement, the company regulation or the collective labor agreement); a worker forms, becomes a member and/or the manager of a union, carries out activities of the union outside working hours, or during the working hours with (i) consent from the employer, or (ii) based on the provisions under the employment agreement, the company regulations or the collective labor agreement; a worker has reported the employer to the authorities concerning the question of whether the employer has committed criminal actions; or a worker has a permanent disability condition or is ill due to a work accident or due to the employment relationship, and, according to a physician’s statement, the recovery period cannot be determined.

If the employer purports to terminate an employee’s employment under any of the circumstances above, such termination is void by law and the employer must continue to employ such employee.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
In order to unilaterally terminate employment, generally, employers must first undertake bipartite or tripartite negotiations as well as mediation or conciliation procedures and (if no mutual agreement is reached) by obtaining a favorable decision on the termination of employment from the IRC. Exceptions apply if the termination of employment occurs during the probation period of the worker (as long as the probation period is specifically provided in writing), due to the worker’s voluntary resignation without pressure/intimidation from the employer, due to a mutually agreed termination or due to the worker reaching retirement age (generally, 55 years old) under the employment agreement or law.

MASS LAYOFF RULES
No specific definition of redundancy or layoff. Employers seeking to make employees redundant should ensure that they provide valid evidence as grounds for the redundancy. Employers must attempt to negotiate a proposed termination with an employee or relevant labor union, as all dismissals on redundancy grounds require approval from the IRC (if not mutually agreed). A consultation process must be completed before notice of termination is given to employees. Where a redundancy occurs, the employer must pay the employee severance pay, service pay (if applicable) and compensation pay.

NOTICE
Employment cannot be terminated unilaterally through notice. In practice, some employment agreements stipulate a notice period for termination even though termination by written notice alone is not permitted and the written notice does not negate the legal requirement to obtain approval of the termination from the IRC, absent mutual agreement as to the termination and its terms.
STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Payment in lieu of notice is not a recognized concept under the Manpower Law but is simply a part of the calculation of severance and may be given in addition to the statutory termination package. However, an employment agreement will sometimes stipulate that payment in lieu of notice can be set off against the statutory termination package.

Employers can require employees to serve a period of garden leave in a form of suspension pending the outcome of mediation and IRC proceedings. During such period the employees are still entitled to their salary.

SEVERANCE
Amount and type of severance depends on the basis of the termination of employment. For example, if the termination is due to the employee’s minor misconduct, the employee is entitled to the following after a process involving the issuance of 3 written warning letters and, absent mutual agreement, the IRC termination approval process:

- Standard severance pay: 1 month’s salary for every year of service, up to 9 months’ salary
- Service appreciation pay: 2 months’ salary for the first 3 years of service, followed by an additional 1 month’s salary for every 3 years of service thereafter, up to a maximum of 10 months’ salary for 24 years of service
- Compensation: to cover annual leave that has not expired or been taken, relocation expenses (to return the employee and his or her family to the place from which they were recruited), medical and housing allowance, other benefits under the employment relationship; and other compensation amounts as determined by the IRC.

If the termination is without cause or there is termination on retirement, the employee is entitled to 2 times the severance pay amount plus the standard service appreciation pay (if applicable) and compensation. If contested, a termination without cause may result in reinstatement.

POST-TERMINATION RESTRAINTS
Enforceable by virtue of the principle of freedom of contract, adopted in the Indonesian Civil Code. However, in practice they are almost impossible to enforce.

NON-COMPETES
Permissible in theory, but very difficult (and likely impossible) to enforce.

CUSTOMER NON-SOLICITS
Permissible in theory, but may be difficult to enforce.

EMPLOYEE NON-SOLICITS
Permissible in theory, but may be difficult to enforce.
WAIVERS

The general freedom of contract provisions of the Indonesian Civil Code will allow parties to waive rights, however the operation of such waiver would not be permitted if it resulted in a violation of public policy or order, or was not being applied in good faith.

REMEDIES

DISCRIMINATION

The employee is entitled to reinstatement, if applicable, or double severance pay, ordinary service pay and ordinary compensation. The Manpower Law does not expressly recognize other damages such as loss of reputation and mental suffering but these may be recognized if a separate, civil action is raised.

UNFAIR DISMISSAL

Reinstatement or termination benefit (such as compensation which includes back pay).

FAILURE TO INFORM & CONSULT

Employees are entitled to voice their concerns, but no remedial action will be taken.

CRIMINAL SANCTIONS

Imposed on employers who breach the Manpower Law, including where employers participate in anti-union activity; intentionally and without any rights or illegally access computers and/or electronic systems owned by somebody else for the purpose of obtaining electronic information and/or electronic documents; violate workplace healthy and safety regulations; fail to submit written annual reports on their industrial relations to the Minister of Manpower; or fail to pay overtime due.
IRELAND

LEGAL SYSTEM, CURRENCY, LANGUAGE
Common Law. Member of the EU and required to implement relevant EU Directives. Euro (EUR). English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage in Ireland with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for Pay As You Earn income tax (up to 40%), Universal Social Charge (up to 8%) and Pay Related Social Insurance (up to 10.75% for the employer and 4% for the employee) to be done through payroll. Self-employed independent contractors are paid gross and are responsible for their own taxation.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance. For certain limited occupations (e.g., those who work with children, the elderly or infirm), a criminal records check.

PERMISSIBLE
Reference and education checks are common and permissible with applicant consent.

IMMIGRATION
Nationals of the European Economic Area (EEA) and Switzerland — right to work in Ireland. Other nationals require permission to work in the form of an employment permit.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against on the basis of such status.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure.

AGENCY WORKERS
Agency workers are common. Agency workers have the right to equal treatment to employees in relation to pay and other benefits terms.
EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Within 2 months of commencement of employment, employees must be provided with certain minimum terms in writing.

PROBATIONARY PERIODS
Permissible. No statutory limit, but 3-6 months common.

POLICIES
Written health and safety policy, disciplinary and bullying and harassment policies and procedures are mandatory. Grievance and IT related policies are common and recommended.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third party.

LANGUAGE REQUIREMENTS
No statutory requirements, but all documents should be in English.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
48 hour a week limit on working time. Rules on rest breaks, night work and rest periods between shifts.

OVERTIME
No obligation to provide pay for overtime worked, as long as pay overall does not fall below the statutory minimum. Premium payable for Sunday work unless the fact that the individual has to work on a Sunday has otherwise been taken into account in the determination of his/her pay.

WAGES
The minimum wage rate is EUR 9.15 per hour.
Subminimum rates only permissible in very limited circumstances.

VACATION
Annual leave entitlement based on hours worked:

• 4 working weeks in a leave year in which the employee works at least 1,365 hours; or
• 1/3 of a working week for each month in the leave year in which the employee works at least 117 hours; or
• 8% of the hours the employee works in a leave year (subject to a maximum of 4 weeks).
Plus 9 public holidays.
SICK LEAVE & PAY
Usually required to be certified by a medical practitioner after three days' absence. Employees may be entitled to illness benefit from the State after six days, but no other general right to sick pay from the employer.

MATERNITY/PARENTAL LEAVE & PAY
26 weeks ordinary maternity leave during which the employee may be entitled to maternity benefit from the State. Entitled to an additional 16 weeks during which no State benefit is payable. General right to return to work.

24 weeks ordinary adoptive leave during which the employee may be entitled to adoptive benefit from the State. Entitled to an additional 16 weeks during which no State benefit is payable. General right to return to work.

18 weeks unpaid parental leave to be taken before the child reaches the age of 8.

No statutory paternity leave, save for the limited case of death of the mother.

DISCRIMINATION
Direct and indirect discrimination prohibited, along with victimization and harassment. Employers are under a duty to make reasonable adjustments for persons with disabilities.

Characteristics protected from unlawful discrimination and harassment: Gender, age, race/nationality, religion, family status, civil status, disability, sexual orientation and/or membership of the Traveller community.

BENEFITS & PENSIONS
Currently, no benefits required above those covered under social insurance contributions.

DATA PRIVACY
Employees generally must be notified of personal data processing (and in certain cases, give consent). Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring employees, including email and internet use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
The EU’s Acquired Rights Directive has been transposed into law by virtue of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations. Provides for automatic transfer of employees with undertakings (or parts of undertakings) which retain their identity post transfer.

Duty to inform and consult with employee representatives. Prohibition on transfer related dismissals, unless justified on economic, technical or organisational grounds.
EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors (manufacturing, transport and the public sector). Many businesses have no union or other worker representation. Works councils are uncommon. Industry level collective bargaining exists.

TERMINATION

GROUNDS
Termination permissible if a fair process has been followed, on the following grounds only: Misconduct, capability (including performance and ill-health), redundancy, illegality and “some other substantial reason of a kind to justify dismissal”.

EMPLOYEES SUBJECT TO TERMINATION LAWS
Employees with fewer than 1 year’s service have no unfair dismissal protection (save in certain circumstances where no service is required, including dismissals for whistleblowing, dismissals connected to any of the nine discriminatory grounds, trade union membership and activities, etc.).

RESTRICTED OR PROHIBITED TERMINATIONS
TUPE related dismissals are void unless justified on economic, technical or organisational grounds.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Not required.

MASS LAYOFF RULES
Strict information and consultation rules apply in certain collective redundancy situations. The employer must also notify the Minister for Jobs, Enterprise and Innovation.

NOTICE
Statutory minimum notice requirements: up to 13 weeks – none; 13 weeks to 2 years – 1 week; 2 years to 5 years – 2 weeks; 5 years to 10 years – 4 weeks; 10 years to 15 years – 6 weeks; 15 years or more – 8 weeks.

Not required for terminations for gross (extremely serious) misconduct. Longer notice can be agreed and set out in the contract of employment.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No. Entitlement depends on contract terms.

SEVERANCE
Payable to redundant employees with 2 years’ service only: 2 weeks’ pay per year of service plus an additional week’s pay. “Pay” capped at EUR 600 per week. More generous terms are possible.

POST-TERMINATION RESTRAINTS
Considered to be in restraint of trade and void. However, those that protect the employer’s legitimate business interests can be enforced if reasonable. Need to be tailored for the specific business and the risks posed by the employee. Garden leave is common for senior employees.
NON-COMPETES
Permissible in narrow, justifiable, circumstances. Typically no longer than 3-6 (maximum of 12) months, depending on the circumstances.

CUSTOMER NON-SOLICITS
Permissible in specific circumstances. Typically no longer than 3-6 (maximum of 12) months, depending on the circumstances.

EMPLOYEE NON-SOLICITS
Permissible. Length of restriction will depend on the circumstances.

WAIVERS
Enforceable, but employees must have had the benefit of independent legal advice prior to signing a settlement agreement waiving employment rights.

REMEDIES

DISCRIMINATION
Workplace Relations Commission can order re-engagement, re-instatement or award compensation of up to 2 years’ remuneration.

UNFAIR DISMISSAL
Workplace Relations Commission can order re-engagement, re-instatement or award compensation of up to 2 years’ remuneration. Compensation is limited to an employee’s financial loss.

In TUPE related dismissals, compensation is not limited to financial loss and can be punitive.

In whistleblowing dismissals, compensation can be up to 5 years’ remuneration.

FAILURE TO INFORM & CONSULT
In theory, in the context of a mass redundancy, such failure can amount to a criminal offence, but prosecution is rare. In the context of a business transfer, such failure can result in up to 4 weeks’ pay per complaining employee.

CRIMINAL SANCTIONS
Failure to notify the Minister for Jobs, Enterprise and Innovation about mass layoffs is a criminal offence (although prosecution is rare). Employing a non-EEA or Swiss national without the required work permit is also a criminal offence.
ISRAEL

LEGAL SYSTEM, CURRENCY, LANGUAGE
Strong common law heritage with elements from other legal systems. New Israeli Shekel (ILS). Hebrew and Arabic (English commonly spoken).

CORPORATE PRESENCE REQUIREMENTS AND PAYROLL SET-UP
Generally, registration of the employer, either an Israeli subsidiary or a foreign company (branch), is required, in order to set up a bank account for payroll and to open tax and national insurance files for mandatory withholding requirements.

PRE-HIRE CHECKS
REQUIRED
Immigration compliance.

PERMISSIBLE
Reference and education checks are common and permissible with applicant consent. Other types of checks are subject to restrictions (including restrictions on criminal records and credit checks) and must be directly related to the position.

IMMIGRATION
All non-Israeli citizens (except for holders of certain types of residency permits) are required to obtain a work visa from the Israeli Ministry of Interior. Companies wishing to employ non-Israeli citizens must obtain work permits and work visas for their foreign workers from the Israeli Ministry of Interior. Special rules apply to employment of Palestinian citizens.

HIRING OPTIONS
EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Since 31 January 2015, Israeli law requires companies to send candidates periodic notices regarding the status of their applications and to provide notice where the candidate is not chosen for the position.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure.

AGENCY WORKER
Agency workers will typically be either white or blue-collar workers. Certain agency workers have the right to become employees of the employer after 9 months, and receive rights and benefits equal to these provided to employees at the same work place. Special rules apply to entities that engage agency workers providing security, catering and cleaning services.
EMPLOYMENT CONTRACTS AND POLICIES

EMPLOYMENT CONTRACTS
Common best practices. Within 30 days of commencement of employment, employees must be provided with a notice listing certain employment conditions (as well as written updates with respect to changes in employment terms).

PROBATIONARY PERIODS
Permissible, generally relating to shortened prior notice periods only. No statutory limit, but up to 3 months is common practice.

POLICIES
Common best practices. In most cases, prevention of sexual harassment policy is mandatory. In addition, a computer use policy is required if the employer intends to monitor the employee computer use. In companies in the high-tech sector employee handbooks are common.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third-party.

LANGUAGE REQUIREMENTS
In a language understood by the employee. As a common best practice, it is recommended that all documents will be in English, provided that employee positions will require a working knowledge and use of English.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
Up to 43 hour a week, and 9 hours a day, for a 5-day work week.

OVERTIME
Up to 3 hours per day and a maximum of 15 hours per week. Pay of 125% of the base hourly wage for the first 2 hours of overtime per day, 150% of the base hourly wage for any additional overtime hours. Special rates for weekend and night work.

WAGES
Minimum wage is ILS 25 per hour, which corresponds to a monthly salary of ILS 4,650 for a full-time position.

VACATION
Based on seniority. Assuming a 5-day work week, the annual minimum vacation entitlement is: 10 days – 1st 2 years of employment; 11 days – 3rd and 4th year of employment; 12 days – 5th year of employment; 17 days – 6th, 7th and 8th year of employment; 23 days – 9th year and after. In addition, employees are entitled to 9 days of public holidays per year.
SICK LEAVE AND PAY
Under law, employees are entitled to 1.5 sick days per month of employment (18 days per year). Sick leave can be accumulated up to a maximum of 90 days. The employer is not required to pay for the first day of sick leave but it may be deducted from the annual sick leave entitlement. On the 2nd and 3rd sick days an employee will be paid 50% of his or her salary, and beginning on the 4th day of sick leave, the employee will be paid his or her full salary until accrued sick days are fully used. During sick leave, benefits are paid in the same ratio as salary. Employees may take certain sick leave days in connection with the illness of the employee’s spouse, any child under the age of 16, or of any parent (of the employee or his/her spouse) who is totally dependent on assistance to carry out day-to-day activities. In practice, many companies in Israel pay full salary from the first sick day.

MATERNITY/PARENTAL LEAVE AND PAY
In general, up to 26 weeks’ maternity leave (may be extended to up to 1 year, based on seniority with employer), paid for up to 14 weeks by the National Insurance Institute, right to return to work for at least 60 days. Men can take what remains of the mother’s leave as paternity leave (after the first 6 weeks of maternity leave which is reserved for the mother) but only if mother returns to work during her maternity leave period.

DISCRIMINATION
Characteristics protected from unlawful discrimination and harassment: age, disability, gender, sexual orientation, race, religious belief, nationality, country of origin, place of residency, opinion, political party, participation in military service (including military reserve duty), and matrimonial and parental status.

BENEFITS AND PENSIONS
Mandatory pension with minimum contributions (including distributions towards severance pay). In certain circumstances employees are also entitled to reimbursement for travel expenses. Employees working over a year are entitled to recuperation pay, based on seniority (starting at 5 days) and payable on a monthly or annual basis, according to the employer’s preference. Recuperation pay is much like vacation pay in other jurisdictions and is intended to be used for vacation or recuperation purposes and is normally paid between June and September. An additional benefit known as “Education Fund” is common, and provides tax breaks for employer and employee disbursements set aside for at least 6 years.

DATA PRIVACY
Employees generally must be notified of the terms of the employer’s personal data processing policy, and consent. Registrations in the Databases Register may be required. Special rules apply to data transfer outside Israel. Significant restrictions on monitoring email and Internet use. Monitoring personal email is restricted.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Acquisitions that entail change of ownership will generally not result in changes in employment relations. Transfer of employees to a new employer as part of an asset transfer requires the employees consent. This can be achieved through assumption of employment arrangements by buyer (including seniority based rights) or through a “fire-rehire” approach (there may still be transfer of residual liabilities deriving from the period of employment preceding the transfer).

EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors (such as industry, transport and the public sector). Many businesses have no union or other worker representation, however, an employer may not object to the incorporation of a workers’ union, and is required to negotiate with the union in good faith. Industry level collective bargaining agreements are common in certain sectors (such as transport and public sector). There are no works councils, but trade unions may be entitled to certain information and consultation rights.

TERMINATION

GROUNDS

Any reasonable reason provided that a fair process has been followed in accordance with the procedural requirements for termination. Employees may claim unlawful dismissal on the grounds of discrimination, breach of the employers’ good faith obligation and/or failure to comply with the procedural requirements for termination.

EMPLOYEES SUBJECT TO TERMINATION LAWS

All employees.

RESTRICTED OR PROHIBITED TERMINATIONS

Pregnant women (after 6 months of employment), women on maternity leave and during the first 60 days following their return to work, and employees undergoing fertility treatments may not be dismissed without the prior approval of the Minister of Economy. Employees may not be dismissed during their military reserve duty or 30 days following their return to work.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS

No, apart from the notification below in case of a mass dismissal.

MASS LAYOFF RULES

No special rules apply, however, if all employees without exception are dismissed, the prior hearing process for termination can be skipped. In the event of dismissal of more than 10 employees, the employer is required to notify the local Employment Services Bureau of the dismissal.
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NOTICE
Absent a contractual arrangement setting a longer notice period than the minimum requirements, the notice period for full-time employees is as follows: (i) during the 1st year of employment – 1 day for each month during the first 6 months of employment and an additional 2Y2 days for every additional month thereafter; and (ii) following completion of at least 1 entire year of employment on a full-time basis – 30 days. The length of the notice period will be less for employees paid on an hourly basis. Most employment agreements include a 30 days’ contractual notice period.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Yes. Payment in lieu of notice in an amount equal to the employee’s salary is permissible. The employer/employee relationship is terminated immediately, and benefits need no longer be paid, unless a contractual provision or binding practice requires otherwise.

Garden leave is permissible on full salary and benefits.

SEVERANCE
Payable to dismissed employees with at least 1 year seniority. Usually last monthly salary multiplied by the number of years the employee worked. Generally, a substantive portion of the severance pay entitlement will have been accrued as part of the employees managers’ insurance and/or pension fund. If the parties provided so in the employment agreement or as a result of a collective bargaining agreement applicable to the employee, the employee will not be entitled to severance pay other than the amount accumulated in the employee’s pension fund.

POST-TERMINATION RESTRAINTS

NON-COMPETES
Although common, generally not enforceable under current Israeli case law.

CUSTOMER NON-SOLICITS
Permissible. Typically not longer than 12 months.

EMPLOYEE NON-SOLICITS
Permissible. Typically not longer than 12 months.

WAIVERS
Generally enforceable, if the employee receives additional benefits in consideration for signing the waiver commensurate with the rights waived. Employees may not waive certain statutory rights and benefits.

REMEDIES

DISCRIMINATION
Uncapped compensation, based on the claimant’s financial loss. Punitive compensation of up to ILS 120,000 without demonstrating damages. Reinstatement or reengagement is possible but rare.
UNFAIR DISMISSAL
Uncapped compensation, usually between 1-24 salaries, depending on circumstances. Reinstatement or reengagement is possible but rare.

FAILURE TO INFORM AND CONSULT
In most circumstances employees are not entitled to information and consultation rights, and these rights will generally only apply to organized workers. Accordingly, awarded damages for failure to inform & consult are rare.

CRIMINAL SANCTIONS
Failure to comply with various labour laws (such as minimum wage, work hours, unlawful discrimination and prohibited termination) is a criminal offence and may result in criminal proceedings (at least in theory).
ITALY

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law. Member of European Union (EU), so required to implement relevant EU Directives. Euro. Italian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage employees in Italy with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for social contributions (up to approximately 30% employer portion and up to approximately 10% employee portion) and income tax (up to approximately 43%) to be done through payroll. The employer must give notice to the labor authorities that employment has commenced at least 1 day before the commencement of the relationship.

PRE-HIRE CHECKS
REQUARED
Immigration compliance.

PERMISSIBLE
Criminal and credit reference checks are only permissible for specific roles (e.g., certain finance positions) and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION
Depending on the duration and reason of the immigration, work permits are required for non-Italy nationals/non-EU citizens.

HIRING OPTIONS
EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status. Additional engagement options are available, such as on-call employment, job sharing or apprenticeships.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company, provided that certain requirements are met. Freelancers can also be engaged on an open-term basis, but there is increased misclassification exposure.
AGENCY WORKER
Agency workers are common. Agency workers have the right to equal treatment to employees in relation to pay and other benefits terms.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Written employment agreements are required according to national collective bargaining agreements. Certain clauses are not valid if they are not put in writing (e.g., probationary clause, noncompete covenant).

PROBATIONARY PERIODS
Permissible, with statutory limits, depending on the category and level of the employee (maximum duration is 6 months for executives – the so-called dirigenti).

POLICIES
Permissible, not mandatory.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third party.

LANGUAGE REQUIREMENTS
No statutory requirements, but all documents should be in Italian.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All, with distinctions based on the employee level pursuant to the applicable collective bargaining agreement

WORKING HOURS
40 hour per week limit on working time.

OVERTIME
Statutory limits to overtime depending on the industry sector and the applicable collective bargaining agreement.

WAGES
Minimum rates are set in the applicable collective bargaining agreement and depend on the category of employee and enrolment level. Under Italian law, there are 4 categories of employees: workers (operai), white collar employees (impiegati), middle managers (quadri) and executives (dirigenti). Collective bargaining agreements set sub-levels within the category of white collar employees. 13th or 14th salaries may be required by the applicable collective bargaining agreement.
VACATION
Employees are entitled to a minimum 4 weeks (excluding public holidays) of paid vacation for each year of service. At least 2 weeks of vacations have to be taken during the entitlement year. Vacations cannot be replaced by monetary compensation before the employment is terminated. Collective bargaining agreements may provide additional holidays. In addition Italian law provides for the following public holidays: 1 January, 6 January, Easter Monday, 25 April, 1 May, 2 June, 15 August, 1 November, 8 December, 25 December, 26 December, and the day of the patron saint of the place of work.

SICK Leave & Pay
In case of illness or accident employees cannot be dismissed before a period of time determined by law or by the applicable collective bargaining agreement has expired. The entitlement to sick pay depends on the applicable collective bargaining agreement.

MATERNITY/PARENTAL LEAVE & PAY
Pregnant employees must not work for 2 months before, and 3 months after, the childbirth. Under certain conditions, the leave may be taken earlier or later. Female employees cannot be dismissed from the first day of pregnancy and until the child is 1 year old, except in certain circumstances (e.g., shutting down of the company, just cause). During the maternity leave, employees receive an allowance from the INPS (social security body). Collective bargaining agreements may contain requirements for company-paid leave. Parental leaves can be taken by the parents until the child is 12 years old.

DISCRIMINATION
Employees are protected against direct and indirect discrimination, during the course of their employment, on several grounds, such as sex, religion, race, color, political opinion. Discrimination is always prohibited (from the hiring procedure to the termination of the employment).

BENEFITS & PENSIONS
Enrolment in the social security public system and public insurance of employees is mandatory for all employers.

In addition to the ordinary social security and insurance, collective bargaining agreements provide for supplementary forms of social security/health care insurance.

DATA PRIVACY
Employees generally must be notified of personal data processing (and in certain cases, give consent). Special rules apply to data transfer outside the European Economic Area (EEA). Not possible to control or monitor employees remotely with devices unless upon agreement with works council or authorization of the Labor Office, with the exception of the instruments used by the employee to carry out their work or to detect access or attendance.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of those employees who belong to the transferred business/branch of business, without any interruption of the employment, to the transferee regardless of their consent. The transferred employees maintain all the rights to which they were entitled to with the transferor, transferor and transferee are jointly liable for entitlements that the transferred employee had at the time of the transfer. Duty to inform and consult with employee representatives.

EMPLOYEE REPRESENTATION

All employees have the right to form or become members of labor associations, as well as the right to perform labor-related activities. On the initiative of the employees, a works council can be established in every plant with more than 15 workers within the trade union’s associations that have executed the collective agreement applied in the company. Employees’ representatives are granted certain rights (e.g., additional protection in case of transfer and dismissal).

Most companies are subject to mandatory industry-wide collective bargaining agreements.

TERMINATION

GROUNDS

Termination permissible on these grounds:

• Just cause, i.e., an irremediable and serious “breach of trust” (serious violation of contractual duties) between the parties of the employment relationship. In this case, the contract terminates immediately, without notice.

• Justified reason, which may be subjective (breach of employee’s contractual obligation is less serious than just cause) or objective (such as redundancy). In this case, the contract terminates with notice.

Dismissals must be notified in writing. Reasons for dismissal must be detailed. If the dismissal is due to just cause/subjective reasons, a special disciplinary procedure must be complied with.

RESIGNATION AND MUTUAL CONSENT TERMINATIONS

Under Jobs Act reforms, starting from 12 March 2016, resignations and mutual consent terminations can only be implemented in electronic form (such forms are provided by the Labor Ministry). Within 7 days of the submission of the form, employees have the right to revoke their resignation or the mutual termination, provided they do so via electronic means. The Ministerial Decree of 15 December 2015 details the procedure for communicating resignation and mutual consent terminations.

EMPLOYEES SUBJECT TO TERMINATION LAWS

All employees except for those under probationary period.

RESTRICTED OR PROHIBITED TERMINATIONS

Discrimination, retaliation, pregnant women, mothers until the child is 1 year old, women in case of marrying, disabled employees under certain conditions.
THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Dismissal based on objective and economic reasons, for employees hired before 7 March 2015, must be preceded by a mandatory administrative conciliation procedure when more than 15 employees are employed in the office where dismissal takes place (or more than 60 in the national territory). Under new legislation, employees hired from 7 March 2015 are not subject to this procedure and can be dismissed without prior involvement of the labor office. Notice to labor authorities has to be given within 5 days from the termination of the employment.

MASS LAYOFF RULES
Yes, strict information and consultation rules apply where 5 or more employees are to be made redundant over 120 days or less.

NOTICE
Notice is set forth by the collective bargaining agreements and varies depending on enrollment level, category and tenure.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
The employer or employee may pay an indemnity in lieu instead of working the notice period. Garden leave is not possible under Italian law.

SEVERANCE
In all cases of termination (including for just cause) the employer has to pay a severance pay (the so-called TFR), which is equal to the sum of each annual salary divided by 13.5, accrued for any single year. TFR is usually set aside on the books of the company. Employees are also entitled to receive the indemnity in lieu of any holidays or permits accrued and not used, as well as the pro-rata portion of the supplementary salary installments.

POST-TERMINATION RESTRAINTS
Those that protect the employer’s legitimate business interests can be enforced if reasonable.

NON-COMPETES
Typically no longer than 6-12 months. To be valid and enforceable such clauses must be agreed in writing and limited in scope, territory, time (up to 3 years; 5 years for executives), and must provide an adequate compensation (usually around 25% to 50% of the annual salary for a 1 year non-compete for the entire Italian territory). If such requirements are not met the clause is null and void.

CUSTOMER NON-SOLICITS
Permissible.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS
Immediately unchallengeable if signed before a “protected venue” (administrative, union or judicial office), or challengeable within 6 months after termination.
REMEDIES

DISCRIMINATION
Reinstatement (or alternatively, at employee’s discretion, compensation for damages of 15 months’ pay). Additional compensation equal to salary lost from dismissal to reinstatement with a minimum of 5 months’ pay.

UNFAIR DISMISSAL
If the company employs up to 15 employees in the same business unit and 60 employees total, the employer may be ordered to re-hire the employee or, at its choice, pay compensation for damages (ranging from 2.5 – 10 months’ salary).

If the company employs more than 15 employees in the same business unit and 60 employees total, sanctions are more serious and may result in compensation from 12 to 24 months’ pay or, in other cases, forced reinstatement of the employee in the job, plus compensation for damages up to 12 months’ pay. Those provisions apply to employees employed before 7 March 2015.

Under new legislation, which applies to employees hired from 7 March 2015, in a company that employs more than 15 employees, newly hired employees who are unlawfully dismissed are entitled to compensation for damages equal to 2 months’ salary for each year of service with a minimum of 4 months and a maximum of 24 months’ salary. For companies with up to 15 employees, the penalties range from a minimum of 2 up to a maximum of 6 months’ salary.

The employer must reinstate the employees in the event of a discriminatory, void or oral termination and must also pay damages of an amount equal to salary from the date of dismissal to the date of reinstatement. Reinstatement (plus compensation for damages of up to 12 months’ salary) is also provided for in the event of a dismissal for cause or justified subjective reason when it transpires that the alleged unlawful behaviour did not happen.

FAILURE TO INFORM & CONSULT
Failure to follow collective dismissal procedure leads to compensation of 12 to 24 months’ pay. If the breach concerns the social criteria to choose the employees to dismiss, then reinstatement (or in alternative, at employee’s discretion, compensation for damages of 15 months’ pay) plus additional compensation up to 12 months’ pay.

Under new legislation, applicable to employees hired from 7 March 2015, employees who are unlawfully dismissed are entitled to compensation for damages equal to 2 months’ salary for each year of service with a minimum of 4 months and a maximum of 24 months’ salary.

Reinstatement is provided for in the event the termination is communicated orally with the additional payment of compensation for damages for a minimum of 5 months.

CRIMINAL SANCTIONS
None. Under certain circumstances, failure to fulfil a court decision can lead to criminal liability.
JAPAN

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
Foreign entities without a local corporate presence in Japan are generally unable to make proper payroll withholdings. Instead, a local corporate presence is generally required to engage employees in Japan.

Employers are required to withhold national income taxes from employees’ salary each month and make contributions to certain social insurances.

PRE-HIRE CHECKS

REQUIRED
Generally not required.

PERMISSIBLE
Criminal background checks are not prohibited, but are discouraged by the labor bureau. There should be a strong need to justify such checks. In addition, conducting a criminal background check in Japan is difficult because records are not publicly available. Reference and education checks can be done with consent, but third parties receiving requests do not always cooperate. Some employers require a health check at hiring, but employers should not conduct HIV testing and gene diagnosis unless there is a strong and legitimate reason to do so.

IMMIGRATION
Foreign nationals who wish to live and work in Japan must obtain the requisite visa. Individuals are also required to have an appropriate “status of residence” (immigration status), which will determine the extent of the individual’s ability to live and work in Japan.

HIRING OPTIONS

EMPLOYEE
Most employees will fall into one of 3 categories: regular employee, fixed-term contract employee, or dispatched employee. Employment can also be full-time or part-time. Starting from April 2013, if a fixed-term contract employee concludes a fixed-term contract for more than 5 years with renewal(s) and there has been no break in employment of 6 months or longer, the employer must make the employee an indefinite term employee upon the employee’s request.
INDEPENDENT CONTRACTOR
Independent contractors can be engaged, but care must be taken not to control or direct independent contractors, as such action can lead to the independent contractor being deemed an employee.

AGENCY WORKER
Hiring dispatched workers is popular because it can lessen some of the burdens associated with the employment relationship. The employees sent by the dispatching agency are direct employees of the agency and not the company utilizing their service. There are strict limitations on the positions that can be filled by dispatched employees, control over the employee and time limits on how long a dispatched employee can be used for the same position. The area is very heavily regulated and penalties for violations are severe. Only reputable and licensed dispatching agencies should be used.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
No requirement to have a written employment contract, but the employer must provide the employee with certain terms and conditions of employment in writing. If the employer has work rules in place, the work rules may address many of the provisions that must be covered in the writing to be provided to the employee.

PROBATIONARY PERIODS
Permissible. No statutory limit, but 3-6 months common. An unreasonably long probationary period could be invalid and 12 months is probably the upper permissible period in many cases. Terminations are very difficult in Japan and this is true even during the probation period.

POLICIES
Employers with 10 or more employees in a workplace are required to create work rules and file them with the Labor Standards Inspection Bureau. Most of the terms and conditions of employment are stipulated in the employer’s work rules. The work rules will constitute part of the employment contract and must stipulate certain terms and conditions of employment, including: wages, working hours and breaks, holidays, termination of employment, disciplinary action and other general matters that apply at the workplace. The working conditions stipulated in work rules are a minimum standard which cannot be diminished by an employment agreement.

THIRD-PARTY APPROVAL
Before filing, the work rules need to be submitted to a representative of the majority of employees (or a labor union which represents the majority of employees if one exists) for comments. While employee comments do not need to be accepted by the employer (i.e., approval is not required), the comments must be considered in good faith. See above regarding the filing with the Labor Standards Inspection Bureau.

LANGUAGE REQUIREMENTS
The employment agreement and work rules should be provided in the language that is understandable to the employees. If work rules are in a foreign language, a Japanese translation must be filed with the Bureau.
GUIDE TO GOING GLOBAL • EMPLOYMENT

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
Generally applicable to all employees.

WORKING HOURS
Employers cannot require employees to work for more than 8 hours per day or 40 hours per week, unless they enter into a labor management agreement with either a labor union or a representative of the majority of employees in the workplace. The agreement must set out the maximum hours of overtime work (currently 45 hours per month and 360 hours per year, unless the agreement includes a special clause allowing for additional overtime in exceptional circumstances).

OVERTIME
Subject to certain limited exemptions which have been interpreted by the Japanese courts and the Ministry of Health, Labor and Welfare narrowly (for example, persons who are considered managers may be exempted in some cases), employers must pay minimum overtime rates as follows:

<table>
<thead>
<tr>
<th>Overtime Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic overtime rate</td>
<td>125% of base hourly wage</td>
</tr>
<tr>
<td>Work on a “rest day”**</td>
<td>135% of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime (between 10:00pm and 5:00am)</td>
<td>150% of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime on a “rest day”</td>
<td>160% of base hourly wage</td>
</tr>
<tr>
<td>Overtime work in excess of 60 hours/month**</td>
<td>150% of base hourly wage</td>
</tr>
<tr>
<td>Late-night overtime in excess of 60 hours/month**</td>
<td>175% of base hourly wage</td>
</tr>
</tbody>
</table>

**Employers are required to grant at least 1 day off per week, known as a rest day.

**Small to mid-sized companies are currently exempted from the additional rate due where hours exceed 60/month.

WAGES
Minimum wages are set by prefecture. In addition, certain industries have minimum wages that apply to employees working in that industry.

VACATION
Where an employee has been continuously employed for 6 months and has attendance of at least 80% of the total number of working days during that period, he or she is entitled to a minimum of 10 days’ paid annual leave on the day after completing 6 months of employment. Entitlement increases by 1 day per year for the following 2 years and by 2 days per year thereafter up to a maximum of 20 days per year. Employees are entitled to carryover unused annual leave for 1 year. There are several national holidays in Japan and, while not legally required, most employers recognize the national holidays or provide additional holiday pay for workers who are required to work on national holidays.

SICK LEAVE & PAY
No statutory right to paid sick leave unless the work rules or employment contract provide otherwise.
MATERNITY/PARENTAL LEAVE & PAY
A pregnant employee is entitled to maternity leave for a period of 6 weeks before the expected date of birth and 8 weeks after the birth. An employee who lives with and is raising a child up to 1 year of age (and in some cases, up to 18 months of age) is eligible for child care leave. In addition, employees are eligible for family care leave of up to 93 days to care for a family member. These absences are unpaid unless otherwise provided in the work rules or the employment contract. An employee will generally receive an allowance equivalent to a certain percentage of their salary under the national unemployment insurance scheme.

DISCRIMINATION
Japan’s labor law recognizes the principle of equal treatment of employees. Discriminatory treatment with respect to wages, working hours, or other working conditions by reason of nationality, creed or social status is prohibited. This includes a prohibition against discrimination with respect to dismissal, fringe benefits, pay and all other aspects of the working relationship between employer and employee.

For instance, the Law Respecting the Guarantee of Equal Opportunity and Treatment Between Men and Women in Employment prohibits discrimination regarding gender in recruitment, hiring and employment in Japan.

BENEFITS & PENSIONS
There are 4 main types of social security systems with current rates as follows:

- Workers’ Accident Compensation Insurance: from 0.25% to 8.9% depending on business which an employee engages in, on the entire annual earnings
- Employment Insurance: with the exception of some businesses, the employee pays 0.5% and the employer pays 0.85% on annual earnings
- Health Insurance/Nursing Care Insurance: 11.52% for an employee between age 40 to 64 and 9.97% for an employee under age 40 and over 64. The employer and employee equally bear the contribution
- Employee’s Pension Insurance: 17.828% (1 April 2015-31 March 2016) which is equally borne by the employer and employee.

No obligation to provide additional benefits above those already covered, but it is fairly common to provide bonuses and retirement allowances.

Japan has a government sponsored pension plan that generally pays employees benefits if the employee has been paying into the system for at least 25 years (it will be shortened to 10 years from October 2015). All persons employed in Japan pay into the system, even foreign nationals working in Japan (subject to any social security totalization agreements).
DATA PRIVACY

The receipt, maintenance of and access to personal information relating to an individual is regulated by the Act of Protection of Personal Information. Broadly, upon the collection of such information, the collector must notify the person of the purpose of the use of such information, and thereafter must take necessary and proper measures to prevent leakage, loss or damage of that information, and take other reasonable steps to control the security of the personal information. In addition, the party maintaining such information is required to adopt internal regulations designed to ensure the confidential and secure maintenance of such information as long as it is held. Disclosure of personal information to third parties (a parent and affiliated companies are considered third parties) is strictly limited.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

In an acquisition by business transfer, employees of the selling company will continue as employees of the selling company. If employees are to be transferred to the buyer, it is typical for the employee to resign from the selling employer and will be newly hired by the buyer under a new employment contract executed by the employee.

In a merger, the merged entity will cease to exist and the surviving entity shall succeed to the contractual obligations of the merged entity, including, employment agreements. Consequently, employees of the merged entity will automatically become employees of the surviving entity keeping terms and conditions of employment including those under the merged entity’s work rules.

In a statutory company split, the split of the employees should be handled in accordance with the Labor Contract Succession Act and some employees may automatically transfer with the business that is being transferred. The splitting company must provide notice, in writing, as to the split-plan or agreement to the employees who will be transferred at least 2 weeks before the approval of the company split. An employee (i) who is mainly assigned to the target business but not included in the transfer to the purchaser; or (ii) who is not mainly assigned to the target business but included in the transfer to the purchaser has the right to object within 2 weeks of receipt of the notice.

EMPLOYEE REPRESENTATION

Labor unions are protected by the Constitution and by statute. All employees have the right to form unions.

Two types of collective agreements. Most common is a labor-management agreement which is an agreement between management and either the representative of the majority of employees in the workplace or a labor union to which a majority of the employees belong. The second type is a collective bargaining agreement (CBA) which is between a labor union and an employer only. CBAs are not particularly common in Japan – the proportion of the workforce in Japan that is unionized has fallen below 20% according to recent statistics.

There are no works or labor management counsels.
TERMINATION

GROUNDS
Employees in Japan enjoy substantial security when it comes to their employment. Termination of employees generally must be for cause. While employers do have the right to dismiss employees, a dismissal will be regarded as an “abuse of rights” under Japanese law and therefore invalid, if a court determines that the dismissal lacks “reasonable” grounds and is not “socially acceptable” — a very high standard to meet. The following grounds may possibly be considered reasonable and socially acceptable: very serious misconduct (e.g., theft or violence in workplace); serious insubordination and failure to correct the action after clear warnings are given; serious and ongoing poor performance, after formal warnings have been given, significant training has been provided through performance improvement plans and other positions have been explored, and it is determined that the training is ineffectual and no other suitable positions exist; provision of material false information about one’s background that impacts performance; and a loss of or significant and continuous lack in ability/capability to perform work duties.

See below under “Mass Layoff Rules” regarding economic dismissals.

EMPLOYEES SUBJECT TO TERMINATION LAWS
Generally, all employees.

RESTRICTED OR PROHIBITED TERMINATIONS
Under the Labor Union Act, disadvantageous treatment including dismissal, based on the fact that an employee is or intends to be a member of a labor union, intends to organize a labor union, or engages in a proper act of a labor union, is prohibited as an unfair labor practice.

Terminating employees on leave of absence for work-related injury or illness or maternity leave is generally not permissible.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Not required.

MASS LAYOFF RULES
There are no redundancy statutes in Japan. An employer may justify terminations based on the economic conditions of the company. However, 4 conditions must be met in order to justify such a termination: there must be a very strong economic necessity to reduce the workplace; the employer must have taken all reasonable steps to avoid terminations; the employees to be dismissed should be selected using a reasonable and fair standard; and termination procedures must be reasonable and proper.

An employer must notify the Public Employment Security Office in advance if:

- 30 or more employees will leave during a 1-month period
- 5 or more employees who are between the age of 45 and 65 and reach the retirement age set by the employer, are dismissed or otherwise leave due to the employer’s actions within a 1 month period
- an employee who is a foreign national leaves
• an employee with a disability is dismissed (under certain conditions) or
• the employer withdraws a job offer or extends the time of joining the company for new
graduates or cancels or downsizes the size of hiring plans of new graduates.

There are some exceptions to these notifications requirements.

There may be additional notification requirements set out in any collective bargaining agreement.

In any event, the employee is represented by a union, the employer is expected to consult with the
union to fulfill the good faith consultation requirement.

NOTICE

Employers must give at least 30 days’ notice of dismissal. It is customary for the work rules
to specify that an employee must give 30 days’ notice of resignation. However, under the
Japanese Civil Code, employees may terminate an employment agreement with 2 weeks’ notice.
The Civil Code will prevail over any longer requirement. Therefore, if an employee insists on
2 weeks’ notice, such notice will be valid.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE

Payment in lieu of notice is permitted even if there is no contractual right to make such a payment.
It is not common for an employee to be placed on garden leave.

SEVERANCE

There are no statutory requirements for severance payments in Japan. Given the severe limitations
on the employer’s right to terminate an employee, most employees are offered a severance
payment in exchange for a waiver and voluntary resignation.

POST-TERMINATION RESTRAINTS

Generally enforceable provided that they are reasonable in scope and duration. Japanese courts will
closely examine issues such as the geographic scope, whether the restraint is necessary to protect
a legitimate business interest and whether consideration was given to the employee.

NON-COMPETES

Generally permitted subject to the limitations noted above, and non-competition covenants should
satisfy at least the following conditions in order to be held enforceable:

• The duration needs to be reasonable*
• A reasonably limited geographical scope and
• The types of jobs or businesses subject to the restriction are limited to jobs or businesses that
  compete directly or indirectly with the former employer’s actual business.

* No maximum is set by law, but 6 months to 1 year is common.

CUSTOMER NON-SOLICITS

Generally permitted, but enforceability will depend on the facts of the given case.
EMPLOYEE NON-SOLICITS
Generally permitted, but enforceability depend on the facts of the given case since employees have a constitutional right to move to another company.

WAIVERS
To be valid, the waiver must be given voluntarily by the employee. In order to avoid any claim from an employee that the waiver is not valid because it was given under duress, or as a result of a mistake due to fraudulent representation by the employer, meetings with the employee should be fairly short and attended by only 1 or 2 managers. The employee should be given a reasonable time to consider the document containing the waiver and should not be told that they will be terminated if they do not sign.

REMEDIES
DISCRIMINATION
Discriminatory treatment in salary, working hours and other working conditions against employees based on nationality, creed or social status, or discriminatory treatment against female workers related to salary shall be punished by imprisonment of not more than 6 months or by a fine of not more than JPY300,000. However, other than that, there is no special enforcement procedure.

NULL AND VOID DISMISSAL
If an employee’s dismissal is held by a court to be null and void, the employee could obtain the following remedies: reinstatement*, and/or award compensation. Once the dismissal is held to be null and void, the employee has the right to have unpaid wages for the period from the dismissal to reinstatement plus statutory interest.

UNFAIR LABOR PRACTICE
A labor union may, within 1 year following the occurrence (or discontinuance) of an unfair labor practice, file a complaint against an employer for such unfair labor practice by seeking a remedial order from the local Labor Commission. This is an administrative procedure but is a quasi-judicial process.

CRIMINAL SANCTIONS
Some violations are subject to criminal sanctions. For example, violations of the worker dispatch law or failing to pay wages (including overtime allowances) may result in criminal sanctions.
KUWAIT

LEGAL SYSTEM, CURRENCY, LANGUAGE
Federal and Civil legal system – employment matters are governed by Federal Law No. 6 of 2010 (the Labor Law) (as amended). There are also relevant provisions in the Penal Code and Civil Code. Kuwaiti Dinar (KD). Official language is Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity cannot directly engage employees in Kuwait. It would always need to have at least a branch or representative office (which requires a local sponsor) to engage even local nationals, because they still need a work permit; the only other way around this would be to have a secondment type arrangement, whereby a local entity sponsors the local national for their work permit but the local national is then seconded out to the foreign entity.

PRE-HIRE CHECKS
REQUISITED
Foreign employees must receive prior approval from the Ministry of Social Affairs and Labor Affairs (MOSAL) and immigration authorities before they can be hired on local employment contracts. The level of background checking and screening carried out by the Kuwait authorities varies according to the nationality of the individual.

PERMISSIBLE
Generally, employers in Kuwait are not able to obtain the same level of information from background checks as they can in other jurisdictions and, in most cases, the employees themselves will be required to provide this information.

IMMIGRATION
In order to legally work and reside in Kuwait, all employees except Gulf Cooperation Council (GCC) and Kuwaiti nationals (who require a work permit only) are required to have a residence visa and work permit under the sponsorship of their employer, which must have an entity established in Kuwait. Non-working married women can also be sponsored for their residence visa by their husband.

Where an employee is only required to work in Kuwait for a short period of time, there are alternative permits and visas that may be applied for, including business visit visas, although there are no short-term or temporary employment visas available for Kuwait.
HIRING OPTIONS

EMPLOYEE
Unlimited or fixed-term. Part-time employment is legally possible but is not common. If both parties continue to perform their duties under a fixed-term contract after the expiry of the fixed term, the contract shall be deemed to have been renewed for a fixed term of the same length.

INDEPENDENT CONTRACTOR
There is no concept of a consultant, unless individuals have established their own professional licence and business, due to the requirement for employees to have sponsorship, which is generally obtained by the employer.

AGENCY WORKER
There is no general concept of an agency worker or “temp” in Kuwait. Some Kuwaiti-owned employment agencies are licensed to provide manpower on a temporary basis; those workers would remain under the agency’s sponsorship.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Non-Kuwaiti national employees are required to sign a government employment contract to obtain their work permit and residence visa. This contract is in English and Arabic. Kuwaiti and GCC national employees are not required to sign a standard form of contract, but their regular employment contract with their employer may be required to be submitted to the MOSAL for review.

PROBATIONARY PERIODS
Permissible. Maximum duration of 100 working days.

POLICIES
There are no mandatory policies. Employees should be provided with any relevant staff handbook and the employer’s policies (if applicable) on commencement of employment.

THIRD-PARTY APPROVAL
The government employment contract must be lodged with MOSAL to obtain the employee’s work permit and residence visa. Strictly speaking, any contractual changes should be notified to the Ministry and amended on the filed standard employment contract copy.

LANGUAGE REQUIREMENTS
Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a foreign language is used in addition to Arabic, the Arabic version shall prevail.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All. Additional rights are also available to young workers (those under the age of 18) and women.
WORKING HOURS
8 hours per day or 6 hours during Ramadan. This equates to a 48-hour maximum for a 6-day working week, Sunday to Thursday (inclusive), or 36 hours for a 6-day week during Ramadan. The working hours provisions presume that the employee is working a 6-day week.

OVERTIME
Not to exceed 2 hours per day or 180 hours per year unless the work is essential for preventing the occurrence of a dangerous accident or for the repair of any breakdown or avoiding a substantial loss. Additional work periods should also not be required more than 3 times per week or 90 days per year.

There is no carveout in the Labor Law for senior executive managerial or supervisory positions in respect of the working hours and overtime provisions, although we understand that in practice professional employees are often exempted from overtime provisions.

WAGES
At present, the minimum wage in Kuwait is KD60 per month, although there are proposals to increase this.

VACATION
All employees are entitled to fully paid leave for 30 days in each year of service. In the first year of service, employees are not entitled to take their leave until they have been in the service of the employer for at least 9 months.

SICK LEAVE & PAY
An employee is entitled, after completing probation, to up to 75 days’ sick leave per annum, payable as follows:

• First 15 days on full salary
• Next 10 days on three quarters’ salary
• Next 10 days on half salary
• Next 10 day on quarter salary and
• Thereafter, leave without pay for up to 30 days.

MATERNITY/PARENTAL LEAVE & PAY
Female employees are entitled to maternity leave with full pay for a period of 70 days. Employees are also entitled to leave without pay for a maximum period of 4 months, to be granted upon request.

There is no legal requirement to provide paternity/adoptive/parental leave in Kuwait.

An employer is not permitted to terminate the employment of an employee or give the employee notice of termination while the worker is on any of the leaves permitted by the Labor Law.

1 The Labor Law does not state that annual leave is based on calendar days; however, we have been advised by the MOSAL that the annual leave entitlement is based on calendar days and therefore equates to 22 working days.
DISCRIMINATION

Disability discrimination. A person with special needs is defined under the Kuwaiti Handicapped Law as “any person suffering from total or partial deficiency or disorder; permanently or temporarily in his physical, sensory, mental, communicative, educational or psychological abilities to an extent reducing the possibility of meeting his normal requirements”.

Only Kuwaiti nationals with special needs have the right to work and occupy positions.

Flexible working hours and suitable equipment in order to perform their work must be provided to the employee, and those employees must not face any discrimination.

There are no other discrimination provisions in the Labor Law, save for a provision stating that a female employee shall have the right to the same salary given to a male employee if she performs the same job.

BENEFITS & PENSIONS

In most cases for Kuwaiti national employees and GCC national employees, the employer is required to set up (and contribute to) a pension fund. All other employees may be eligible to receive an end of service gratuity (EOSG) on termination, calculated by reference to length of service, unless the employer contracts out of these arrangements with its employees by providing a savings scheme or pension scheme. EOSG is reduced if the employee resigns within the first 10 years of service.

DATA PRIVACY

There are no clear laws in Kuwait comparable with those in the US or Europe concerning the handling and transmission of employees’ personal information, nor do any provisions address the cross-border flow of data. However, it is advisable to seek prior written consent to the processing of personal data from the employee to the extent necessary to address the various privacy protections set out in Kuwait law, including the protections set out in the Kuwait Penal Code and the Kuwait Constitution.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employees transfer through termination and rehire in an asset deal.

EMPLOYEE REPRESENTATION

Foreigners are not permitted to form any unions according to the Kuwaiti Labor Law.

Kuwaiti nationals are allowed to form or join a labor union, and only one labor union per sector is allowed to be formed in the country (i.e., a union for engineers, a union for lawyers). Only associations expressly designated for an Islamic purpose, or granted legal status by the government, are permitted to meet openly and freely.
**TERMINATION**

**GROUNDS**
Termination is possible on these grounds: by agreement, on the expiry of a fixed term contract, resignation, incapacity or death, dismissal with notice provided it is for a valid reason, or summary dismissal (by reason of any of the grounds listed at Article 41A of the Labor Law).

**EMPLOYEES SUBJECT TO TERMINATION LAWS**
All employees.

**RESTRICTED OR PROHIBITED TERMINATIONS**
Employees on any type of leave cannot be terminated while on leave, e.g. employees on maternity leave or who are delayed in returning to work due to sickness resulting from pregnancy or labor cannot be terminated.

**THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**
Special consideration should be given in the case of Kuwaiti nationals.

**MASS LAYOFF RULES**
None.

**NOTICE**
3 months’ notice for monthly paid employees; 1 month’s notice for all other employees.

**STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE**
None. Entitlement depends on contract terms.

**SEVERANCE**
Unless terminated under Article 41A of the Labor Law, employees are entitled to salary and benefits to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of a flight/air ticket to repatriate the employee to their home country (unless (i) dismissal is attributable to employee and the employee has the funds to pay his/her own costs; or (ii) the employee has obtained alternative sponsorship to remain in Kuwait), an end of service gratuity payment and reimbursement of unpaid business expenses. In case of employer termination, the end of service gratuity for monthly paid employees is calculated at 15 days’ pay per year for each of the first 5 years of service; and 1 month’s pay for each additional year of service thereafter. Where the employment is terminated by the employee, the employee is entitled to the following:

- after 3 and up to 5 years’ continuous service, 50% of the severance pay as calculated above
- after 5 years’ continuous service, two thirds of the severance pay as calculated above and
- after 10 years’ continuous service the full entitlement to severance pay as calculated above.²

The total end of service gratuity entitlement an employee can receive is capped at one and half years’ salary.

² The Labor Law only sets out the employee’s entitlement to an end of service gratuity in the case of a resignation in respect of unlimited contracts, however, we have been advised by the MOSAL that the same entitlements will apply to employees that resign from limited term contracts.
POST-TERMINATION RESTRAINTS

It is permissible to have restrictive covenants contained in the contract of employment, provided that the employee has become acquainted with the employer’s clients or the secrets of the business and the covenants are reasonably drafted in relation to their duration, geographic scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the contract of employment as it is generally not possible to obtain an injunction in Kuwait, however any such penalty should not be exorbitant.

NON-COMPETES
Typically no longer than 12-24 months.

CUSTOMER NON-SOLICITS
Typically no longer than 12-24 months.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS

Waiver agreements are commonly used, but their enforceability has not been tested by the Kuwait courts and there is no system of precedence in Kuwait.

REMEDIES

DISCRIMINATION
Not applicable.

ARBITRARY DISMISSAL
There is no cap on the award for arbitrary dismissal; however, awards higher than 3 months’ pay are uncommon in most cases.

FAILURE TO INFORM & CONSULT
Not applicable.

CRIMINAL SANCTIONS
Criminal sanctions can be imposed for a variety of reasons, including but not limited to the setting up of a trade union, breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.
LUXEMBOURG

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil law. Member of the European Union (“EU”), so required to implement relevant EU directives. Euro (EUR) French, German and Luxembourgish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage employees in Luxembourg with proper payroll registrations, subject to doing business and corporate tax considerations.

Income tax and the employee’s portion of the social security contributions are withheld from the remuneration paid out by the employer. The rate of the social security contributions is from 25.01% to 26.42% (plus a surplus depending upon the absentee rate within the company). The employee’s portion is 12.95% of this total amount.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance.

Medical check: When recruiting, an employer must ensure that the employee passes a medical check with a practitioner of the occupational health service to which the employer is affiliated. The practitioner will decide if the employee’s health allows him or her to fill the position in question. This medical check is compulsory, whatever the work (ie office, industrial or construction work, etc.). In certain cases, during employment, the employer must also organize regular medical examinations.

PERMISSIBLE
Reference and education checks are common and permissible with the applicant’s consent. For the purpose of human resources management and recruitment, the employer may request any applicant to provide a criminal record and may process the data collected for a period of time which may not exceed 24 months.

IMMIGRATION
European Union (EU) citizens benefit from the right of free movement which gives them the right to work and reside in any EU country.

Nationals of the European Economic Area (EEA) and Switzerland have the right to work in Luxembourg. Third country nationals will need to apply for a residence permit with authorization to work. However, third-country nationals who are the spouse, registered partner or child of a citizen of the European Economic Area (EEA) and Switzerland already working in Luxembourg do not require a work permit. A work permit exemption must be requested.
HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the employer or via a personal services company. Engagement may be subject to misclassification exposure if a relationship of subordination is demonstrated.

AGENCY WORKER
Agency workers are common. Temporary lending of workforce is subject to specific conditions and non-discrimination rules.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
A written contract is required, and must be entered into for each employee no later than the date an employee commences work.

PROBATIONARY PERIODS
Trial period may be set for a minimum of 2 weeks up to a maximum of 12 months. 3-6 months common.

POLICIES
No specific policy is mandatory.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third-party, except for young employees under age 18.

LANGUAGE REQUIREMENTS
There is no specific requirement as far as the language is concerned, but the contract must be in a language understood by all the parties. English is commonly used and accepted by the courts.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
40 hours per week limit on working time.
OVER-TIME
Over-time is compensated either with time off equivalent to the excess hours worked (for each over-time hour, 1.5 hours’ time off or allocated to a time saving account) or with a supplementary payment of 40%. Over-time payment is not required for senior executives.

WAGES
EUR 1,922.96 minimum wage per month for unqualified employees and EUR 2,307.56 per month for qualified employees. A “qualified employee” is one who holds (i) an official certificate at least equivalent to a vocational skills certificate; or (ii) a vocational diploma; or (iii) a manual skills certificate; or (iv) a certificate of vocational ability and has at least 2 years’ practical experience; or (v) a vocational initiation certificate and has at least 5 years’ practical experience. Certain other employees may also be categorized as “qualified” even if they have no official certificate, subject to having accrued sufficient years of practical professional experience.

VACATION
25 days per year (plus public holidays).

SICK LEAVE & PAY
An employer must continue to pay the employee in case of sickness leave due to illness or an occupational accident and must do so until the end of the month during which the 77th day of sickness leave occurs, over a reference period of 12 successive months. As from the month following the 77th day of sickness leave, the National Health Fund (Caisse Nationale de Sante – CNS) pays sickness benefits to the employee on sickness leave.

However, during the sick leave, the CNS may make a “refusal decision” pursuant to which the employee’s entitlement to full salary ceases. In such cases, the employer must abide by the refusal decision once the period of 40 days allowed to lodge an appeal against the decision, expires.

MATERNITY/PARENTAL LEAVE & PAY
Maternity leave starts 8 weeks before the expected date of delivery and continues for 8 weeks after the actual date of delivery and may be extended by 4 weeks if the employee breastfeeds her child.

During maternity leave the employee is paid by the National Health Fund (Caisse Nationale de Sante – CNS).

Maternity allowances cannot be lower than the social minimum wage (gross amount of EUR 1,922.96 per month as of 1 January 2016) and do not exceed 5 times the social minimum wage (gross amount of EUR 9,614.8 per month as of 1 January 2016).

Currently, during parental leave (either full-time for 4 to 6 months or half-time for 8 to 12 months), the employee receives a fixed allowance of EUR 1,778 per month. However, a new law scheduled to come into force during 2016 will reform the parental leave system. Under the new system, the amount of parental leave allowance will be linked to the employee’s income and will replace, proportionately, the income lost by the employee taking parental leave. The allowance will be set between EUR 1,922.96 and EUR 3,200 per month and will be paid by the CNPF (Caisse Nationale des Prestations Familiales). An employee earning less than EUR 3,200 per month will receive an equivalent amount to replace his or her salary. An employee earning more than EUR 3,200 per month will receive a maximum of EUR 3,200 per month.
DISCRIMINATION

Discrimination on the grounds of religion or belief, disability, age or sexual orientation, racial or ethnic origin and sex are prohibited with regard to access to employment, access to all types and levels of vocational guidance, employment and working conditions, and membership of and involvement in an organization of workers or employers.

BENEFITS & PENSIONS

Employers have no legal obligations to provide complementary/supplementary social benefits in addition to the social coverage provided for by the social public scheme.

DATA PRIVACY

Employees generally must be notified of personal data processing. The employee’s consent does not legitimise the processing of data.

Certain types of data processing are, however, exempt from notification while others are subject to prior authorization. Special rules apply to data transfers. The Labour Code provides that processing employees’ personal data for the purpose of workplace supervision is only possible if it is necessary to (i) protect health and safety; (ii) protect company property; (iii) control motorised production processes; (iv) control production or performance where this is necessary to assess the amount of remuneration; (v) implement flexitime.

The Labour Code also provides the Joint Works Council / the Staff Delegation with a positive right of decision on any personal data processing in relation to monitoring employee behaviour or performance or matters affecting employee health and safety.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

In case of business transfers falling under the scope of the EU Acquired Rights Directive, as implemented in Luxembourg, all employment contracts existing at the date of the transfer have to be maintained with the new employer. All employees’ rights are maintained and transferred to the transferee.

Duty to inform and consult the employees’ representatives.

Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

Trade Union: Employees as well as employers are organized on a voluntary basis into a number of trade unions, trade and professional federations. Membership is optional.

Staff Delegation: A staff delegation must be set up in every business in the private sector with at least 15 employees. Joint Works Councils were abolished by the law of 27 July 2015 and a Council’s competences will be transferred to the Staff Delegation. Existing Joint Works Councils will disappear after the next social elections, which will take place in November 2018.
Economic and Social Entity Board: Several companies together form an “economic and social entity” when they have a shared management, identical and complementary activities, a community of employees working with the same interests and a comparable social status. Where such an entity exists, a board may be established, when requested by at least two different companies forming part of the entity.

**TERMINATION**

**GROUNDS**
Termination permissible with immediate effect for gross misconduct or with notice for real and serious cause connected with the employees’ attitude, aptitude or for operating needs of the business (“economic ground”).

**EMPLOYEES SUBJECT TO TERMINATION LAWS**
All.

**RESTRICTED OR PROHIBITED TERMINATIONS**
Employee representatives, employees who have duly notified their incapacity to work, pregnant women, employee during parental leave, etc.

**THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**
No third-party approval is required for termination.

**MASS LAYOFF RULES**
- Any employer contemplating dismissing at least 7 employees within a period of 30 days, or 15 employees within a period of 90 days for one or more reasons not related to the employees is required to follow the procedure applicable to mass layoffs.
- The employer must enter into prior negotiations with the employee representatives in order to come to an agreement in respect of the establishment of a social plan. Before negotiations start, the employer must inform the employee representatives in writing of the proposed collective dismissal and provide them with information thereon. Any dismissal notified before a social plan is signed is deemed null and void.

**NOTICE**
The notice period (which are not applicable in case of terminations due to gross misconduct) depends on the length of service:
- Less than 5 years: 2 months.
- Between 5 and 10 years: 4 months.
- More than 10 years: 6 months.

**STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE**
No statutory right to pay in lieu of notice. The employee can be released from the obligation to work during the notice period. During the release, the employee is entitled to the same remuneration and benefits as if he or she was working.
**SEVERANCE**
The amount of the severance depends on the length of service and varies from 1 to 12 months. Not applicable for terminations for gross misconduct.

**POST-TERMINATION RESTRAINTS**

**NON-COMPETES**
A non-compete clause must be in writing, and is deemed null and void when the employee signing the contract of employment is under 18 years of age and/or if the employee’s annual remuneration when he or she leaves the employer does not exceed EUR 52,843.88 (index 775.17).

Further, a non-compete clause will only apply if the employee works as an independent contractor, but not where he or she works for a new employer.

A non-compete clause is only valid if it anticipates an employee working as an independent contractor. The non-compete clause is only effective if the restriction: (i) applies to a specific professional sector and to similar activities to those carried out by the former employer (ii) does not exceed 12 months, and (iii) is limited to a geographical area where the employee would be in a position to effectively compete with his or her former employer.

**CUSTOMER NON-SOLICITS**
Valid under Luxembourg law.

**EMPLOYEE NON-SOLICITS**
Valid under Luxembourg law.

**WAIVERS**
Waivers are enforceable if they refer to rights which had arisen at the time of the waivers.

**REMEDIES**

**DISCRIMINATION**
There are two types of discrimination remedies:

- remedies stipulated by the Labour Code, which entitle the affected employee to uncapped compensation, based on his or her financial loss and injury to feelings;

- remedies stipulated by the Penal Code, which provide for imprisonment of the person who has discriminated for up to a minimum of 8 days and a maximum of 2 years and/or a fine of between EUR 251 and EUR 25,000.

**UNFAIR DISMISSAL**
In case of dismissal with notice, the employee is entitled to compensation for moral damages and financial damages. In case of a dismissal for gross misconduct which is deemed unfair, the employee is entitled to a pay in lieu of notice and a severance pay in addition to the compensation for moral and financial damages.
FAILURE TO INFORM & CONSULT
Criminal sanctions if the employer does not inform/consult or negotiate with the employees’ representatives when required. Prosecution is rare.

CRIMINAL SANCTIONS
Many of the mandatory labor law rules are criminally punishable by fines and/or imprisonment. For example employers are subject to criminal fines and/or imprisonment for

- publishing a job offer without informing the Administration of Employment (ADEM);
- hiring an employee without arranging a compulsory medical examination;
- hiring an employee from outside the EEA without authorization;
- paying wages below the minimum social wage;
- failing to comply with the rules on paid leave;
- failing to comply with the rules on public holidays.
MEXICO

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law. Mexican Peso (MXN). Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity cannot directly engage employees in Mexico without setting up a branch or subsidiary. Proper payroll registrations are required. Social Security, Tax, and Union contributions withholdings may apply, depending on the employee's category and income.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance.

PERMISSIBLE
Under Mexican law, there are few restrictions on an employer’s right to request substantiating documents and confirm the information provided by the applicant regarding his or her education, health condition, finances, drug use, family situation and criminal background. Employers have broad flexibility with regard to the questions that may be asked during the application process.

Criminal background checks are permissible; however, only the employee itself can request such information from the corresponding authority. Credit checks are not common in Mexico, since there is no specific procedure established by law for employers to obtain credit information. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION
A foreign national requires an immigration document (temporary visa) authorizing such foreign national to live and work in Mexico. Such visas are valid for 1 year and renewable for up to 4 additional periods, after which time the holder may apply for a permanent visa. It is the employer that must file a visa application with the Mexican immigration authorities.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, training, part-time and seasonal or intermittent. Fixed-term agreements can only be executed under very specific circumstances (e.g., temporary replacement of an employee on maternity leave).

INDEPENDENT CONTRACTOR
Independent contractors may be engaged. Specific rules (“judicial criteria”) must be followed in order to reduce misclassification exposure.
AGENCY WORKER
Agency workers can be hired only for activities different from the core business of the company receiving such services. Otherwise, the company receiving the services could be considered the employer and/or could be subject of monetary sanctions.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Written employment agreement must be executed.

PROBATIONARY PERIODS
Employees hired pursuant to an indefinite employment agreement or a fixed-term agreement of at least 180 days can be hired subject to a probationary period of up to 30 days, extendable by up to 180 days if the employee is hired as an executive, manager or director or fills an administrative position.

POLICIES
Depending on the number of employees, written training and productivity policies (that is, policies addressing training and productivity/professional development plans) as well as health and safety policies are mandatory, and must be reviewed annually. An internal work policy may be issued in order to cover the general rules to be followed in the company and the expected conduct at the work place.

THIRD-PARTY APPROVAL
Labor board approval of the employment relationship is required if the employee is 15 to 18 years old or if the employment agreement is executed under Mexican law, but the activities are performed abroad.

LANGUAGE REQUIREMENTS
No statutory requirements, however, Spanish is always recommendable, since any Mexican authority will require any employment document to be in Spanish or translated into Spanish.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
Up to 48 hours a week for work day shifts, 42 hours a week for night shifts, and 45 hours a week for mixed shifts. Employees must have at least 1 paid day off every 6 days. Common business practice in Mexico for employees to work 48 hours per week distributed among 5 days.
OVERTIME
An employee may not be required to work more than 3 hours more than the number of hours in the statutory work day during a given shift, or more than 9 hours in a given week. An employee working overtime on a given day is entitled to a double compensation for each hour of overtime. In the event the employee works more than 9 hours overtime in a given week, the employee is entitled to triple the applicable hourly wage for each hour of overtime.

WAGES
The minimum wage is established by geographical areas and/or for specific professions or specific fields (professional). Currently there is only one geographical area for purposes of determining minimum wage. The minimum wage for 2016 is MXP 73.04 per day. The minimum wage is usually increased annually in accordance to the IN PC (National Consumer Price Index).

VACATION
An employee who has worked for more than 1 year is entitled to at least 6 days of paid vacation. The number of mandatory vacation days increases by 2 working days for each following year until it reaches 12 vacation days. Thereafter, the vacation period increases by 2 days for every 5 years of service.

SICK LEAVE & PAY
If an employee cannot work due to illness or an accident, the employee must obtain a medical authorization from the Mexican Social Security Institute in order to get paid for the days during which the employee could not attend work.

MATERNITY/PARENTAL LEAVE & PAY
Women have the right to 6 weeks of paid leave prior to the birth of a child and 6 weeks following the birth of a child. Women can allocate up to 4 of the 6 weeks of the pre-birth leave to the post-birth leave period. If a child is born with disabilities or requires medical attention, the post-birth paid leave may be extended by up to 2 additional weeks.

In case of adoption, female employees are entitled to 6 weeks of paid leave following placement of the child.

A male employee is given 5 business days of paid paternity leave when his spouse gives birth or he adopts a child.

DISCRIMINATION
Employers may not discriminate against employees or job candidates on the basis of: age, ethnic origin/race, sex, citizenship, disabilities, health conditions, religion, opinions, sexual orientation, marital status, or any other criteria.
BENEFITS & PENSIONS

The Social Security Law regulates employer, employee, and government participation in different federal social benefit programs through the Mexican Institute for Social Security (Institute Mexicano del Seguro Social (“IMSS”)). Registration of an employee with the IMSS relieves the employer from the following risks and obligations: (i) work-injury related risks, (ii) health and maternity insurance, (iii) disability pension and life insurance, (iv) retirement, advanced age and pension and (v) child care and social benefits.

Companies must set aside 10% of their taxable income for employee profit sharing, in accordance with the rules established in the Mexican Income Tax Law.

DATA PRIVACY

To process personal data, data controllers must provide a privacy notice to the affected employees prior to the collection and processing of such personal data. In the case of data transfers, the privacy notice must contain the name of the transferee or the person to whom the information is transferred. All transfers of personal data to domestic or foreign third parties must be pre-approved by the data subject/employee.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employment transfers may be implemented via an employer substitution letter. Transferred employees are entitled to receive at least the same benefits and perform their work subject to the same terms and conditions as before the transfer. The employer who has been substituted will be jointly responsible with the new employer for a period of 6 months.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors, sugar, railway, automotive, and mining industry as well as the public sector (specially education and energy). Employers with more than 20 employees may have a union.

There are no works councils or other employee representatives.

TERMINATION

GROUNDS

An employer may rescind their employment relationship without incurring any liability if any of the justified “causes” established by law is given, which are mostly based on misconduct. Technically, the employer cannot terminate employment without cause, except in specific cases established in the labor law. In practice, however, exposure in an unlawful termination lawsuit is mostly limited to the statutory termination payments, so most terminations can be implemented either through employee resignations (with all statutory payouts, including severance), or through a mutual termination agreement signed-off in front of the labor court (again with all statutory payouts, including severance).
EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees.

RESTRICTED OR PROHIBITED TERMINATIONS
If the employment relationship is suspended (e.g., an employee on maternity leave).

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
No third-party approval is required, but it is common to have employees sign a resignation letter or a waiver and release letter in front of the labor authorities.

MASS LAYOFF RULES
No mass layoff rules.

NOTICE
No notice period.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Not applicable under Mexican Law.

SEVERANCE
90 days’ Integrated Salary (i.e., the last annual average of the employee’s income), plus 20 days’ Integrated Salary for each year of services rendered, seniority premium equal to 12 days’ wages for each year of services rendered (subject to a limitation up to twice the minimum wage) and accrued benefits.

POST-TERMINATION RESTRAINTS

NON-COMPETES
Post-termination non-compete clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and even create a sense of moral obligation on the part of an employee.

CUSTOMER NON-SOLICITS
Post-termination customer non-solicits clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and even create a sense of moral obligation on the part of an employee.

EMPLOYEE NON-SOLICITS
Post-termination employee non-solicits clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and even create a sense of moral obligation on the part of an employee.

WAIVERS
Enforceable, however, employees cannot waive their right to receive mandatory benefits or rights.
REMEDIES

DISCRIMINATION
No specific sanctions are in place.

UNFAIR DISMISSAL
Employer must pay the severance payment plus claimant’s unpaid wages from the day he or she was unfairly dismissed until 1 year thereafter, plus monthly increase of 2% of the claimant’s total amount awarded plus any proven unpaid benefit (such as overtime, bonus, commissions, etc.), plus 20 days’ Integrated Salary for each year of services rendered (this amount is only applicable in case the employee demands his or her reinstatement and the employer rejects it).

FAILURE TO INFORM & CONSULT
Not applicable under Mexican law.

CRIMINAL SANCTIONS
Employees may be subject to criminal sanctions if they do not honor their non-disclosure agreement.

Employers may be subject to criminal sanctions if they pay to their employees less than the minimum wage, or employ children under 15 years old.
NETHERLANDS

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil law. Member of the European Union, so required to implement relevant EU Directives. Euro (€). Dutch.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
Foreign entities can directly engage employees in the Netherlands, subject to doing business and tax considerations. Registration with the Dutch tax authorities as employer (to make mandatory payroll deductions) is required.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance. For certain limited provisions (e.g., judges, lawyers advocaat) an applicant has to provide a recent copy proving that he or she has no criminal record that should prevent him or her from performing his or duty (verklaring omtrent gedrag).

PERMISSIBLE
Reference checks are common, and permissible with applicant’s consent. Other checks are only permissible in limited situations.

IMMIGRATION
Most of the nationals of the European Economic Area (EEA) and Switzerland are allowed to work in the Netherlands, although these nationals should be registered. Other nationals should have a proper visa that allows them to work in the Netherlands.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, full-time or part-time, zero-hours, on-call. Fixed-term employees can gain an indefinite employment status after a certain time and cannot be discriminated against due to their status.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company. The contractor shall pay taxes himself/herself.

Whether or not an agreement is, in fact, an employment contract first depends on the intentions of the parties when concluding the agreement, but also on the actual facts and circumstances and the way both parties have carried out the agreement. If a consultancy agreement is deemed to be an employment contract, mandatory Dutch employment regulation will apply.
Under new legislation, that will enter into force as of 1 May 2016, an independent contractor can no longer indemnify its client for wage tax and social premiums in case of a deemed employment. To mitigate such risk, new legislation enables the client to submit the contractor agreement to the Dutch tax authorities for assessment of the work relationship. If the Dutch tax authorities have confirmed that the contract does not constitute an employment relationship, they have in principle waived their right to recover wage tax and social premiums from the client, provided that the work is indeed carried out in accordance with the terms of the contract.

In addition, the Dutch tax authorities have published certain template contracts (in Dutch) that can be used for various client-contractor relations (per sector). If the client and contractor work on the basis of such template AND the contract is in fact carried out in line with the provisions and wording of the contract, the Dutch tax authorities cannot recover wage tax and social premiums from the client either. Please note in this respect that the templates are currently still subject to the approval of an independent panel that expects to have given its final guidance by the end of 2016.

Even though the assessment of individual contracts and the use of the templates will provide some level of certainty, the key issue will still be that the Dutch tax authorities may still be able to recover wage tax and social premiums from the client in cases where the facts and circumstances point to the existence of an employment, rather than a genuine contractor relationship. In these circumstances, it may therefore be recommendable to “voluntarily” withhold and pay wage tax and social premiums with respect to the fees paid to a contractor.

**AGENCY WORKER**
Agency workers are common and cannot be discriminated against due to their status.

**EMPLOYMENT CONTRACTS & POLICIES**

**EMPLOYMENT CONTRACTS**
Common best practices, might depend on the requirements of the collective employment agreement, if any.

**PROBATIONARY PERIODS**
Permissible in indefinite term contracts and fixed-term contracts for 2 years or more for a maximum of 2 months.

Since 1 January 2015, it is not permissible to include a probationary period in a fixed-term employment contract of 6 months or less. It is not possible to deviate from this via a Collective Labour Agreement (CLA).

In the case of a fixed-term contract of more than 6 months and less than 2 years a probationary period of 1 month is allowed. Under a CLA, it is possible to extend the probationary period to a maximum of 2 months.

The previous rules on probationary periods will still apply to employment contracts entered into prior to 1 January 2015. Probationary period provisions which are not in line with the new legislation, but which were included in a CLA valid on 1 January 2015, will be valid until the earlier of 1 July 2016, or the end date of the CLA.
GUIDE TO GOING GLOBAL • EMPLOYMENT

POLICIES
Optional.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third party.

LANGUAGE REQUIREMENTS
No statutory requirements, although the employer must make sure that the employee understands the relevant provisions.

MINIMUM EMPLOYMENT RIGHTS
EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
Contractual not over 40 hours/week.

OVERTIME
No statutory obligation to provide pay for overtime worked, as long as pay overall does not fall below the statutory minimum. Collective employment agreements might set different obligations.

WAGES
Depends on the employee’s age. The minimum daily wage for employees of the age of 23 years and older is €70.37 as of 1 January 2016.

VACATION
Based on a (full time) 40 hour/week: 20 days/year, excluding public holidays.

SICK LEAVE & PAY
In case of occupational disability, an employer must pay 70% of the most recent gross salary plus holiday allowance to the employee for up to 2 years. The amount of pay cannot, however, exceed the maximum daily pay rate set out in legislation and must not be below the statutory minimum wage rate.

MATERNITY/PATERNITY/PARENTAL LEAVE & PAY
16 weeks maternity leave and, after that 16 weeks, a right to return to work. During the maternity leave, the employee is entitled to a maternity allowance. The employer continues to pay the full salary of the employee. However, the Employee Insurance Agency reimburses a part of the regular salary to the employer (with a maximum daily wage of €202.17 as of 1 January 2016). Statutory possibility of unpaid parental leave during a part of the working week, during a certain amount of time before the youngest child turns 8 years old.

The father-employee is entitled to 2 days of paid and 3 days of unpaid paternity leave.
DISCRIMINATION
Characteristics protected from unlawful discrimination and harassment: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

BENEFITS & PENSIONS
In many industry sectors, a mandatory industry-wide pension fund applies. The employees who work in such a sector are required by law to participate in that pension fund and their employers are required by law to pay pension premiums to the fund. In sectors without such an industry-wide pension fund, the employer usually sets up its own pension plan for its employees.

DATA PRIVACY
Employees generally must be notified of personal data processing (and in certain cases, give consent). Registrations with the Information Commissioner are required. Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring email and internet use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
Automatic transfer under the EU Acquired Rights Directive/Dutch civil code in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employee representatives. Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational reason. Works council has the right to advise.

EMPLOYEE REPRESENTATION
Trade unions are prevalent in a number of sectors. Works councils are common and have significant rights. If the company has 50 or more employees, the company is obliged to establish a works council. If there are more than 10 employees, but fewer than 50 employees, the company must create the possibility to meet with the employees twice a year. Industry-level collective bargaining agreements are common.

TERMINATION

GROUNDS
Termination is permissible on misconduct, performance, redundancy or other substantial grounds. As from 1 July 2015, a dismissal is only possible on the basis of one of the reasons specified in the Dutch legislation.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All.
RESTRICTED OR PROHIBITED TERMINATIONS

Members of the (European) works council, employees on their first 2 years of sick leave, pregnant employees, employees on military service.

These prohibitions of termination do not apply in the event that:

• an employee consents to the termination in writing
• the termination takes place during the probationary period
• the termination is a dismissal with immediate effect
• there is a company closure (the termination of pregnant employees is in that event still prohibited/restricted) or
• the termination takes place because the pensionable age has been reached.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS

Employers do not need any third-party approval for immediate termination for cause. In all other situations, employers must either seek approval of the Dutch Employee Insurance Agency (UWV) or request a court to dissolve the employment agreement. Mutual terminations are common.

MASS LAYOFF RULES

Yes, strict information and consultation rules apply in situations where 20 or more employees are to be made redundant over a period of 3 months’ or less.

NOTICE

The notice period that an employer must provide can either be contractually agreed or will depend on the employee’s length of service on the day the notice of termination is given. An employment contract which has been in effect:

• for less than 5 years requires 1 month’s notice
• between 5 and 10 years requires 2 months’ notice
• between 10 and 15 years requires 3 months’ notice
• for more than 15 years requires 4 months’ notice.

With the consent of the employee, employers can, but are not required to, make a payment in lieu of notice.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE

No.

SEVERANCE

As per 1 July 2015, severance pay regulations are arranged by law, under a so-called transition payment. A transition payment will be due where the employment has lasted at least 2 years and the amount will be based on years of service – 1/6 of one month’s salary for every 6 months for the first 10 years of service and 1/3 of one month’s salary for every 6 months over 10 years of service. The maximum transition payment amounts to €76,000 gross, or, where an employee earns over €76,000 per annum a maximum of one year’s salary.
WAIVERS
Enforceable, but employees must be given time to consider and to seek legal help.

POST-TERMINATION RESTRAINTS

NON-COMPETES
Post-employment restraints to protect against competition are common in the Netherlands and are included in almost every employment agreement. Typically, such restraints remain in effect for up to 1 year after termination of employment. As from 1 January 2015, a new law restricts non-competition clauses in new fixed-term employment contracts, prohibiting the inclusion of such clauses unless they are necessary to protect a legitimate business interest and the business interests are clearly described in the employment agreement.

In general no payment required for enforceability.

CUSTOMER NON-SOLICITS
Permissible.

EMPLOYEE NON-SOLICITS
Permissible.

REMEDIES

DISCRIMINATION
Compensation depends on damages.

UNFAIR DISMISSAL
An employee can obtain a court order to be allowed back to work or can demand an additional “fair compensation” on top of the statutory transition payment.

FAILURE TO INFORM & CONSULT
Works council can litigate any decision of the company, that is, file an appeal with the Enterprise Chamber and request revocation of the company’s decision.

CRIMINAL SANCTIONS
Criminal sanctions are not generally a concern.
NEW ZEALAND

LEGAL SYSTEM, CURRENCY, LANGUAGE
Common law jurisdiction, New Zealand Dollar (NZD), English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign company employing staff in New Zealand is required to register with the Inland Revenue Department (IRD) as an employer and set up an IRD number, except in a limited range of exceptions.

Employment income is subject to tax at source in that the employer must withhold the tax and return this to the IRD under the “pay as you earn” (PAYE) regime.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance.

PERMISSIBLE
Criminal, reference and credit reference checks are permissible but are subject to the candidate’s consent.

IMMIGRATION
Nationals (and permanent residents) of New Zealand and Australia have the right to work in New Zealand; however, all other immigrants have to apply for one of the following visas:

• Permanent resident skilled Migrant Category
• Work to Residence
• Residence from Work or
• Investor/Entrepreneur (various categories).

HIRING OPTIONS

EMPLOYEE
Individuals can be recruited on either a full time, part time or casual basis (meaning they are employed by the hour or day) or on a fixed-term contract for a limited period.
INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company.

TEMPORARY WORKER
Temporary workers are used by some organisations for short periods. The most common forms of temporary labor in New Zealand include casual employees and fixed-term employees. Agency workers are engaged by the agency, not the employer of where they are placed to work.

ANY OTHER EMPLOYMENT OPTION
Employers can engage casual employees on a casual 'as-needed' basis.

EMPLOYMENT CONTRACTS & POLICIES

REQUIREMENTS
An employment agreement must be in writing and must contain certain minimum terms.

PROBATIONARY
A trial period is permissible for a period of 90 days at the start of a new employee's employment.

POLICIES
Not mandatory, but some policies (especially regarding anti-discrimination and harassment, bullying and health and safety) are recommended.

THIRD PARTY APPROVAL
No requirement to lodge employment contract or policies with or get any approval from a third party.

LANGUAGE REQUIREMENTS
No statutory requirements, but all documents should be in English.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
Employees are entitled to minimum employment rights under New Zealand law.

WORKING HOURS
Standard working hours are 40 hours per week, although the employer may require an employee to work reasonable additional hours.

OVERTIME
Overtime payment may be provided for in individual or collective employment agreements but is not required.

WAGES
National adult minimum wage of NZD 14.75 per hour.
VACATION
4 weeks’ paid annual leave per year.

SICK LEAVE & PAY
Employees are entitled to 5 days sick leave per year after 6 months of continuous employment.

MATERNITY/PARENTAL LEAVE & PAY
Eligible mothers are entitled to:

- 16 weeks of maternity leave. This leave is paid for employees/self-employed. Payment is made by the Government, not by employers
- 52 weeks of extended leave in total (includes maternity leave) and
- 10 days of special leave (unpaid).

Eligible fathers are entitled to:

- 2 weeks of paternity leave
- The partner’s parental leave if they are assuming care of the child.

DISCRIMINATION
Employees are protected from discrimination and harassment under both the Employment Relations Act 2000 and the Human Rights Act 1993. Protected characteristics are age (from 16 years), color, disability, employment status, family status, marital status, political opinion, race, ethnic or national origins, religious or ethical belief, sex and sexual orientation.

BENEFITS & PENSIONS
New Zealand has an optional superannuation saving scheme, “KiwiSaver”. Employers may provide a private superannuation scheme if they wish to.

New Zealanders qualify for a government pension payment at age 65.

DATA PRIVACY
The Privacy Act 1993 controls New Zealand data privacy and determines how employers collect, use, disclose, store and give access to “personal information”.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
New Zealand law does not contain any automatic transfer provisions except for a few limited classes of employees.

If a business is sold, transfer of employees depends on the nature of the sale.
GUIDE TO GOING GLOBAL • EMPLOYMENT

Where a business, or part of the business, is acquired by way of an asset and goodwill purchase, the employees do not automatically transfer to the new owner, but must agree to do so. Where a business, or part of the business, is acquired by way of a share purchase, the employment of employees remains unchanged.

Special provisions apply for businesses that employ over 20 “vulnerable employees”. This is a special category covering, for example, cleaning and catering staff.

There are also requirements under the Employment Relations Act 2000 for there to be a process for consultation with staff in business transfer situations. These are called “Employment Protection Provisions” and are process requirements only, meaning there is no substantive right to transfer.

EMPLOYEE REPRESENTATION

In New Zealand, an employee can choose to be part of a union or not. Any union validly appointed to represent an employee or employees must be recognised and dealt with according to the law.

TERMINATION

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

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees.

PROHIBITED OR RESTRICTED TERMINATIONS
Employers are prohibited from making “unjustified” dismissals and from taking adverse action against an employee for union membership or because of a protected characteristic under the Human Rights Act 1993.

THIRD PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
N/A

MASS LAYOFF RULES
Employers must use a fair and reasonable process when implementing a redundancy. An employer needs to show that there is a genuine commercial reason for any redundancy decision.

NOTICE
The notice period will be set out in the employment agreement.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Employer can pay in lieu of notice if stipulated in the employment agreement. No right to garden leave unless specified in the employment agreement.

SEVERANCE
No right to severance payments unless specified in the employment agreement.
POST-TERMINATION RESTRAINTS

Restraints in New Zealand are enforceable only if the restriction is no more than is reasonably necessary to protect the legitimate proprietary interests of the employer.

NON-COMPETES
Permissible.

CUSTOMER NON-SOLICITS
Permissible.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS
Statutory rights cannot be waived, however contractual or common law rights can be waived by the employee.

REMEDIES

DISCRIMINATION
If employees believe they have been subjected to discrimination, they may apply for a remedy under either the Employment Relations Act 2000 or the Human Rights Act 1993. Potential sanctions include compensation, declarations, orders and recommendations.

UNFAIR DISMISSAL
If the Employment Relations Authority determines an employee has been unjustifiably (unfairly) dismissed, they may be awarded compensation and/or reinstatement.

FAILURE TO INFORM & CONSULT
An employer who does not consult with an employee in circumstances where the employer’s decision may “adversely affect” the employee’s employment may be liable to an unjustified dismissal or disadvantage claim in the Employment Relations Authority.

CRIMINAL SANCTIONS
Generally none. However, there are criminal sanctions for breach of relevant work health and safety laws.
NORWAY

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
Any entity conducting business activity in Norway has both a duty and a right to be registered in the Norwegian Register of Business Enterprises. Following its registration, the entity will be provided with a Norwegian company registration number, which among other things is necessary in order to fulfil certain statutory obligations, for example the payment of tax deductions and employer’s contributions.

All employers pay statutory social security contributions to the national insurance scheme. The common rate is 14.1%. Norwegian employers are obliged to withhold income taxes and pay the employee’s tax to the taxation authorities.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance. For certain occupations (e.g., lawyers, accountants) a certificate of good conduct is required.

PERMISSIBLE
Criminal check is only permissible for specific occupations where there is legal basis for obtaining a certificate of good conduct.

Reference checks and education checks are permissible with applicant’s consent.

IMMIGRATION

EEA CITIZENS
Foreigners from EC and EU countries, who bring an identity card or a passport, are free to take residency for up to three months. If the employee is going to stay in Norway for more than three months, the employee must make a preliminary registration online and thereafter visit a police station or the service centre for foreign workers for registration. Upon completion of the registration, the employee will receive a registration certificate. The certificate is valid indefinitely (it does not need to be renewed).
NON-EC OR NON-EU CITIZENS
As a general rule, all citizens from non-EEA countries must have been granted a residence permit before their arrival in Norway. Petition for working permit is directed to the Norwegian foreign station in the applicants’ country of citizenship or the country in which the applicant has had a working or resident permit for the last six months. For persons with specialised skills, it is also possible to apply for a work permit after arrival.

As a main rule, the applicant must have a definite job offer for a full-time position from an employer in Norway, and the pay and working conditions must be equivalent to or better than what is settled in current tariff regulations or what is customary in the line of business.

HIRING OPTIONS

EMPLOYEE
The main rule is that employees are to be appointed permanently. Temporary employment is permitted in specific circumstances. Part-time employees and temporary employees have the right not to be discriminated against on the basis of such status.

INDEPENDENT CONTRACTOR
Independent contractors may be engaged. However, independent contractors have to be sufficiently independent of the company in order not to be regarded as employees. This includes e.g., that the independent contractor bears the risk of the result of the work, is not restricted from also working for others, and invoices all services to the company as a registered independent contractor.

AGENCY WORKER
Agency work is permitted to the same extent as temporary employment. Agency workers have the right to equal treatment in relation to pay and other benefits.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Written employment contract required. Several minimum requirements apply to the content of an employment contract.

PROBATIONARY PERIODS
Permissible. Statutory limit of 6 months.

POLICIES
Staff rules required for industrial, commercial and office undertakings that employ more than 10 employees.

THIRD PARTY APPROVAL
All employees must be registered with the State Register of Employer and Employees (EE-register).
LANGUAGE REQUIREMENTS
No statutory requirements. Documents may be in English, provided that the employees have sufficient understanding of English.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All. For provisions regarding working hours, exceptions apply for employees in senior and particularly independent positions.

WORKING HOURS
Ordinary working hours must not exceed 9 hours per day and 40 hours per week. Specific rules apply for daily and weekly off-duty time, rest breaks, night work and work on Sundays.

OVERTIME
The employer has to pay an overtime supplement of at least 40% of salary for work in excess of agreed working hours (9 hours per day and 40 hours per week).

WAGES
No statutory minimum wage. In some sectors, collective bargaining agreements that have been made generally applicable stipulate minimum wages.

VACATION
25 working days (including Saturdays) per year in addition to public holidays. Employees who are turning 60 during the same year have a right to 6 additional holidays.

SICK LEAVE AND PAY
Statutory right to take time off for sick leave. Employees are entitled to receive sick pay for one year. Sick pay is provided by the employer for the first 16 days (at basic salary rate) and thereafter by the national insurance.

MATERNITY/PARENTAL LEAVE & PAY
Parents have a general shared right to leave of absence for a total of 12 months. 10 weeks is reserved for the father. Allowance from the government will be paid either for a period of 47 weeks at a full daily rate or 59 weeks at a reduced daily rate. Collective bargaining agreement and individual contracts of employment may contain special regulations. In addition, parents have a right to unpaid leave for up to 12 months for each child.

DISCRIMINATION
Both direct and indirect discrimination is prohibited with regard to all aspects of the employment relationship.

Characteristics protected from unlawful discrimination: political views, membership in a trade union, sexual orientation, disability, gender, age, ethnic origin, national origin, descent, language, religion, and ethical and cultural orientation.

Employees and applicants with disabilities are entitled to appropriate individual adaption of their workplace and tasks.
BENEFITS & PENSIONS
Occupational injury insurance and contributions to a mandatory occupational pension scheme are required.

DATA PRIVACY
Notification to the employee is required. An obligation to notify the Data Inspectorate may apply. Significant restrictions on monitoring and control of employees. Special provisions apply for transmission of data outside the EEA.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
Automatic transfer under business transfer regulations. Rights and obligations under the employment contracts are transferred to the new employer. Restrictions on changes to terms and conditions following a transfer. Duty to inform and consult with employee representatives. The transfer is not in itself grounds for dismissal.

EMPLOYEE REPRESENTATION
Trade unions are common. Requirements for safety representatives and environments committee apply. Several obligations to consult with the employees elected representatives.

TERMINATION

GROUNDS
Mutual agreement, expiry of a fixed-term contract, dismissal by the employer with notice, dismissal by the employer without notice and notice given by the employee.

Termination by dismissal with notice is permissible if dismissal is objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee. Termination by dismissal without notice is permissible if the employee is guilty of a gross breach of duty or other serious breach of the contract of employment.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All. The chief executive may relinquish the rights to employment protection in exchange for severance pay by prior agreement.

PROHIBITED OR RESTRICTED TERMINATIONS
Termination for the following reasons is prohibited or restricted:

- supporting or not supporting statutory union recognition and de-recognition
- trade union membership or activities or non-membership of a trade union
- pregnancy or any reason connected with maternity
- taking, or seeking to take, parental leave
GUIDE TO GOING GLOBAL • EMPLOYMENT

- sex or race
- ethnicity, politics or religion
- sexual orientation
- age or disability
- sickness during the first 12 months of absence from work.

THIRD-PARTY APPROVAL FOR TERMINATION
Not required.

MASS LAYOFF RULES
Strict information and consultation rules apply when notice of dismissal is given to 10 employees or more within a period of 30 days for business reasons (as opposed to reasons relating to the employees).

Notification to the Labor and Welfare Service is required.

NOTICE
During the probationary period, 14 days’ notice is required. After the probationary period, the minimum statutory notice period for terminating an employment contract is 1 month. The notice period will be increased by 1 month for each 5 years of service, up to 10 years of service. If an employee is dismissed after at least 10 years of employment, the period of notice must be at least 4 months when given after the employee is 50 years of age, at least 5 months after the age of 55, and at least 6 months after the age of 60.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No. All employees are entitled to work and receive full payment during the notice period. The right to notice may be waived at the time of the termination.

SEVERANCE
No statutory right to severance pay. However, employees often offer severance pay so the employee will accept notice.

POST-TERMINATION RESTRAINTS

NON-COMPETES
Permissible. No longer than 12 months. Must be in writing.

CUSTOMER NON-SOLICIT
Permissible. Length of restriction will depend on the circumstances.

EMPLOYEE NON-SOLICIT
Permissible between employee and employer. Generally not permissible between employers, except for up to 6 months in relation to sale of businesses.
WAIVERS

The Working Environment Act is to a large extent mandatory. The employer and the employee may not agree on terms and conditions that are less favourable to the employee than those of the Act, if not expressly stated in the Act that the provision may be departed from.

However, employees may waive their rights in relation to termination of the employment relationship in a settlement agreement upon termination of the employment.

REMEDIES

DISCRIMINATION
Right to compensation that the court deems reasonable in view of the circumstances. Compensation for financial loss.

UNFAIR DISMISSAL
The court must rule the dismissal invalid unless this is clearly unreasonable. Right to be reinstated and/or right to compensation. The compensation is not capped.

FAILURE TO INFORM AND CONSULT
Failure to inform and consult will often lead to a finding that the dismissal was unfair.

CRIMINAL SANCTIONS
Wilful or negligent breach of the Working Environment Act by the proprietor, employer or person managing the undertaking in the employer’s stead is liable to a fine, imprisonment up to 3 months or both. In particularly aggravating circumstances, the penalty may be up to 2 years’ imprisonment. This does not apply to breach of provisions regarding appointment and termination.
OMAN

LEGAL SYSTEM, CURRENCY, LANGUAGE
Federal and civil legal system – employment matters are governed by the Oman Labor Law issued by Royal Decree 35/2003 (Labor Law) (as amended). There are also relevant provisions in the Penal Code and Civil Code. Omani Rial (OR), Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
There are 3 main legal structures available to companies that wish to establish a presence in Oman – a sole proprietorship, a corporate entity or through a commercial agent. It is not possible to employ staff in Oman without an established entity.

PRE-HIRE CHECKS

REQUIRED
Foreign employees must receive prior approval from the Ministry of Manpower and immigration authorities before they can be hired on local employment contracts. The level of background checking and screening carried out by the authorities varies according to the nationality of an individual.

PERMISSIBLE
Generally, employers in Oman are not able to obtain the same level of information from background checks as they can in other jurisdictions and, in most cases, the employees themselves will be required to provide this information.

IMMIGRATION
In order to legally work and reside in Oman, all employees except GCC and Omani nationals (who require a work permit only), are required to have a residence visa and work permit under the sponsorship of their employer, which must have an entity established in Oman, or, in the case of married women, be sponsored by their husband.

Where an employee is only required to work in Oman for a short period of time, there are alternative permits and visas that may be applied for, including business visit visas and mission visas.

HIRING OPTIONS

EMPLOYEE
Unlimited or fixed-term employment contracts. If the parties to a fixed-term contract continue to honor the contractual obligations following its expiry, it is renewed automatically for an unlimited period on the same terms and conditions.

Part-time employment is permitted but less common and applies only to Omani nationals.
INDEPENDENT CONTRACTOR
There is a limited concept of a consultant; individuals may not provide consultancy services unless they have established their own professional licence and business, due to the requirement that workers are prohibited from carrying out work for a company that is not their sponsor.

AGENCY WORKER
There is no general concept of an agency worker or “temp” in Oman. Some Omani-owned employment agencies are licensed to provide manpower on a temporary basis and these individuals would remain under their sponsorship.

SECONDEE
Workers in Oman are not permitted to carry out work for another company that is not their sponsor. However, companies sometimes enter into an agreement with a local company whereby the local company acts as a third-party host to the individuals. Such an arrangement is not strictly speaking legal and is most often seen in circumstances where a company does not have a local entity.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Expatriate employees are required to sign a government employment contract to obtain their work permit and residence visa. This contract is in English and Arabic.

PROBATIONARY PERIODS
Permissible. Maximum duration of 3 months.

POLICIES
Employers with more than 15 employees are required to have internal regulations which must be pre-approved by the Ministry of Manpower. These regulations cover working hours, leave, termination, etc. Further, employees should be provided with any relevant staff handbook and the employer’s policies (if applicable) on commencement of employment.

THIRD-PARTY APPROVAL
The government employment contract must be lodged with the Ministry of Manpower or relevant free zone authority to obtain the employee’s work permit and residence visa. Strictly speaking, any contractual changes should be notified to the Ministry of Manpower and amended on the filed standard employment contract copy.

LANGUAGE REQUIREMENTS
Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a foreign language is used in addition to Arabic, the Arabic version will prevail.
**MINIMUM EMPLOYMENT RIGHTS**

**EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS**

All. Additional rights are also available to young workers (those under the age of 18) and women.

**WORKING HOURS**

The Labor Law guarantees workers 2 days off per week, compared to the previous 1 day minimum. To achieve this, the maximum working hours were reduced from 48 hours per week to 45 per week, spread over 5 days.

During Ramadan, the maximum working hours per week for Muslim employees are 30, spread over a 5-day working week. Oman is the only GCC country with a 5-day working week.

**OVERTIME**

9-hour maximum working day. As no more than 12 hours in total may be worked on a particular day, this means that overtime is capped at 3 hours per day.

An employee who works overtime is entitled to basic salary per hour plus (i) 25% for extra hours worked during the working day and (ii) 50% for extra hours at night or time off equal to the amount of overtime worked.

**WAGES**

The minimum wage provisions apply only to Omani workers and are regulated by ministerial decisions.

**VACATION**

30 days’ annual leave fully paid after completion of 6 months’ service.

**SICK LEAVE & PAY**

Employees are entitled to 10 weeks’ (or 70 calendar days’) sick leave per year of service (first 2 weeks on full pay, weeks 3 and 4 at 75% pay, weeks 5 and 6 at 50% full pay and weeks 7 to 10 at 25% pay). Termination during sick leave is not permitted.

**MATERNITY/PARENTAL LEAVE & PAY**

Female employees are entitled to 50 calendar days’ maternity leave at full pay for a maximum 3 times during their employment.

There is no concept of parental leave or pay in Oman.

**ADDITIONAL LEAVE**

Employees are entitled to 6 days of emergency leave per year.

**DISCRIMINATION**

There are no specific discrimination laws in Oman, save for 2 provisions in the Labor Law relating to non-discrimination of women employed in similar situations to men and preference for employment of Omani nationals.
BENEFITS & PENSIONS

The Public Authority for Social Insurance (PASI) pays social service benefits to Omani and GCC national employees who have subscribed to the scheme. Private sector employers are therefore required to make monthly contributions to the PASI scheme.

All other employees are entitled to receive an End of Service Gratuity (EOSG) on termination calculated by reference to salary and length of service unless the employer contracts out of these arrangements with their employees by providing a savings scheme or pension scheme.

DATA PRIVACY

There are no clear laws in Oman comparable with those in the US or Europe concerning the handling and transmission of employees’ personal information, nor do any provisions address the cross-border flow of data. However, it is advisable to seek prior written consent to the processing of personal data from the employee to the extent necessary to overcome the various privacy protections set out in applicable civil and criminal laws.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Omani employees will automatically transfer to the purchaser; however, expatriate employees will not.

EMPLOYEE REPRESENTATION

Yes, this is permitted under the Labor Law.

TERMINATION

GROUNDS

Termination possible on these grounds: by agreement; on the expiry of a fixed term contract or completion of the specific project; resignation; incapacity or death; dismissal with notice provided it is for a valid reason; or summary dismissal (by reason of any of the grounds listed at Article 40 of the Labor Law).

EMPLOYEES SUBJECT TO TERMINATION LAWS

All employees.

RESTRICTED OR PROHIBITED TERMINATIONS

Employees who have not exhausted statutory sick leave or who are on public holiday. In such instances, any notice of termination will not be effective until the leave or absence has ended.

It is also not permissible to dismiss a female employee by reason of illness which is proved by a medical certificate to result from pregnancy or delivery and where she cannot resume work because of such illness, provided that the total period of absence is not more than 6 months.
THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
None required.

MASS LAYOFF RULES
None.

NOTICE
30 days’ statutory notice.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No. Depends on contract terms.

SEVERANCE
Unless terminated under Article 40 of the Labor Law, employees are entitled to: salary and benefits to the termination date; notice (or payment in lieu); payment in lieu of accrued but untaken annual leave; the cost of a flight/air ticket to repatriate the employee to their home country (unless (i) the dismissal is attributable to employee and the employee has the funds to pay his/her own costs; or (ii) the employee has obtained alternative sponsorship to remain in the Oman); an end-of-service gratuity payment; and reimbursement of unpaid business expenses.

In case of termination by the employer, the end-of-service gratuity is calculated based on the employee’s final salary. An employee is entitled to 15 days’ pay for the first 3 years of service and 1 month’s pay for each subsequent year.

POST-TERMINATION RESTRAINTS
It is permissible to have restrictive covenants contained in the contract of employment, provided that (i) the employee has become acquainted with the employer’s clients or the secrets of the business; and (ii) the covenants are reasonably drafted in relation to their duration, geographic scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the contract of employment as it is not possible to obtain an injunction in Oman.

NON-COMPETES
Typically no longer than 6 to 12 months.

CUSTOMER NON-SOLICITS
Typically no longer than 12 to 24 months.

EMPLOYEE NON-SOLICIT
Permissible. Typically no longer than 12 to 24 months.

WAIVERS
Waiver agreements are commonly used but their enforceability has not been tested by the Courts.
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REMEDIES

DISCRIMINATION
Not applicable.

ARBITRARY DISMISSAL
For arbitrary dismissal claims, the courts may order reinstatement (although this is uncommon in practice) or compensation of not less than 3 months’ pay.

FAILURE TO INFORM & CONSULT
Not applicable.

CRIMINAL SANCTIONS
Criminal sanctions can be imposed for a variety of reasons, including but not limited breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.
POLAND

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage employees in Poland without having a local corporate presence. Engaging a Polish employee who will perform work in Poland requires registration with the social security authorities. Income of this Polish employee will be subject to Polish income tax and social security contributions. In order to conduct business activities in Poland, a foreign entity may need to establish a local corporate presence (branch or representative office) in Poland, registered in the National Court Register.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance: requirement to obtain a work permit for foreigners originating from non-EU and non-European Economic Area (EEA) countries. A statutory list of so-called regulated activities to be performed only by persons holding specific licenses or possessing certain type of education and professional experience. Initial medical examinations to a position to confirm that there are no health reasons barring the person’s employment.

PERMISSIBLE
Certain limited personal data can be requested from the candidate, as specified by the Polish Labor Code. Additional information (e.g., information on criminal convictions) can be requested only if the obligation to provide this information is provided for in separate statutory provisions.

IMMIGRATION
Free movement of employees from all countries of the EU and EEA as well as Switzerland. In general, citizens of other countries require a work permit and a work visa (or other residence permit).

HIRING OPTIONS

EMPLOYEE
Employment relationship under an open-ended employment contract or fixed-term employment contract (contract for a fixed-term period, for the completion of specified task, for substitution or probationary period); part-time and full-time. It is unlawful to discriminate against employees on the basis of their working part-time or working under a fixed-term contract.
INDEPENDENT CONTRACTOR
A person engaged under civil law agreement is not an employee in the meaning of the Polish labor law. Nevertheless, a contractor will be deemed to be an employee (irrespective of the formal name of the contract between parties) if an individual is engaged under the other party’s supervision and subject to control of the place, hours of work and the manner of performance.

AGENCY WORKER
Temporary work is widely used for short periods of employment, in order to cover the absence of permanent employees or to perform seasonal works. Over a period of 36 successive months, the temporary work agency (which is the formal employer and must be entered into a register of work agencies) can send an employee to perform work for the single user-employer for a total period not exceeding 18 months.

EMPLOYMENT CONTRACTS & POLICIES
EMPLOYMENT CONTRACTS
An employment contract must be concluded in writing; however, the validity of a contract of employment does not depend on the form.

An employment contract must include basic employment information such as: (1) the parties to the employment contract, (2) the type of employment contract, (3) the date of concluding the employment contract, (4) the conditions of work and pay, including in particular the type of work (job position), the place where work is performed, remuneration, amount of working time, and the date when work commences.

Provisions of employment contracts cannot be less favorable to an employee than the provisions of the Polish labor law or else they are null and void.

PROBATIONARY PERIODS
An employment contract for a probationary period is a separate employment contract which can precede other types of employment contracts. A probationary period cannot be longer than three months. The aim of employment under this type of contract is to check the skills and qualifications of the employee and the possibility of employment for a specific type of work. As a rule, the employer can engage an employee for a trial period only once.

POLICIES
Statutory requirement to adopt workplace and remuneration regulations by employers engaging at least 20 employees, not covered by a CBA. The content of the workplace and remuneration regulations must be agreed with the trade unions (if operating at the entity).

Employers with at least 20 employees on the first day of each calendar year (i.e., 20 full-time positions or their equivalent) are obliged to create a company social benefits fund to allocate money for financing the employer’s social activities and adopt regulations on awarding benefits from this fund.

THIRD-PARTY APPROVAL
No requirement to obtain a third party’s approval.
LANGUAGE REQUIREMENTS
Statutory requirement to draft employment-related documents in Polish in order for them to be binding. Possibility to prepare these documents in a bilingual (e.g., Polish-English) version; however, in the case of any discrepancies, the Polish version will prevail.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All employees.

WORKING HOURS
Standard (basic) working time may not exceed 8 hours per day and an average of 40 hours over an average 5 day working week within the adopted settlement period not exceeding 4 months. It is also possible for an employer to introduce a 12-month settlement period for each working time system it uses, if this is justified by objective or technical reasons and the organization of working processes. Polish labor law provides also for other systems of working time where the daily and weekly standards are different from the basic working time system. A recent amendment to the provisions on working time allows the introduction of “flexible working hours”. An employer is able to specify different times for the working day to start or can let the employee decide (within the confines of a period indicated by the employer) what time they begin work. An employee’s weekly working time, together with over-time work, cannot exceed an average of 48 hours in a given settlement period. In general, an employee must be granted at least 11 hours of uninterrupted rest each day and 35 hours of uninterrupted rest per week. Work on Sundays and public holidays is permissible only in the cases enumerated in the Polish Labor Code.

OVERTIME
Statutory restrictions on the permissible number of hours of over-time work. An employer cannot instruct some groups of employees to work over-time (e.g., pregnant employees).

The over-time work can be compensated by paying an allowance (in addition to a standard remuneration) in the amount specified by the Polish Labor Code (50% or 100% of remuneration) or granting time off from work.

WAGES
Statutory minimum wage whose amount is established each year – for 2016 the minimum wage amounts to PLN1,850. Remuneration in the first year of employment cannot be lower than 80% of the minimum wage.

VACATION
20 or 26 days (after 10 years) of holiday leave depending on the total years of service. The years of service include all previous employments and years of education (ending with graduation) specified under statutory law. Special rules apply to an employee beginning work for the first time. Additionally, an employee is entitled to 13 public holidays.
SICK LEAVE & PAY
In general, for the period of total of 33 days (14 days in case of employees over 50 years of age) in the calendar year of incapacity to work due to illness, an employee is entitled to sick pay from his/her employer in the amount of 80% of remuneration. Starting from the 34th (15th) day of incapacity to work, an employee is entitled to a sickness benefit paid by the Social Insurance Institution (ZUS). In principle, the sickness benefit amounts to 80% of the employee’s remuneration.

MATERNITY/PARENTAL LEAVE & PAY
Special protection against dismissal of pregnant employees and employees using maternity, paternity, parental or childcare leave.

Basic maternity leave for a female employee is 20-37 weeks, depending on the number of children born. An employee-father is entitled to 2 weeks of paternity leave, to be used before the child reaches 24 months.

Employees can apply for 32 weeks – or 34 weeks in the case of a multiple birth. This leave can be used by both parents at the same time and can be divided into parts.

An employee engaged for at least 6 months is entitled to childcare leave of up to 36 months, to be used before the child reaches 5 years of age. Each parent has the exclusive right to 1 month's childcare leave – this right cannot be transferred. Childcare leave can be combined with employment or training by the current or another employer; parents can use the childcare leave at the same time and divide the leave in 4 parts. Alternatively, an employee may file a request to reduce his/her working time to no less than 1/2 of the full amount of working time within the time during which he/she could have benefited from such leave.

For the period of the maternity leave (basic and additional), the paternity leave and the parental leave, an employee is entitled to a maternity benefit paid by ZUS. In general, no benefits or salary are granted to an employee using childcare leave.

DISCRIMINATION
Any discrimination of employees is prohibited. Provisions of employment contracts that infringe the principle of equal treatment are null and void and the statutory provisions apply instead. Where there are no appropriate regulations, the infringing provisions should be replaced with appropriate provisions.

BENEFITS & PENSIONS
The state social system provides for health insurance and pension coverage. Apart from the common pension system, an employer can voluntarily run a private pension scheme for its employees.

After the reform of the pension system, the retirement age will be increased gradually and finally everybody (both women and men) should work until age 67. However, further to a draft bill presented by the President to the Parliament in November 2015, it is likely that the previous retirement age (60 for women and 65 for men) will be restored.
DATA PRIVACY

An employer is obliged to respect its employees’ dignity and other personal rights, including their privacy and the confidentiality of the content of employees’ private correspondence. There are no specific regulations on the protection of employees’ privacy at work. The Polish Labor Code sets forth specific rules regarding collecting and processing personal data of the candidates and the employees, in particular lists the type of data that can be requested by the employer. In matters not regulated by the Labor Code, general rules on data protection provided for in the Act on Protection of Personal Data apply.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of employees under the EU TUPE Directive and the Polish Labor Code. The transferor and the transferee are jointly and severally liable for the obligations resulting from the employment relationships that arose before the transfer of a part of an undertaking. They have certain information and consultation obligations towards the employees and the employees’ representatives (trade unions and works council). A transferred employee has the right to terminate his/her employment relationship within 2 months of the transfer date, without notice, providing 7 days’ prior notice. Termination according to this procedure has the same legal effect as if the employment relationship was terminated with notice by an employer. Dismissal solely due to transfer is unlawful. The transferee is obliged to apply any CBA adopted by the transferor and applicable to the transferred employees for a period of 1 year after the transfer date, unless the transferee applies more favorable conditions than those resulting from this CBA.

EMPLOYEE REPRESENTATION

Trade unions: A single-establishment trade union can be formed either as (1) a unit of a nationwide trade union or as (2) a new, separate trade union organization, upon a resolution on its establishment, passed by at least 10 persons entitled to establish trade unions. All employees are entitled to form and join trade unions. Nobody may be discriminated against for being or not being a member of a trade union. Trade unions represent all employees irrespective of their membership. In individual matters, trade unions solely represent the rights and interests of their members or of unassociated employee upon his/her request. Employers have multiple, various obligations towards the trade unions operating at their entities. Trade unions are granted certain rights, in particular the trade union leaders enjoy special protection against dismissal.

Works council: Employees’ representative body elected by the employees that may be established within a company that engages at least 50 employees, excluding state enterprises, mixed-capital entities engaging at least 50 employees, and public movie institutions. The employer has an obligation to inform and consult with its works council in matters specified by law. Special protection against dismissal for works council’s members.

TERMINATION

An employment contract can be terminated by mutual agreement of the parties, with notice, with immediate effect (for cause or without any employee’s fault), after a lapse of the period it has been concluded for (fixed-term employment contracts) or upon completion of the task it was concluded for (in a case of an employment contract concluded for the completion of a specified task).
Polish law sets forth detailed rules regarding the unilateral termination (with notice and with immediate effect) served by both an employer and an employee. These rules vary depending on the type of employment contract.

**GROUNDS**
An employer that terminates the open-ended employment contract or terminates the employment with immediate effect must specify the reasons for termination, which must be concrete, justified and real. A termination letter must include all the reasons for termination as it is not possible to raise further grounds before the court. In case of termination with immediate effect, Polish law enumerates the reasons for termination.

**EMPLOYEES SUBJECT TO TERMINATION LAWS**
Polish law provides for general protection against dismissal (granted to all employees engaged under open-ended contracts) and special protection against termination (due to employee’s life situation or role he/she holds).

**RESTRICTED OR PROHIBITED TERMINATIONS**
Statutory limitations of an employer’s right to unilaterally terminate the employment relationship with some groups of employees due to their life situation (e.g., due to pregnancy, when using maternity leave, paternity leave, parental leave and childcare leave, during sick leave) or function they hold (e.g., trade union leaders, works council members).

**THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**
In case of the protected employees, the restriction on termination may require the employer to seek consent of certain bodies for the termination of employment (e.g., trade union’s consent for summary dismissal of pregnant employee or terminating the employment relationship with a member of the trade union’s board; consent of the works council for the termination of employment with its member).

In case of termination of an open-ended employment contract with notice or termination with immediate effect with an employee represented by the trade union (as its member or upon his/her request), it is necessary to notify the trade union in writing on the intended termination and its grounds. The trade union’s opinion is not binding for the employer.

**MASS LAYOFF RULES**
Special procedure of termination in case of collective redundancies, applicable to employers engaging at least 20 employees terminating employment on grounds not related to individual employees. Collective redundancies cover the dismissal of at least:

- 10 employees in entities normally employing less than 100 employees
- 10% of the employees in entities normally employing at least 100, but fewer than 300 employees and
- 30 employees in entities normally employing at least 300 employees.
NOTICE
The length of the notice period depends on the type of employment contract. In the case of an employment contract for a probationary period, it can be 3 days, 1 week, or 2 weeks, depending on the length of the probationary period.

Pursuant to the amendment to the Polish Labor Code dated 22 February 2016, the length of notice period applicable to open-ended and fixed-term employment contracts is to be harmonised and will be between 2 weeks and 3 months, depending on the length of service with a given employer.

Parties can agree on the notice period longer than the statutory one. No notice period must be observed by termination by mutual agreement or termination with immediate effect.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Pay in lieu of notice: inadmissible. Only if the termination of an open-ended employment contract is due to employer’s bankruptcy or liquidation or other reasons not related to the employee, the 3 months’ notice can be shortened up to 1 month and the employee is entitled to compensation equal to salary for the outstanding notice period.

Garden leave: permissible for the period of notice, provided that an employee retains the right to his/her standard remuneration and benefits.

SEVERANCE
In general, an employee is not entitled to severance pay, unless the parties agree otherwise. Only in case of the collective redundancies or an individual termination of employment made exclusively due to reasons not related to the employee (only by employers engaging at least 20 employees), an affected employee is entitled to severance pay which is fixed on the basis of the period of employment by the employer. The amount of the statutory severance pay is equal to the employee’s 1-3-months’ salary and cannot exceed 15 times the minimum wage.

POST-TERMINATION RESTRAINTS
Post-termination restraints, in particular the confidentiality obligation, result from the statutory provisions or are imposed on the employee upon the separate agreement between the parties. Contractual post-termination covenants are relatively common in Poland in relation to employees who, during their employment, have access to particularly important information (e.g., senior executives).

NON-COMPETES
Parties to an employment relationship can enter into a non-compete agreement which will be effective either during the term of employment, as well as after the employment relationship has ceased. A non-compete agreement must be concluded in writing in order to be valid. A non-compete agreement effective after the termination of employment must specify the period of prohibition of competition, the scope of the non-compete restriction and the amount of compensation due to the employee. The compensation must not be lower than 25% of the remuneration received by the employee prior to the termination of the employment relationship for a period corresponding to the period of validity of the prohibition of competition. Polish law allows such compensation to be paid in monthly installments.
CUSTOMER NON-SOLICITS
Statutory prohibition to induce the employer’s clients to terminate, not to fulfill or improperly fulfill the contractual duties with an aim for the inducing person to gain benefits for him/herself or for a third party or to cause damage to the employer.

EMPLOYEE NON-SOLICITS
Statutory prohibition to induce the person performing work for the employer not to perform or improperly perform his/ her contractual duties with the aim for the inducing person to gain benefits for him/herself or for a third-party or to cause damage to the employer.

WAIVERS
Waiver of the statutory rights is ineffective and is not enforceable in Poland.

REMEDIES

DISCRIMINATION
An employee or a candidate can claim compensation of at least the statutory minimum wage.

UNFAIR DISMISSAL
In case of unlawful or unjustified termination with or without notice, an employee can claim reinstatement to work on the previous conditions or compensation in the limited amount specified in the statutory regulations.

In case of reinstatement, an employee can also claim remuneration for the period of being out of work in the limited amount specified by the Polish law. In case of unjustified termination without notice served by the employee due to the employer’s fault, an employer can claim compensation in limited amount specified by law. In the case of the reinstatement of protected employees (i.e., employees who will reach retirement age in not more than 4 years, pregnant employees, employees on maternity leave, or trade union activists), they are entitled to compensation for the entire period of being out of work.

FAILURE TO INFORM & CONSULT
Failure to inform or consult a works council or a trade union where such notification or consultation are required by law (e.g., transfer of undertaking) is subject to criminal sanctions (fine or restriction of liberty).

CRIMINAL SANCTIONS
An employer may be punished with a fine ranging from PLN1,000 to 30,000 for committing offences specified in the Polish Labor Code which relate to the employer’s basic obligations.
QATAR

LEGAL SYSTEM, CURRENCY, LANGUAGE

Federal and civil legal system – employment matters are governed by Law No. 14 of 2004 (the Labor Law) (as amended). There are also relevant provisions in Law No (4) of 2009 (Sponsorship Law).

Companies established in the Qatar Financial Centre (QFC) will be governed by QFC laws and regulations with the primary employment law provisions being contained in QFC Regulation 10 – Employment Regulations and QFC Regulation 11 – Immigration Regulations. This guide focuses on the state labor laws.

Qatari Riyal (QAR). Official language is Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in Qatar. It would always need to have at least a branch or representative office to engage even a local national, because such an individual is still required to be registered with the labor department.

At present, employees working in Qatar are not subject to income tax, and therefore there are no tax withholding obligations imposed on the employer.

There are also no social security/insurance requirements, save for in respect of certain companies which are required to contribute to the local General Retirement and Pension Authority on behalf of their local Qatari national employees.

PRE-HIRE CHECKS

REQUIRED

Foreign employees must receive prior approval from the labor and immigration authorities before they can be hired on local employment contracts. The level of background checking and screening carried out by the Qatar authorities varies according to the nationality of an individual. We are not aware of the same level of checks being carried out in respect of local nationals.

In some cases, (depending on the nature of the role) as part of the work permit/labor card process, employees will be required to provide an attested copy of their degree/high school certificates to the Ministry of Labor, so if the employee is not telling the truth, the certificates will not be attested.
PERMISSIBLE
Generally, employers in Qatar are not able to obtain the same level of information from background checks as they can in other jurisdictions and, in most cases, the employees themselves will be required to provide this information. For example:

- Criminal record: In Qatar, police checks or Certificates of Good Conduct can only be obtained by the individual from the Qatar Central Intelligence Department (CID). To obtain the Good Conduct Certificate, the individual, if a foreign national, will need to obtain police clearance from his home country and provide this clearance to the CID.

- Employment: There is provision in the Labor Law for employers to provide all employees with a certificate of service if requested, so candidates should be asked to verify their employment history.

IMMIGRATION
In order to legally work and reside in Qatar, all employees except Qatari and GCC nationals (who require a work permit only) are required to have a residence visa and work permit under the sponsorship of the employer (which must have an entity established in Qatar) or the husband, in the case of a married woman.

Where an employee is only required to work in Qatar for a short period of time, there are alternative permits that may be considered, although suitability will depend on the type of work to carried out.

Recent amendments to the sponsorship law in Qatar have been introduced with the intention of making it easier for expatriate workers to change jobs and leave the country. The new law is due to come into effect in October 2016. Under one of the provisions of the new law, workers will be given a route of appeal in the event that their sponsor refuses to consent to the worker being granted an exit permit.

HIRING OPTIONS

EMPLOYEE
Unlimited or fixed term. Part-time employment is legally possible but is not common.

INDEPENDENT CONTRACTOR
There is no concept of a consultant, unless individuals have established their own professional licence and business, due to the requirement for employees to have sponsorship, which is generally obtained by the employer.

AGENCY WORKER
There is no general concept of an agency worker or “temp” in Qatar. Some Qatari-owned employment agencies are licensed to provide manpower on a temporary basis, but the individual would remain under agency sponsorship.
EMployment Contracts & Policies

Employment Contracts
Non-Qatari national employees are required to sign a government employment contract to obtain their work permit and residence visa. This contract is in English and Arabic.

In light of the basic nature of the standard government contract, it is common for more detailed employment contracts to be entered into.

Probationary Periods
Permissible. Maximum duration of 6 months, during which time the employee is entitled to 3 days’ notice of termination.

Policies
There are no mandatory policies. Employees should be provided with any relevant staff handbook and the employer’s policies (if applicable) on commencement of employment.

Third-Party Approval
The government employment contract must be lodged with the labor authority to obtain the employee’s work permit and residence visa. Strictly speaking, any contractual changes should be notified to the labor authority and amended on the filed standard employment contract copy.

Language Requirements
Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a foreign language is used in addition to Arabic, the Arabic version shall prevail.

Minimum Employment Rights

Employees Entitled to Minimum Employment Rights
All. Additional rights are also available to young workers (those under the age of 18) and women.

Working Hours
Maximum ordinary working hours = 48 hour per week at the rate of 8 hours per day. During the month of Ramadan, maximum working hours= 36 hours per week at the rate of 6 hours per day.

Overtime
Not to exceed 2 hours per day, unless the work is essential for preventing a substantial loss or serious accident or for eliminating or relieving the impact of a serious accident.

The overtime and maximum working time provisions in the Labor Law do not apply to employees holding senior executive managerial or supervisory positions.

Wages
At present, there is no minimum wage to be paid to employees in Qatar.
VACATION
3 weeks’ where the employee’s period of service is less than 5 years and 4 weeks where the employee’s period of service is 5 years or more.

SICK LEAVE & PAY
Employees are entitled to 12 weeks of sick leave per year of service (2 weeks at full pay, 4 weeks at half pay and the remaining 6 weeks without pay). Employees are not entitled to statutory sick leave until they have completed 3 months’ service and unless they provide a sickness certificate from a physician approved by the employer.

MATERNITY/PARENTAL LEAVE & PAY
After 1 year’s continuous service – 50 calendar days’ maternity leave at full pay. An employee can take a further 60 consecutive or non-consecutive days (unpaid) if the employee falls ill as a result of her pregnancy or the delivery of her baby.

There is no concept of parental leave or pay in Qatar.

DISCRIMINATION
There are no discrimination laws in Qatar except for provisions which state that a woman must be paid the same as a man if she performs the same work and must be provided with the same opportunities with regards to training and promotion.

BENEFITS & PENSIONS
It is mandatory for Qatari nationals working for government entities or joint stock companies (public or private) to be registered with the relevant pension authority. (Please note that other private companies have been specifically made subject to this requirement pursuant to special resolutions issued by the Council of Ministers of Qatar). Employers are required to contribute to the pension fund and deduct employee contributions from the employee’s salary.

All employees are entitled to receive an end of service gratuity (EOSG) on termination, calculated by reference to age and length of service, unless the employer contracts out of these arrangements with its employees by providing a savings scheme or pension scheme.

Qatar has recently adopted a wages protection system whereby all employees must be paid in Qatari currency once a month directly into a bank account, or, for some categories of workers, every two weeks. The new requirements took effect on 2 November 2015. Firms that flout the new rules risk penalties of up to 1 month in prison and a maximum QAR6,000 fine. While the requirement to pay via WPS only applies to employers under the Labor Law, in practice, the WPS is also used by a number of employers within the QFC.
DATA PRIVACY

With the exception of the Qatar Financial Centre, there are no clear laws in Qatar comparable with those in the US or Europe concerning the handling and transmission of employees’ personal information, nor do any provisions address the cross-border flow of data. However, it is advisable to seek prior written consent to the processing of personal data from the employee to the extent necessary to address the various privacy protections set out in the Qatar Law, including the protections set out in the Qatar Penal Code.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No automatic transfer principles and no laws covering business transfers. Employees transfer through termination and rehire in an asset deal.

EMPLOYEE REPRESENTATION

Trade unions/workers committees are not common in Qatar and are rarely formed, but they are permissible provided certain conditions are fulfilled. Employees in workers organizations may go on strike if an amicable settlement has become impossible and if they have complied with a number of Labor Law requirements.

TERMINATION

GROUNDS

Termination possible on these grounds: during the probationary period (provided the employee is proved to be incapable of carrying out the work), on the expiry of a fixed term contract, resignation, incapacity or death, dismissal with notice and summary dismissal (by reason of any of the grounds listed at Article 61 of the Labor Law). Article 61 of the Labor Law sets out a limited list of circumstances (including when the employee attends work under the influence of alcohol, or is absent from work for period of seven consecutive or 15 non-consecutive days). There is no general misconduct category.

EMPLOYEES SUBJECT TO TERMINATION LAWS

All employees.

RESTRICTED OR PROHIBITED TERMINATIONS

Employees who have not exhausted the statutory sick leave entitlement are protected from dismissal on grounds of health, unless the full sick leave entitlement has been taken (i.e., 12 weeks per year of service). Women employees are protected from dismissal during maternity leave. A female may not be dismissed on grounds of her marriage.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS

No.

MASS LAYOFF RULES

No.
NOTICE
1 month’s written notice where the employee is paid annually or monthly and has less than 5 years’ service increasing to 2 months’ written notice where the employee has more than 5 years’ service. Different notice periods apply for employees paid more frequently.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No. Depends on contract terms.

SEVERANCE
Unless terminated under Article 61 of the Labor Law, employees are entitled to salary and benefits up to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of a flight/air ticket to repatriate the employee to their home country (unless the employee has obtained alternative sponsorship to remain in Qatar), an end of service gratuity payment (EOSG) and reimbursement of unpaid business expenses.

In case of employer termination, employees are eligible for an EOSG where they have more than 1 year of service. EOSG accrues at the rate of 3 weeks’ basic salary for each year of completed service unless the parties agree on a greater amount. The calculation is prorated for any fractions of a year service that have not been completed. A different EOSG regime applies for employees employed prior to 2004.

POST-TERMINATION RERAINTS
It is permissible to have restrictive covenants contained in the contract of employment to the extent necessary to protect the legitimate interests of the employer, provided the nature of the employees’ work allowed them to know the company’s clients and/or know the secrets of the business.

The covenants must be restricted in relation to duration (which must not exceed 2 years), geographical scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the contract of employment as it is not possible to obtain an injunction in Qatar (with the exception of the Qatar Financial Centre) although contractual provisions imposing a penalty (rather than a genuine estimate of the loss incurred) are likely to be unenforceable.

NON-COMPETES
Typically no longer than 6 to 12 months.

CUSTOMER NON-SOLICITS
Typically no longer than 6 to 12 months.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS
Waiver agreements are commonly used, but their enforceability cannot be guaranteed.
REMEDIES

DISCRIMINATION
Not applicable.

ARBITRARY DISMISSAL
The court can award the employee compensation and/or reinstatement. There is no cap on the level of compensation a court can award. Where a court orders reinstatement it can also award compensation for the wages lost during the period the employee was prevented from working.

FAILURE TO INFORM & CONSULT
Not applicable.

CRIMINAL SANCTIONS
Criminal sanctions can be imposed for a variety of reasons, including but not limited to the breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.
ROMANIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU) so required to implement relevant EU Directives. Romanian Leu (RON). Romanian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Typically, foreign entities set up a Romanian presence in order to conduct business in Romania, which may engage employees under individual employment agreements, but which are required to have registered with both the fiscal authorities and also the labor authorities which handle all employment and payroll-related registrations.

Although it is not the typical scenario envisaged by the Romanian Labor Code and it might trigger some practical difficulties (mainly from a payroll and tax perspective), there is no express legal provision prohibiting foreign companies with no Romanian presence from executing individual employment agreements directly with Romanian employees. Thus, a foreign entity can engage staff in Romania, subject to business, corporate and tax considerations.

PRE-HIRE CHECKS

REQUIRED

A request for a medical certificate/check can only be made for the purpose of ascertaining the applicant’s ability to perform the work in question, and the cost of the medical must be met by the employer. Immigration compliance also needs to be considered, where relevant.

PERMISSIBLE

Reference checks with respect to an applicant’s length of employment and work performed for former employers are common and permissible although the applicant should be informed in advance. A criminal records check is only permissible if expressly imposed by law, specific data protection requirements are complied with and/or arguably if it is objectively relevant for the position in question.

IMMIGRATION

Nationals of the EU, the EEA (European Economic Area) and Switzerland have the right to reside and work in Romania, subject to observance of applicable legal conditions and typically subject to obtaining a registration certificate for stays of longer than 3 months. Non-EU and non-EEA nationals must comply with the immigration-related requirements for entry, stay and work in Romania, with the company employing them being under various procedural obligations related to engaging foreign individuals to work in Romania.
HIRING OPTIONS

EMPLOYEE
Indefinite – as a rule, fixed-term (only in the cases expressly provided by the law and subject to specific legal conditions), full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against on the basis of such status.

INDEPENDENT CONTRACTOR
Engagement of independent contractors may expose the employer to the risk of the arrangement being reclassified as an employment relationship, with the possibility of it being construed that the parties have attempted to circumvent applicable employment law provisions.

AGENCY WORKER
Use of temporary employees via a temporary work agency is permitted only for executing a temporary and specific assignment, the maximum duration of which (including all successive renewals) is 36 months. Temporary employees are hired by the temporary work agency under a temporary individual employment agreement.

ANY OTHER EMPLOYMENT OPTION
Employers may also have an individual assigned or seconded to them by another employer, provided that all applicable legal conditions are observed and only for a limited period of time.

EMPLOYMENT CONTRACTS & POLICIES

REQUIREMENTS
Execution of an individual employment agreement in writing, in Romanian, and registration of the agreement with the general registry of employees (which is an electronic registry set up by each employer and periodically communicated to the relevant labor authorities).

PROBATIONARY
Only one probationary period may be used per individual employment agreement (with certain exceptions). As a rule, the maximum duration is 90 calendar days for executive level positions and 120 calendar days for management level positions. By way of exception, among others, shorter probationary periods are applicable to employees working under a fixed-term agreement and temporary employees, the exact duration depending on the term of their employment.

POLICIES
Employers are required to implement internal regulations (as an employee handbook), in consultation with the relevant employee representative body. The internal regulations must include certain minimum provisions, such as rules on health and safety at work, disciplinary-related rules, a grievance procedure, employee professional evaluation criteria and procedures etc. Employers may also unilaterally implement other work-related rules (such as dress code, employee specific obligations, etc.) via their internal regulations or as separate internal policies/procedures.
THIRD PARTY APPROVAL
As a general rule, there is no requirement to lodge employment policies with or get approval from any third-party either in respect of any policies or in respect of execution of individual employment agreements. The implementation of internal regulations is only subject to consultation with the relevant employee representative body, and there is no need to reach agreement with them or secure consent.

LANGUAGE REQUIREMENTS
Statutory requirement to execute individual employment agreements in Romanian (a bilingual format, including a Romanian language version, is also possible). It is not a statutory requirement for internal regulation or policies to be in Romanian, but this is recommended.

MINIMUM EMPLOYMENT RIGHTS
EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All, in line with the Romanian Labor Code.

WORKING HOURS
Weekly working time for full-time employees is 40 hours/week and, as rule, this is evenly distributed, so 8 hours/day for 5 days (generally Monday to Friday). Weekly rest is 48 consecutive hours, usually Saturday and Sunday. By law, maximum working time cannot exceed 48 hours/week, including overtime. No opt out is possible; however, there are certain exceptions under which the working time may exceed 48 hours/week.

There are specific rules on rest breaks, weekly rest, night work and rest periods between shifts.

OVERTIME
Work performed outside of normal working time is considered to be overtime. Overtime performed in normal working days needs to be compensated with (i) paid time off granted within the next 60 calendar days after the overtime has been performed, or, if paid time off is not possible within this legal deadline, (ii) payment of additional monetary compensation (on top of the monthly salary due for the respective month) of 75% of the hourly base salary for each overtime hour. Also, if overtime is performed during (a) weekly rest periods or (b) days of legal/public holiday, different (higher) compensation must be paid.

WAGES
The minimum gross base monthly salary is approx. EUR 35 EUR. From May 2016 this will rise to approximately EUR 280. It is then expected to be subject to periodic increases.

VACATION
The minimum vacation is 20 working days (in practice, based on the old legislation, the expectation is 21 working days). This does not include the 12 public holidays.
SICK LEAVE & PAY
Generally, employees may take sick leave up to 183 days per year, based on a medical certificate and for the duration specified in the certificate (but depending on the type of illness). As a rule, the first 5 days of sick leave are paid by the employer and the following days are paid from the health insurance budget. Sick pay generally is 75% of the average salary of the employee for the last 6 months out of a 12-month representative contribution period.

MATERNITY/PARENTAL LEAVE & PAY
Female employees benefit from 126 days of maternity leave, which can be split equally or otherwise between the pre and post birth period (subject to a minimum 42 calendar days’ leave which must be taken after the birth).

Male employees benefit from 5 working days paternal leave to be taken in the first 8 weeks after the child’s birth to enable effective participation in the care of the new-born. This can be extended to 15 working days if the father has undertaken a child-care course.

In addition, either parent is entitled to take child raising leave up until the child is 1 or 2 years old, at the parents’ option, subject to the requirement that at least 1 month of such leave needs to be taken by the other parent.

DISCRIMINATION
Direct and indirect discrimination is prohibited, along with victimization and harassment. Employers have an obligation to include provisions prohibiting discrimination in their internal regulations.

The main characteristics protected from unlawful discrimination and harassment: race, nationality, ethnic background, language, religion, social category, beliefs, age, disability, sex or sexual orientation, etc.

BENEFITS & PENSIONS
Currently there are no general benefits applicable by law to all employees, but some that apply only in specific cases (such as employees working under a mobility clause).

In Romania, occupational pensions are not expressly regulated and private pensions are not typically provided in practice as an employment benefit. By law, all employees are insured under the state statutory pension system, with employers required to withhold and pay the corresponding contributions to the state pension fund.

DATA PRIVACY
Employees must be informed of personal data processing (and in most cases, must give consent). Registrations with the data protection authority are required in certain cases. Special rules apply to data transfers outside Romania, depending on the categories of personal data that are transferred and on whether personal data is transferred outside or inside the European Economic Area. Monitoring of employees, including email and internet use, may be performed under very specific circumstances, provided that the restrictions on the protection of private life, data privacy and electronic communications are complied with.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive and Romanian Transfer of Undertaking Law No. 67/2006 (TUPE) in asset deals typically involving a business/undertaking sale. Transfer of the rights and obligations arising from the transferred employees’ individual employment agreements and the applicable collective bargaining agreement (for its duration) in force on the transfer date. Restrictions on changing terms and conditions of employment following a transfer. Duty to inform and, in certain cases, to consult with the employee representative bodies for both the transferor and the transferee. Any dismissal connected to the transfer is prohibited.

EMPLOYEE REPRESENTATION

The main employee representative bodies are (i) employee representatives and (ii) trade unions. Works councils are not expressly regulated unless there is a European works council.

Collective bargaining agreements may be executed at (i) company level (negotiated between the employer and the competent employee representative body) at (ii) group company level; or (iii) at sector (industry) level – here, an employer must be a signatory to such an agreement in order for it to apply to their employees although extension to the entire sector is possible in certain circumstances).

TERMINATION

GROUNDS

Termination implemented by the employer is permissible (1) on the following grounds only: (i) for reasons not related to the individual employee (redundancy), and (ii) for reasons related to the individual employee, namely (a) poor performance, (b) serious or repeated misconduct (disciplinary), (c) medical unfitness and (d) arrest of the employee for a period exceeding 30 days; and (2) subject to strictly complying with the procedure provided by law.

A simplified form of termination is also possible, at the initiative of either party, during or at the end of the probationary period, exclusively on the basis of a written notice, with no notice period nor termination grounds being required.

EMPLOYEES SUBJECT TO TERMINATION LAWS

Termination rules equally apply to all employees (with no seniority threshold required by law).

PROHIBITED OR RESTRICTED TERMINATIONS

A dismissal may never be implemented on discriminatory grounds or for exercising the right to strike or trade union rights.

A dismissal may not be implemented, for example, during temporary work incapacity (medical leave), during pregnancy (provided that the employer acknowledged the pregnancy before issuing the dismissal decision), during maternity leave, child raising leave or during vacation/annual leave, etc.
THIRD PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
There are no third party approvals expressly required by law, however, there is a requirement to involve certain labor authorities during a mass layoff process, including an obligation to provide them with relevant termination-related documents.

MASS LAYOFF RULES
Strict information and consultation rules apply where, over a 30 calendar day period, a certain number of employees are to be made redundant. The thresholds depend on the employer’s total headcount so, for example, the rules will apply where at least 10 employees are to be dismissed if the company employs between 21 and 99 employees. The employer must also notify the territorial labor inspectorate and the workforce occupancy agency at set times during the redundancy process.

NOTICE
The minimum notice period provided by the law is 20 working days. Longer notice periods may be agreed and set out in the individual employment agreement. Notice is not required for disciplinary terminations, nor in case of termination due to the employee being under arrest for a period exceeding 30 days.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No express regulation under Romanian employment law. However, with regard to a payment in lieu of notice, the Romanian High Court of Cassation and Justice has ruled that it is not permitted as it essentially breaches an employee’s right to receive notice (which is a fundamental legal right).

SEVERANCE
There is no minimum level of severance payment expressly provided by the law. However, in practice, employers may decide to make a severance payment.

POST-TERMINATION RESTRAINTS

NON-COMPETES
The parties may negotiate a post-termination non-compete clause prohibiting the employee from performing an activity competing with the one performed for his (previous) employer.

In order to be valid, a non-compete clause must specify certain minimum content as required by the Romanian Labor Code: (i) the prohibited activities; (ii) the amount of the non-competition indemnity; (iii) the duration of the prohibition; (iv) the third parties for which the employee cannot perform the prohibited activities; and (v) the prohibited territory.

As a non-competition restraint represents an exception from the principle of freedom of work, failure to comply with the legal conditions for negotiating such clause may render the clause void.

CUSTOMER NON-SOLICITS
Not expressly regulated by the law. May arguably be included within the scope of a non-compete clause.
EMPLOYEE NON-SOLICITS
Not expressly regulated by the law. May arguably be included within the scope of a non-compete clause.

WAIVERS
Under the Romanian Labor Code, employees cannot waive their rights recognised by the law and any transaction with the purpose of waiving or limiting such rights will be null and void.

REMEDIERS

DISCRIMINATION
Uncapped compensation, based on the claimant’s financial and moral loss, as proven in court.

UNFAIR DISMISSAL
Failure to comply with dismissal requirements can lead to the court: (1) annulling the dismissal decision; (2) ordering re-instatement, if requested by the employee; (3) ordering payment of salary rights between the dismissal and the final and binding court decision which the employee would have benefited from if not unlawfully dismissed; (4) ordering payment of damages (including moral damages), if proven by the employee; and (5) ordering payment of trial expenses incurred by the employee (such as legal assistance expenses).

FAILURE TO INFORM & CONSULT
Uncapped compensation, based on the claimant’s financial and moral loss, as proven in court. This also exposes the employer to administrative fines up to approx. EUR 11,000.

CRIMINAL SANCTIONS
Infringement of health and safety rules can lead to criminal sanctions (where human life has potentially been put in jeopardy). Criminal liability is also triggered in cases of repeated breach of the obligation to pay minimum salary; repeated refusal to permit labor inspectors access to any of the company’s locations or to provide them with requested documentation; or for employing more than 5 employees without executing individual employment agreements etc.
RUSSIA

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil law. Russian Ruble (RUB). Russian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity cannot directly engage employees in Russia and can only operate in Russia after corporate registration. Personal income tax to be withheld through payroll.

PRE-HIRE CHECKS
REQUIRED
Immigration compliance, military compliance (with regard to a person’s responsibility to serve in the military). In certain situations, criminal record check.

PERMISSIBLE
Criminal and credit reference checks are only permissible for specific roles (e.g., certain finance positions) and subject to proportionality requirements. Reference and education checks are common and permissible with the applicant’s consent.

IMMIGRATION
Before foreign nationals (except for citizens of Belarus and Kazakhstan) may be employed and/or actually commence working in Russia, all employers must obtain the relevant documents, unless foreign workers qualify as “Highly-Qualified Professionals.” Employers are also required to provide financial, medical and social guarantees in respect of their foreign employees and must comply with general migration monitoring requirements and file notifications regarding foreign employees’ travel both into and out of Russia in accordance with the statutory procedure.

HIRING OPTIONS
EMPLOYEE
Indefinite, fixed-term, full-time or part-time. A definite fixed-term employment agreement may be concluded, but cannot be for a term longer than 5 years and it may only be concluded in the circumstances specifically provided for by Article 59 of the Labor Code.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company. There are severe penalties if a services agreement is re-qualified as a labor agreement.
AGENCY WORKER
No statutory grounds, but generally permissible in practice. A new bill to ban the loan of labour (secondments) in certain circumstances took effect on January 1, 2016. Under the new law:

- Secondments will only be permitted (i) by private (accredited) employment agencies; or (i) between related persons, including affiliates or parties to shareholders’ agreements.

- Private agencies may only second workers in circumstances expressly specified by law (for example, to cover temporary absences).

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
An employment contract must be made in writing and specify the employment commencement day.

PROBATIONARY PERIODS
Permissible. 3 months for newly hired employees and 6 months for employees hired for certain executive positions.

POLICIES
Written internal policies, such as an internal labor regulation, and a personal data protection policy are mandatory. The employer may also adopt other policies, such as a remuneration policy, confidential information protection policy, etc.

THIRD-PARTY APPROVAL
Internal labor regulations must be approved by employees’ representatives and trade unions (if any).

LANGUAGE REQUIREMENTS
No statutory requirements, but all documents should be in Russian (or bilingual) so that they can be presented to the Russian authorities without translation if necessary.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
A standard working week is 40 hours (in some exceptional cases decreased by the Labor Code).

OVERTIME
In general, any time worked over 40 hours is classed as overtime.
No more than 120 hours of overtime a year and no more than 4 hours of overtime in any 2 consecutive days are permitted. In most cases overtime is only permitted with the employee’s prior written consent.
Over-time must be paid at a rate of 150% of the regular hourly rate for the first 2 hours of overtime worked during one day and at a rate of 200% of the regular hourly rate thereafter. Upon an employee’s written request, the employer must compensate overtime work by granting the employee additional time off in lieu of payment, which should be no less than the overtime worked.

Certain limitations regarding over-time apply to protected employee categories, which include employees under the age of 18, pregnant women, women with children under the age of 3, disabled employees and certain other categories defined by federal law.

**WAGES**
At least RUB5,965 per month.

**VACATION**
At least 28 calendar days per year of employment.

**SICK LEAVE & PAY**
Employees are entitled to receive statutory sick leave compensation, which is covered by the Russian State Social Insurance Fund, which in turn is funded by the employer’s mandatory contributions paid as a percentage of its employees’ salaries. The amount of sick leave compensation will vary according to the grounds for the sick leave. In cases of a labor-related injury or occupational illness, the amount of sick leave compensation is 100% of the employee’s average earnings. However, sick leave compensation may not exceed the maximum established by federal law, which is subject to annual review.

In general, the maximum duration of sick leave is 4 months (in certain cases it can be 9 months, after a reconstructive operation, or 12 months, when recovering from tuberculosis).

Employees are only required to submit a medical certificate for absence after their recovery and return to work. Generally, an employer cannot terminate an employee’s employment while the employee is on sick leave.

**MATERNITY/PARENTAL LEAVE & PAY**
Paid maternity leave begins to accrue no later than 70 calendar days prior to the birth and continues for 70 calendar days thereafter, although the period may be extended in the event of a multiple births and/or complications during birth. The amount of maternity leave allowance is established by federal law and is subject to annual review. The allowance shall be paid by the employer, but will be reimbursed by the Social Insurance Fund.

A person caring for a child, be it the child’s mother, father, or any relative who is actually raising it, may request to be on childcare leave until the child is 3 years old. The amount of child leave allowance is established by federal law and is subject to annual review. The allowance shall be reimbursed by the Russian government. The employee retains the right to return to work during the entire period of the maternity or childcare leave and the full leave period is included when calculating the employee’s term of service.

**DISCRIMINATION**
Characteristics protected from unlawful discrimination and harassment: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, gender or sexual orientation.
BENEFITS & PENSIONS
Currently, there are no benefits required other than those covered under social insurance contributions.

DATA PRIVACY
Employers are required to obtain the prior written consent of their employees in order to process their personal data (e.g. transferring personal data to third parties, including cross-border transfers).

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
Employees need to consent to the transfer of employment and generally cannot be terminated because of the transfer. It is possible to terminate the agreements with the general director, his/her deputy and chief accountant no later than 3 months after a change of the owner in certain instances.

EMPLOYEE REPRESENTATION
Employees can be represented either by trade unions or by another employee representative(s). Under current laws, in order to create a basic trade union organization (or another representative body), it is sufficient to have 3 employees who should jointly decide to create a trade union, elect the union leader and approve the regulations. It is not necessary to register the trade union, as the trade union is deemed to have been created upon the adoption of all of the above decisions. There are no works councils.

TERMINATION

GROUNDS
The Labor Code sets out specific circumstances for which an employer may terminate the employment of one of its employees, which include, but are not limited to, the following:

• the employee’s repeated failure to perform his or her employment duties without a justifiable reason (if the employee was lawfully disciplined during the preceding 12 months)

• dismissal due to redundancy or

• the employee’s unjustified absence from the workplace for more than 4 consecutive hours during 1 working day.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees.

RESTRICTED OR PROHIBITED TERMINATIONS
Certain categories of employees stipulated by the Labor Code enjoy additional protections; these include, among others, minors, employees on sick or holiday leave, pregnant employees, employees with children and trade union members.
THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Local trade union (if any).

MASS LAYOFF RULES
Yes, strict information and notification rules apply when 50 or more employees are to be made redundant within 30 calendar days, 200 and more employees within 60 calendar days or 500 and more employees within 90 calendar days; as well as in case of dismissal of employees amounting to 1% of the total number of employees in connection with the liquidation of the organization or staff reduction within 30 calendar days in areas with less than 5,000 working persons in total.

The employer must also notify the Russian Employment Service of the redundancies.

NOTICE
2 weeks’ statutory notice. Not required for dismissals due to gross misconduct as defined by law.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No.

SEVERANCE
Payments to redundant employees of at least 2 average monthly earnings (in mass redundancies a payment of 3 average monthly earnings). Payments in the amount of at least 3 average monthly earnings in case of removal or termination of the general director.

POST-TERMINATION RESTRAINTS
Generally unenforceable.

NON-COMPETES
Generally unenforceable.

CUSTOMER NON-SOLICITS
Generally unenforceable.

EMPLOYEE NON-SOLICITS
Generally unenforceable.

WAIVERS
Unenforceable.

REMEDIES

DISCRIMINATION
Compensation of moral damage is uncapped.

UNFAIR DISMISSAL
Reinstatement of employment and compensation of lost salary plus compensation for moral damage (uncapped).
FAILURE TO INFORM & CONSULT
The Russian Administrative Offences Code does not specify liability for specific breaches of labor law and indicates a range of fines and possible liability which may apply for violating labor law. This generally ranges from between RUB 30,000 and RUB 50,000 for the company; and from between RUB 1,000 and RUB 5,000 for the company’s officials. This legal ambiguity leaves a lot of leeway for Russian supervisory authorities when deciding the amount of the fine and even the possibility of suspending the employer’s activity for 90 days (a measure which is applied extremely rarely). The most likely form of liability is the imposition of fines rather than the suspension of the business activity of the employer.

CRIMINAL SANCTIONS
Criminal sanctions are not generally a concern for employers.
SAUDI ARABIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Shariah Law. Member of the Gulf Coordination Council (GCC), therefore required to implement the relevant GCC laws. Saudi Arabian Riyal (SAR). Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Only Saudi registered entities may hire employees in the Kingdom of Saudi Arabia (Saudi Arabia or KSA). Non-GCC employees will need to have a sponsor for immigration purposes and only a Saudi registered entity may sponsor non-GCC employees.

PRE-HIRE CHECKS

REQUIRED

Immigration compliance for all non-GCC employees.

PERMISSIBLE

Criminal and credit reference checks are only permissible for specific roles (e.g., certain finance positions) and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

GCC nationals are allowed to work in all the GCC states freely without the need for work visas. Employing non-GCC nationals requires a special type of visa issued by the employer who will become the sponsor of the non-GCC employee for all immigration purposes.

HIRING OPTIONS

EMPLOYEE

Indefinite, fixed-term, full-time or part-time. Incidental work, that is, work that is not considered by its nature to be part of the usual activities of an employer, and whose execution does not require more than 90 days. Seasonal work.

With respect to non-Saudis, all employment contracts are deemed to be for a fixed term. If the employment contract itself does not specify a definite term, the term will be the length of the employee’s work visa/working permit. Saudi employees will automatically become engaged on indefinite term contracts after 3 consecutive renewals of the employment contract or when the initial and the renewed term of employment reach 4 years. Part-time and fixed-term employees have the right not to be discriminated against due to their status.
GUIDE TO GOING GLOBAL • EMPLOYMENT

INDEPENDENT CONTRACTOR
Only Saudi independent contractors can be hired directly by the company or via a personal services company. Engagement may be subject to misclassification exposure.

AGENCY WORKER
Subject to following the legal immigration rules for non-Saudis, agency workers are permissible and have the right to equal treatment to employees in relation to pay and other benefits terms.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
In practice, the employment contract should be written, though an oral contract will be binding for employing GCC nationals.

From a procedural perspective, an employment contract is required for all non-GCC national employees to obtain their visas. 2 copies of the employment contract should be made, 1 copy to be held by each party.

The contract must contain a minimum of: name of the employer and registered address; name and nationality of the employee; identification of the employee (national identity card number for nationals or foreign passport numbers for non-nationals); employee’s salary and any allowances; description of the employee’s duties; identification of the place where the work will be performed; date of appointment and commencement of contract; length of the contract, if applicable.

Moreover, the labor law mentions that an employment contract template shall be issued by the ministry which would include all the necessary provisions.

PROBATIONARY PERIODS
A probationary period may be agreed of up to 180 days for any new employee. During this probation period, both parties (unless such option is restricted to one of them) may terminate the contract for any reason and the employee has no right to contest the termination or to require the employer to reinstate him or her, nor any right to end of service awards. The probationary period and its term must be included in the contract. An employee may be made to serve only 1 probationary period, unless the parties agree otherwise where the second probationary period is for a different position.

POLICIES
Written health and safety policy and disciplinary and grievance policy mandatory and must be approved by the Ministry of Labor.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third-party other than the Ministry of Labor.
LANGUAGE REQUIREMENTS

Arabic is the prevailing language in the KSA, though a contract can be established using another language. It is common practice in the KSA to produce a bilingual contract, with the Arabic and English texts written in one document. In case of a labor dispute, all proceedings will be conducted in Arabic and all documents, including the employment contract, must be submitted in Arabic. Even if the parties specify otherwise, the Arabic text will always prevail.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS

All.

WORKING HOURS

Employees can be required to work a maximum of 8 hours per day or 48 hours per week. There are exceptions for those employed in trade, hotels, catering, security and similar jobs where the working hours may be increased to a maximum of 9 hours per day. For Muslims, the workday during Ramadan cannot exceed 6 hours per day and the work week cannot exceed 36 hours. There are particular requirements in relation to the hours that women can work and the industries they can work in.

OVERTIME

Overtime is to be paid at the rate of the employee’s wage plus 50% of his or her basic wage. Employees who hold a senior, supervisory or managerial position are not entitled to paid overtime.

WAGES

There is no minimum wage for Saudi employees; however, in order to fulfil the Saudization requirements, a Saudi employee will be fully counted if his wage is SAR 3,000 per month or above; otherwise the employee will be counted as less than one.

VACATION

An employee is entitled to 21 days of annual leave. Salaries must be paid prior to the employee taking his or her vacation. After 5 years of employment, the employee is entitled to 30 days per year.

SICK LEAVE & PAY

An employee with a proven illness which requires the submission of satisfactory medical evidence shall be paid in full for sick leave for the first 30 days, then 75% of wages for the next 60 days. The employer is not required to pay the employee after 90 days of absence.

MATERNITY/PARENTAL LEAVE & PAY

Women are entitled to fully paid maternity leave of 10 weeks commencing a maximum of 4 weeks before giving birth and 6 weeks thereafter. Paternal leave is 3 days, fully paid.
DISCRIMINATION

Generally, there may be no discrimination in terms and conditions of employment (e.g., as to leaves or end of service benefits), but there are few specific anti-discrimination or harassment laws. Some of the terms of the Labor Law are specific to expatriates. Provisions concerning foreign recruitment, repatriation and related matters do not apply to Saudi nationals. There are also some specific rules for female employees.

BENEFITS & PENSIONS

Medical insurance is required for all employees and their male dependents under the age of 25 and females until they marry or until their sponsorship is transferred. Pension is only payable for Saudi and GCC nationals. Pension is paid to the General Organisation of Social Insurance (GOSI). The total cost of GOSI insurance is 22%; 10% is paid by the employee and the remaining 12% is borne by the employer.

DATA PRIVACY

Transfer of employee data outside of KSA is not regulated under Saudi law. However, general Shariah principles provide for personal data protection rules which imply that employers should include provisions in employment contracts where the employee’s consent is required for the employer to use or disclose the employee’s data to third parties to the extent that such disclosures may be required.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

If the ownership of a company is transferred to a new owner or a change takes place in its legal form through merger, partition or otherwise, the employment contracts shall remain in force and service shall be deemed continuous. As for the employees’ rights accrued for the period prior to the change (such as wages or unrealized end of service gratuity on the date of transfer of ownership), the predecessor and the successor shall be jointly and severally liable.

However, in the case of an asset sale, employees generally transfer through termination and rehire, but the predecessor and the successor may agree to transfer all the previous rights of the employee to the new owner with the written consent of the employee. If the employee disapproves, he or her may request the termination of his or her contract and collect his or her dues from the predecessor.

.employee_representation

Labor unions are illegal in Saudi Arabia. “Worker’s Committees” or similar type organizations are also not permitted. Instead, the Ministry of Labor and the Labor Commissions have jurisdiction over safeguarding employment relations in KSA. However, the ministry is in the process of establishing the general union of Saudi workers, which will include all Saudi employees. In general these labor unions are allowed for entities employing 100 or more Saudi employees.
**TERMINATION**

**GROUNDS**
Termination permissible on these grounds, if a fair process has been followed: misconduct, performance, redundancy, illegality, and some other substantial reasons, as well as the consent of both parties.

**EMPLOYEES SUBJECT TO TERMINATION LAWS**
All.

**RESTRICTED OR PROHIBITED TERMINATIONS**
Termination may not be based on the employees’ illness if the employee has not exhausted his/her sickness days.

**THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**
Not required.

**MASS LAYOFF RULES**
No statutory rules.

**NOTICE**
If the contract is for an indefinite term, either party may terminate it for a valid reason to be specified in a written notice to be served to the other party at least 60 days prior to the termination date if the employee is paid monthly and not less than 30 days for others.

For fixed-term contracts, the employment will terminate once the fixed term has expired. If termination is sought prior to the expiry of a fixed-term contract for an invalid reason, and if the parties did not agree on the compensation amount, compensation may be payable to the employee in the form of all wages for the duration of the remaining period of the contract. The last wage received by the employee shall serve as the basis for estimating the compensation.

For indefinite term contracts, the party who has suffered an unjustified termination is entitled to compensation equal to 15 days’ wages per each year of service.

In both cases (indefinite and fixed term contracts) the compensation amount shall not be less than 2 months’ wages.

**STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE**
Payment in lieu of notice or garden leave are permissible.

**SEVERANCE**
End of Service Gratuity (EOSG) is not payable before the end of the employment relationship. If the employer ends the employment, the benefit is calculated by adding 1/2 month’s wage for each of the first 5 years and 1 month’s wage for each of the subsequent years. For fractions of a year, the employee is entitled to proportionate EOSG. EOSG is calculated on the basis of the employee’s last salary.
If the employee resigns, he/she will be entitled to 1/3 of the award after service of not less than 2 consecutive years and not more than 5 years; to 2/3 if his/her service is in excess of 5 successive years but less than 10 years; and to the full award if his/her service amounts to 10 or more years.

If an employee is called to military service or cannot work because of force majeure, he/she is entitled to EOSG. Female employees are entitled to EOSG if they resign within 6 months of marriage or within 3 months of childbirth.

**POST-TERMINATION RESTRAINTS**

Those restraints that protect the employer’s legitimate business interests can be enforced if reasonable. Garden leave is common for senior employees.

**NON-COMPETES**

Non-compete clauses will be honored as long as they are in writing and specified in terms of place, duration (no longer than 2 years) and type of work. If there is no written agreement or an express non-compete clause is included in an employment contract, the law will not impose any restrictions.

**CUSTOMER NON-SOLICITS**

Permissible in narrow circumstances.

**EMPLOYEE NON-SOLICITS**

Permissible.

**WAIVERS**

Employees cannot waive rights under the Saudi Labor Law.

**REMEDIES**

**DISCRIMINATION**

None.

**UNFAIR DISMISSAL**

If the contract is terminated for an invalid reason, the employee shall be entitled to indemnity as stated above. An employee may no longer ask to be reinstated.

**FAILURE TO INFORM & CONSULT**

None.

**CRIMINAL SANCTIONS**

Not generally a concern under Saudi Labor Law.
SINGAPORE

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign company generally cannot carry on business in Singapore without registering a subsidiary, branch or representative office. “Carrying on business” as defined under Singapore’s Companies Act (Cap. 50) includes the administration, management or otherwise dealing with property situated in Singapore as agent, legal personal representative, or a trustee, whether by employees or agents or otherwise; and does not exclude activities carried on without a view to any profit. There are some exceptions to this. For example, purely holding director/shareholder meetings or effecting sales through an independent contractor or investing in funds or holding property or if the foreign company carries on such other activity as the Minister may prescribe, do not amount to “carrying on business”.

Payroll should be set up to comply with the Employment Act (Cap. 91) (EA), Central Provident Fund (under the Central Provident Fund Act (Cap. 36)) and tax obligations and required payroll records. Employers also have income tax withholding obligations in respect of foreign employees.

PRE-HIRE CHECKS

REQUIRED
Immigration checks.

PERMISSIBLE
Offers of employment are often made subject to: (i) the prospective candidate having obtained the relevant work pass, (ii) where necessary, the obtaining of satisfactory references, and (iii) when appropriate, criminal record checks. Employers may also require the prospective candidate to undergo a medical examination and produce evidence of qualifications.

Pre-hiring checks need to comply with Singapore’s Personal Data Protection Act 2012 (PDPA). Generally, employers are required to at least notify applicants of the purposes for which their personal data is being used in connection with the management and termination of employment and obtain their consent where collecting, using or disclosing their personal data. However, relevant exceptions to the PDPA notification and consent requirements include where the information is publicly available, and where the information collected is for evaluative purposes (e.g., for the purposes of evaluating employee suitability for the role) or for investigative purposes.
IMMIGRATION

Foreign nationals (i.e., non-Singapore Citizens or Permanent Residents) who wish to live and work in Singapore must obtain valid work passes. There are several types of work pass which are administered and issued by the Ministry of Manpower (Employment Passes, S Passes and various Work Permits). The type of work pass required depends on the applicant’s qualifications and skill-level and on the nature of employment sought.

HIRING OPTIONS

EMPLOYEE

The Employment Act is the primary statute regulating the relationship of employees and employers in Singapore. Coverage by the EA is dependent on whether the individual in question falls under the definition of “employee” in the EA. The definition covers every employee who is under a contract of service with an employer (EA Employees), with the exception of seafarers, domestic servants, certain government employees, and persons employed in a professional, managerial or executive position earning basic monthly salaries of more than SGD 4,500 per month (Non-EA Employees).

A third category of employees comprises EA employees earning basic monthly salaries of up to SGD 2,500 per month as well as workmen earning basic monthly salaries of up to SGD 4,500 a month, who are granted further benefits under Part IV of the EA (Part IV EA Employees).

Employees can be hired on a full-time, part-time, fixed-term or at will basis.

INDEPENDENT CONTRACTOR

Independent contractors can be engaged but the Singapore Courts and the Ministry of Manpower will look at the substance of the relationship to determine if the individual is in fact an employee, and merely labelling or classifying as an independent contractor is insufficient.

AGENCY WORKER

Agency workers can be engaged.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS

From 1 April 2016, all employers are required to issue key employment terms (KETs) in writing as well as itemized payslips to EA Employees who are hired after 1 April 2016 and who will be employed for a continuous period of 14 days or more. The KETs must include:

• full name of employer;
• full name of employee;
• job title, main duties and responsibilities;
• start date of employment;
• duration of employment (if employee is on fixed-term contract);
• working arrangements, such as:
  – Daily working hours (e.g. 8.30am – 6pm);
  – Number of working days per week (e.g. six); and
  – Rest day (e.g. Saturday).
• salary period;
• basic salary – For hourly, daily or piece-rated workers, employers should also indicate the basic rate of pay (e.g. $X per hour, day or piece);
• fixed allowances;
• fixed deductions;
• overtime payment period (if different from item 7 salary period) and overtime rate of pay;
• types of leave such as annual leave, outpatient sick leave, hospitalisation leave, maternity leave and childcare leave;
• other medical benefits such as insurance, medical benefits and dental benefits;
• probation period; and
• notice period.

KETs should be provided to EA Employees within 14 days from the start of employment, and may be in soft or hard copy. Common KETs which are not specific to individual employees, such as leave policy and medical benefits, can be provided within the employee handbook or on the company intranet.

Other than as set out above, there are no legal requirements for employers to have employment contracts in writing with employees and there are no formalities that need to be complied with although written contracts are recommended. The employment contracts of part-time employees (i.e., employees who work for less than 35 hours a week), must specify their hourly basic rate of pay, number of working hours and number of working days, amongst others.

PROBATIONARY PERIODS
The EA does not have any clauses specifically pertaining to the appropriate probation period for employees. As a common practice, employees may be asked to serve a probation period of 3-6 months.

POLICIES
No mandatory policies for Non-EA Employees (EA Employees cannot have terms and conditions worse than those prescribed under the EA). Certain terms can be implied into an employment contract by operation of law, or by custom and practice.

THIRD-PARTY APPROVAL
Generally, there is no requirement to lodge employment contracts or policies with, or get approval from, any third-party before an employment contract is valid (subject to work pass approvals).
LANGUAGE REQUIREMENTS

No specific requirements to be complied with, though contracts are generally in English.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS

Employees’ rights under law depend on whether they are EA Employees, Part IV EA Employees or Non-EA Employees (as defined above). Generally, the minimum entitlements apply to EA Employees (especially Part IV EA Employees). Matters such as hours of work, overtime and paid annual leave entitlements are statutorily prescribed for Part IV EA Employees only. Employers are free to provide better contractual terms (above and beyond these minimum obligations) to their employees. However, terms which are worse than the minimum obligations for these employees will be invalid and unenforceable.

WORKING HOURS

For shift workers, the hours of work must not exceed an average of 44 hours per week over any continuous period of 3 weeks (subject to a maximum of 12 hours per day).

For non-shift workers working 5 days or more per week, the hours of work should generally not exceed more than 8 hours per day or 44 hours per week. Where a non-shift worker works less than 5 days per week, the agreed hours of work shall not exceed 9 hours per day or 44 hours per week.

A non-shift worker is not allowed to work for more than 12 hours in a day (inclusive of overtime work) except in prescribed circumstances.

OVERTIME

With some exceptions, all work done in excess of 8 hours in one day or 44 hours per week is considered overtime for which an employee must be paid at least 1.5 times his or her basic hourly rate. The maximum permitted overtime is 72 hours per month. Rules relating to overtime only apply to Part IV EA Employees.

In terms of overtime pay, if an employee is required to work on any public holiday, he or she shall be paid an extra day’s salary at the basic rate of pay in addition to the gross rate of pay for that day. Where an employee is required to work on a rest day, the calculation of the overtime pay varies with the exact period of work on that rest day. For example, where the period of work exceeds the employee’s normal working hours, he or she must be paid (i) the basic rate of pay for 2 days’ work and (ii) not less than 1.5 times the hourly basic rate of pay for each hour or part thereof that exceeds his or her normal working hours.

WAGES

Singapore law does not generally have a minimum wage stipulation. Wages are a matter to be agreed between the parties. However, as of January 2014, there is an entry-level monthly wage of SGD 1,000 for those working in the cleaning sector. The minimum monthly basic wages of security guards will also rise to SGD1,100 from September 2016. Further, the minimum monthly basic wages of landscape workers will rise to SGD1,300 from June 2016.
**VACATION**

A Part IV EA Employee who has worked for his or her employer for at least 3 months is entitled to 7 days’ paid annual leave for the first year of service. An additional day of leave for every subsequent 12 months of service will be provided, up to a maximum of 14 days. If the Part IV EA Employee has worked for his or her employer for at least 3 months, the annual leave entitlement is pro-rated based on the number of full months the Part IV EA Employee has worked. This entitlement applies even if the Part IV EA Employee is still on probation. Further, every EA Employee is entitled to be paid for each public holiday. There are presently 11 public holidays in Singapore each year.

**SICK LEAVE AND PAY**

An EA Employee who has worked for his or her employer for at least 3 months is entitled to paid sick leave if the EA Employee has informed or tried to inform his or her employer within 48 hours of his or her absence, and the sick leave is certified by the employer’s doctor, employer-approved doctor or a government doctor (including doctors and dentists from approved public medical institutions). The number of days of sick leave is subject to the employee’s service period and a cap of 14 days where hospitalization is not required; and where hospitalization is necessary, either 60 days in a year; or 14 days plus the number of days on which the employee is hospitalized, whichever is the lower. A pro rata entitlement exists for EA Employees with less than 6 months’ continuous service.

**MATERNITY/PARENTAL LEAVE AND PAY**

Under the Child Development Co-Savings Act, any female employee in Singapore is entitled to maternity leave benefits if: (i) the child is a Singapore citizen; (ii) the child’s parents are lawfully married; and (iii) the employee has worked for the employer for at least 3 months immediately before the day of birth. Eligible employees are entitled to 16 weeks’ paid maternity leave to be used over a continuous period (mothers can start using maternity leave up to 4 weeks preceding birth). For the first and second confinements, employers must pay for the first 8 weeks, and may in certain circumstances be reimbursed by the government for the remaining 8 weeks. Subject to certain eligibility criteria, the full 16 weeks’ entitlement will be government paid; from the third confinement onwards, it is capped at SGD 10,000 per 4 weeks (including employer’s CPF contributions).

However, if the employee is unmarried, she will only be entitled to maternity leave if she is an EA Employee. An EA employee is entitled to a total of 12 weeks’ maternity leave. Of the 12 weeks, the employee will only be entitled to 8 weeks’ paid maternity leave if she has less than 2 children of her own and if she has served her employer for at least 3 months before the estimated delivery date. The EA employee must also comply with notice requirements under the EA. Failure to provide such notice without sufficient cause will entitle an employer to pay the employee only half her salary during the leave.

Working fathers (including adoptive fathers and those who are self-employed) will be entitled to 1 week of government-paid paternity leave for all births provided they meet certain criteria. For fathers of citizen children born from 1 January 2015 onwards, a working father may get up to 1 additional week of government-paid paternity leave, if his or her employer voluntarily agrees to provide it. Subject to certain eligibility criteria, a working father (including one who is self-employed) is entitled to share 1 week of his wife’s 16 weeks of government-paid maternity leave, subject to his wife’s agreement.

All employees (including fathers) employed for at least 3 months (including Non-EA Employees) are entitled to up to 6 days of paid childcare leave where the child is a Singapore citizen and below the age of 7. The first 3 days will be paid by the employer, and the remaining 3 days of leave will be paid by the Government. Payments are capped at SGD 500 per day, including CPF contributions. An EA Employee whose child is not a Singapore citizen, will be entitled to 2 days.
Singapore does not have any legislation which expressly prohibits discrimination on the grounds of race, ethnicity, religion, gender, disability or sexual orientation. While the Constitution provides that all persons are entitled to the equal protection of the law and that there shall be no discrimination based on religion, race, descent or place of birth, successful challenges on constitutional grounds are rare.

The main type of employment legislation that deals with the issue of discrimination concerns age discrimination. The Retirement and Re-employment Act applies to all employees and prohibits the dismissal of any employee who is below the current retirement age of 62 on the grounds of age, notwithstanding any agreement to the contrary.

Also, female employees under the EA may not be dismissed solely for being absent from work before and after their maternity leave, though this is not characterized as discrimination per se.

There are also general guidelines such as the Tripartite Guidelines on Fair Employment Practices issued by the Tripartite Alliance for Fair Employment Practices (TAFEP) that encourage fair treatment of employees. If an individual encounters workplace discrimination in breach of these Tripartite Guidelines, they can contact TAFEP who may first engage informally with the employer to assess if the complaint is meritorious. TAFEP can refer cases to the Ministry of Manpower (MOM) where the employer is recalcitrant or unresponsive, and the MOM can impose certain administrative sanctions against errant employers (e.g. curtailing work pass applications and privileges).

For employees who are Singapore citizens or permanent residents, the employer is required to make mandatory contributions to the Central Provident Fund (CPF).

Benefits offered to an employee will usually depend upon his or her level of seniority within the organization. EA Employees are entitled to minimum standards of benefits under the applicable part of the EA. Those at managerial and/or executive level are likely to be offered additional benefits which are usually contractually provided for. Many organizations provide for leave, pay occupational sick pay and notice requirements in excess of statutory entitlement to a wide range of employees.

Under the PDPA, an employer is permitted to collect, use and disclose the employees’ personal data for purposes of managing or terminating an employment relationship, so long as the employee has been notified of the purposes of such collection, use and disclosure and/or provides his or her consent prior to such collection, use and disclosure. Notably, employers may collect, use and disclose personal data without obtaining the employees’ consent or notifying them where it is necessary for evaluative purposes, including the determination of the suitability or eligibility of an individual to whom the data relate for employment, continuance in employment or promotion.

EA Employees are protected on business transfer and transfer automatically to the transferee. There are notification and consultation requirements required under the EA relating to the automatic transfer of EA Employees. Non-EA Employees do not transfer automatically, and instead will have to have their employment contractually terminated by the transferor on a business transfer, after which they can then be rehired by the transferee (or have their contracts novated).
**EMPLOYEE REPRESENTATION**

Trade unions are administered by the Industrial Relations Act ("IRA"), the Trade Disputes Act ("TDA") and the Trade Unions Act.

The IRA regulates relations between employers and employees and provides the legal framework to prevent and settle trade disputes by collective bargaining, conciliation and industrial arbitration. Individual disputes fit within the definition of trade disputes under the TDA. The TDA defines illegal industrial action and illegal lock-outs and provides penalties for the same.

Collective agreements are common in Singapore within specific industries, such as transport and manufacturing. Even where a trade union has been statutorily recognised but no formal collective agreement has yet been entered into, disputes may potentially still be referred to the Industrial Arbitration Court and decided in accordance with principles of equity and fairness (rather than strict contractual principles).

**TERMINATION**

**GROUNDS**

No legal requirement to state the reason for termination, so long as termination is effected in accordance with the express termination provisions of the employment contract (there may need to be grounds where the employment contract has no express termination provisions though). In addition, an employer has a right to summarily dismiss an employee in exceptional circumstances (including gross misconduct). It is usually prudent to set out in the contract the circumstances and grounds on which the employee may be terminated summarily.

**EMPLOYEES SUBJECT TO TERMINATION LAWS**

The EA is the main piece of legislation governing termination of employment. As such, for those employees not covered by the EA termination is governed by the employment contract between employer and employee.

**RESTRICTED OR PROHIBITED TERMINATIONS**

None, save for restrictions as to termination of female employees on maternity leave, and termination of employees who attain the retirement age but remain eligible for re-employment under the conditions stated in the Retirement and Re-Employment Act (or on the grounds purely of old age).

**THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**

None required.

**MASS LAYOFF RULES**

There are no laws prohibiting mass layoffs, but these would be subject to any restrictions under the individual contracts of employment and collective agreements (if any). The 2009 Tripartite Guidelines on Managing Excess Manpower (Guidelines) issued by the MOM provide guidance on redundancy situations and are commonly followed by employers, but are not legally binding. The MOM recognizes a genuine redundancy in a number of circumstances including: recession/economic downturn; high labor cost; high business costs other than labor cost; streamlining of operations; automation/mechanization/computerization; restructuring by reason of merger, take-over by another company; and outsourcing of functions.
Any redundancy exercise should be implemented in consultation with a trade union (if the company is unionized, including if a union has been statutorily recognised). Employers are also encouraged to notify the MOM of any retrenchments in particular mass layoffs involving EA employees.

**NOTICE**

Employment contracts typically specify a required notice period for termination. For an EA employee, the length of such notice must be the same for both employer and employee and is determined by the notice provision specified in the terms of the contract of service. In the absence of a specified term, where the employee is an EA Employee, the required notice of termination is dependent upon the employee’s length of employment (from 1 day for those employed for less than 26 weeks to 4 weeks for those employed for 5 years or more). A Non-EA Employee is not subject to the statutory minimum notice period and instead is entitled to reasonable notice (usually not less than the statutory minimum notice period) if his or her employment contract does not set out an express notice period.

**STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE**

Even if not made express in the contract, it is possible for the employer to make payment in lieu of notice for EA employees – a sum equal to the amount of salary which would have been earned by the employee during the required period of notice, and for the EA employee to likewise make a payment in lieu of notice if resigning. The same is true for employer’s termination of Non-EA employees (provided all relevant contractual benefits are paid in addition to salary) if the same is provided for in the employment contract. Non-EA employees are, however, not entitled to terminate their employment contracts by paying salary in lieu of notice unless there is an express contractual right to do so.

Employees serving their notice period before termination may be placed on garden leave. During this time, they should continue to be treated as an employee and receive their full contractual benefits up to their last day with the employer.

**SEVERANCE**

Unless the employment terms expressly provide that severance, retrenchment or redundancy benefits are payable, there is no obligation on the part of the employer to pay such benefits and any retrenchment benefits are to be agreed between the employer and the employee. This is a matter of contract and company policy. When dealing with unionized employees, employers are obliged to negotiate in good faith with the union, and may not have absolute discretion to determine the terms of the retrenchment benefits.

From 1 April 2015 onwards, Part IV EA Employees will not be entitled to retrenchment benefits (even where their contract provides for such benefits) if they have worked for less than 2 years with their employer.

**POST-TERMINATION RESTRAINTS**

Covenants in restraint of trade are prima facie void in Singapore. They will only be considered enforceable if they can be shown to protect legitimate proprietary interests of the employer, and go no further than is reasonably necessary to protect those interests (especially in duration and geographical area of coverage). The courts have recognized three legitimate proprietary interests thus far: an employer’s trade secrets and confidential information, the protection of trade connections, and the maintenance of a stable trained workforce.
NON-COMPETES
Not enforceable, unless they can be shown to be necessary to protect the employer’s legitimate business interests; and to be reasonable. Non-competes are also generally not enforceable if there are other clauses binding the employee that already protect the employer’s three legitimate interests, although this position may be changing.

CUSTOMER NON-SOLICITS
Enforceable, subject to the above and strict limitations. Such post-employment restraints may be enforced by courts if:

- necessary to protect the employer’s legitimate business interests; and
- reasonable — both in the interests of the parties and in the interests of the public (e.g., should relate to customers that the employee dealt with or had influence over, and be reasonable in duration and geographical area).

EMPLOYEE NON-SOLICITS
Enforceable, subject to strict limitations. A post-employment restraint may be enforced by courts if it is:

- necessary to protect the employer’s legitimate business interests; and
- reasonable — both in the interests of the parties and in the interests of the public (e.g., should relate to certain categories of employees that the employee dealt with or had influence over, and be reasonable in duration and geographical area of coverage).

WAIVERS
A waiver must be clear, but may be oral or written. A waiver need not be express, but can be inferred from a course of conduct.

REMEDIES

DISCRIMINATION
Where it can be argued that there has been a breach of the employer’s implied duties of mutual trust and confidence because of discrimination, the employee may potentially allege constructive dismissal and claim for breach of contract under common law (with damages as the most common remedy).

UNFAIR DISMISSAL
EA Employees may lodge a claim with the MOM, and refer disputes to the Commissioner for Labor for Adjudicating Matters, for the purposes of recovering salaries and other statutory payments, or may appeal in writing for reinstatement (within one month from the date of dismissal). As mentioned above, the MOM has power to reinstate EA employees in an appropriate case. Non-EA Employees can only claim for a breach of contract in civil courts and do not have other claims.
FAILURE TO INFORM AND CONSULT
There is generally no obligation on an employer to inform and consult the employee on matters related to his or her employment. This usually only arises in a business transfer situation.

In a business transfer situation, if the transferor fails to discharge his or her obligations under the EA to inform and consult EA Employees prior to the transfer, the employee may refer the matter to the Commissioner for Labor for Adjudication, and the Commissioner is empowered to:

• delay or prohibit the transfer of the employee concerned, or
• order the transfer of the employee and set such terms as the Commissioner considers just.

CRIMINAL SANCTIONS
Criminal sanctions include fines or imprisonment for offences under the EA (or other applicable statutes). Offences under the EA include: wrongful detention of an employee by the employer after a contract of services have been determined; obstructing an employee appearing before an inquiry held by the Commissioner; fraudulently inducing an employee to emigrate out of Singapore to work; entering into prohibited contracts of service; failure to pay salary as stipulated; and employment of children under 12 years of age.

Any director, manager, secretary or other officer of the company may also be charged with the same offence and punished upon conviction if it can be shown that the offence is committed with the consent or connivance of any act or default of such persons.
SOUTH AFRICA

LEGAL SYSTEM, CURRENCY, LANGUAGE
Common law, civil law and customary law, subject to the Constitution. Rand (ZAR). 11 official languages: Afrikaans, English, Ndebele, Northern Sotho, Sotho, Swazi, Tswana, Tsonga, Venda, Xhosa and Zulu.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign company must register as an “external company” with the Companies and Intellectual Property Commission before it can enter into employment contracts in South Africa, and is required to pay corporate income tax. Companies (including external companies) are obliged to register and deduct tax from an employee’s salary and, in addition, have reporting duties to the South African Revenue Services. The maximum personal tax rate is currently 40 percent.

Employers are required to contribute to prescribed employee benefit funds and make contributions to an unemployment benefit fund. Employee contributions to the unemployment benefit fund are deducted and paid on their behalf by the employer.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance. Profession-specific requirements may apply, subject to the profession in question, e.g., directors of companies may not be unrehabilitated insolvents.

PERMISSIBLE
Employees’ personal information is protected by the Protection of Personal Information Act (POPI). POPI’s effective date remains to be determined. Under POPI, personal information may only be processed if the purpose for which it is processed is adequate, relevant and not excessive. The procedures to be followed to gain access to personal information will depend on the nature of the information and the reasons why such information is sought. This may include reference checks, and possibly criminal and credit checks where relevant to the position.

IMMIGRATION
All non-citizens must hold an appropriate work visa. Local sponsor for a work visa is generally required and it is also necessary to show that no local person is capable of filling the applicant’s position. Foreign nationals who overstay will be declared undesirable and their employment prohibited.
HIRING OPTIONS

EMPLOYEE
Full-time permanent employment, fixed-term, part-time, and employment below the minimum hours per month (which may result in exclusion from minimum benefits). Fixed-term employment of employees earning below a threshold amount that is published annually (the BCEA threshold), currently set at ZAR205,433.30, is partially restricted, in that such employment may only be freely utilised for a restricted time (3 months), unless one of a limited number of exceptions and/or reasons for using longer fixed-term employment exists.

INDEPENDENT CONTRACTOR
Independent contractors are excluded from the employment protections afforded to employees, but legislation imposes a presumption of employment if certain elements exist in the working relationship, such as the right of supervision on the part of the employer. The presumption applies only to persons earning below the BCEA threshold, currently set at ZAR205,433.30. For other workers, the common law dominant impression test will apply. There is no single indicator of an employment relationship. Instead, the court will look at the relationship as a whole, to determine whether the relationship is one of employment or independent contracting. The level of control exercised by the employer over the “employee” is one aspect to be considered.

AGENCY WORKER
Employees earning below the BCEA threshold enjoy additional protection if placed at a client through an agency (temporary employment service). Except in limited circumstances, after an initial period of placement, the agency worker will be deemed employed by the client, without the loss of any remedies against the agency, and become entitled to have terms of employment equalised relative to comparable permanent employees of the client. No deemed employment applies to higher earning agency workers.

EMPLOYMENT CONTRACTS & POLICIES

REQUIREMENTS
In general, no formalities, although the Basic Conditions of Employment (BCEA) requires that a minimum list of written particulars of employment be provided. Compliance need not be in the form of a contract of employment; however, written employment agreements are common. Offers of fixed-term employment for employees earning below the BCEA threshold must be in writing and must contain certain prescribed terms, e.g., the reason for use of a fixed-term agreement. Contract comes into existence upon valid acceptance of a valid offer of employment. Consensus with regard to the nature of the services rendered and remuneration is required. On commencement of the employment relationship employer is required to provide the employee with information such as the calculation and method of payment. The employee cannot contract out of certain rights contained in the BCEA.

PROBATIONARY
Permissible for a “reasonable period” (normally between 3 and 6 months).
POLICIES
No specific policies are mandatory. Employers are not required to have written health and safety policies but are required to adhere to the requirements contained in the Occupational Health and Safety Act. Government codes of good practice for employers may recommend particular policies but are often not binding.

THIRD PARTY APPROVAL
None required.

LANGUAGE REQUIREMENTS
When rights of employees are affected, employers are required to ensure that the employees understand the action taken, or information imparted. This may require that information be supplied in a language that the employees can understand. Disciplinary proceedings may be considered unfair if conducted in a language with which the employee is insufficiently familiar to enable effective participation in the proceedings. Translators must then be supplied.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
Independent contractors are excluded from all employment protection. Specific categories of employees may further be excluded from some legislative protections – for instance, employees working less than 24 hours per month are excluded from minimum employment terms under the BCEA, and employees earning above the BCEA threshold are not entitled to overtime payments unless their contracts of employment provides otherwise.

WORKING HOURS
Maximum 45 hours a week, subject to the exemptions identified in the BCEA (employees earning above the BCEA threshold; senior managerial employees; employees engaged as sales staff who travel to the premises of customers and who regulate their own hours of work; employees who work for less than 24 hours per month for the employer; and an employee who performs work that is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by other employees within their normal working day). Rules on rest breaks, night work and rest periods between shifts apply. Agreements on compressing work weeks and averaging of work hours can impact maximum work hours.

OVERTIME
Overtime may be worked if agreed between the employer and employee. An agreement to work overtime concluded in the first 3 months of employment is only valid for 12 months. Limitations on maximum overtime apply (10 hours per week, or 15 hours in terms of a collective agreement), but agreements on compressing work weeks and averaging of work hours can alleviate limitations. Compensation for overtime is payable to employees earning below the BCEA threshold, but higher earning employees are excluded from overtime payment unless the employment contract provides for it. Minimum statutory overtime rates are either 1-1/2 the normal rate, or 2 times the normal rate, with the highest rate being payable if the overtime is worked on a Sunday or public holiday and the employee is not normally required to work on Sundays and/or public holidays. Time off may be given in lieu of paying overtime, by agreement.
WAGES
No general prescribed minimum wage. Sectoral determinations (subordinate legislation promulgated by the Minister of Labor, which sets up basic conditions of employment for specific sectors and areas that are not well organised) provide for minimum terms and conditions of employment in a particular industry or sector, which include minimum wages.

VACATION
Minimum 3 weeks’ paid annual leave as well as 12 days’ statutory holidays, on full remuneration.

SICK LEAVE & PAY
All employees are statutorily entitled to paid sick leave of 6 weeks per 36 month employment cycle. Payment based on basic wages, not full remuneration. Pro-rated leave entitlements may apply for shorter periods of employment and in the first 6 months of employment.

MATERNITY/PARENTAL LEAVE & PAY
Minimum of 4 consecutive months of unpaid maternity leave. Employees may claim partial remuneration through the Unemployment Insurance Fund.

No specific paternity leave, however family responsibility leave of 3 days per year (non-cumulative) can be used as paternity leave, or as contractually agreed. Unfair discrimination based on gender is, however, prohibited, with the effect that in particular circumstances, a father may be granted access to maternity leave, where failure to do so would be unfairly discriminatory.

DISCRIMINATION
Direct and indirect unfair discrimination are prohibited. Sexual harassment and unequal pay on prohibited grounds are given express protection as forms of unfair discrimination. Designated employers are obliged to put into place affirmative action policies, including numerical targets but excluding quotas, to increase access to opportunities for previously disadvantaged South African citizens (African, Coloured, Indian people, women and people with disabilities).

The listed grounds protected from unfair discrimination are race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth and any other arbitrary ground.

BENEFITS & PENSIONS
The contract of employment will determine whether the employee is entitled to any further benefits, including subsistence, travel and pension allowances, bonuses or acting-up allowances.

No obligation that employees should belong to a retirement fund.

DATA PRIVACY
Employee monitoring is impacted by legislation, including POPI, but not prohibited. POPI restricts the extent to which employers can access the private information of its employees. Employees must generally be notified of the reason for personal data processing, and provide consent.
RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employees automatically transfer to the new employer in the event of a transfer of a business or service as a going concern. No general consultation requirement, but terms of service can only be amended by agreement. Disclosure of information required, with failure to do so resulting in limited joint and several liability for the two employers. No dismissal by reason of the transfer, but dismissals due to operational requirement may still be effected if the reason for dismissal is unrelated to the transfer.

EMPLOYEE REPRESENTATION

Employees are constitutionally entitled to join a trade union, to be represented by such trade union and to strike. Industry-wide collective bargaining agreements may be concluded which apply to parties in a bargaining council (a body formed by organized labor and organized employers for a particular sector which forms the forum for industry wide collective bargaining). The result is an extensive framework of collective bargaining, organizational rights, collective agreements and bargaining councils that play a central role in most commercial and employment activities.

TERMINATION

GROUNDS
Termination is permissible if substantively and procedurally fair. Dismissal is only justifiable by reason of misconduct, capacity (ill-health or performance) or operational requirements. Termination by effluxion of time (i.e., fixed term or retirement age) is not considered dismissal; hence there is no requirement of fair reason or fair process.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees from the beginning of the employment relationship, although termination is easier during a probation period. Independent contractors not protected.

PROHIBITED OR RESTRICTED TERMINATIONS
Automatically unfair dismissals are prohibited, and increased penalties will attach if a dismissal is motivated by one of these prohibited reasons. Automatically unfair dismissals include for instance dismissals due to employee participation in lawful strike action and dismissals due to an employee's pregnancy or a reason related to pregnancy.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Not required.

MASS LAYOFF RULES
Strict information and consultation rules apply to all mass layoffs (operational requirement dismissals or retrenchments). Additional requirements apply to large scale retrenchments (size of retrenchment determined on a sliding scale, by reference to number of affected employees compared to total employees).

No notice to government officials required.
NOTICE
Minimum BCEA notice periods of between 1 week and 4 weeks apply, unless contracts of employment provide for longer notice, or a collective agreement provides a shorter period. Notice to be given in writing. Notice cannot be given while the employee is on any type of leave.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Employer may freely elect to pay remuneration in lieu of notice, irrespective of who gives notice. The decision to waive the obligation to work during a notice period rests with the employer, but the employee must agree to a waiver of the obligation to pay remuneration. The employee cannot be compelled to take accrued leave during the notice period. Garden leave is neither regulated by statute, nor commonly provided for in employment contracts.

SEVERANCE
Only payable in the event of operational requirement dismissals. Minimum of 1 week’s remuneration per completed year of service, subject to additional payments agreed in the consultation period. Severance is one of the mandatory topics of consultation.

POST-TERMINATION RESTRAINTS
In principle enforceable, with the party seeking to escape its effect having the onus of proving that the restraint ought not to be enforced, for being against public policy. The enforcing party must, however, be able to show a protectable interest, and the limitations to competition must not go beyond what is reasonably necessary to protect such legitimate business interest. Protectable interests include client relationships and trade secrets.

NON-COMPETES
Permissible in principle if the employer has a protectable interest and the restraint goes no further than necessary to protect that interest.

CUSTOMER NON-SOLICITS
Permissible.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS
Employees can contract out of common law rights without any formalities. Limited right to waive statutory rights (i.e., only to the extent that legislation may allow such waiver). No specific requirement that the employee waiving a right must be represented, or for any formalities to be met.
REMEDIES

DISCRIMINATION AND SEXUAL HARASSMENT
Claims must first be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) or a Bargaining Council with jurisdiction for conciliation. If conciliation fails, the claim is referred to the Labor Court for adjudication, or for arbitration at the CCMA Bargaining Council in limited circumstances (i.e. sexual harassment cases, with the parties’ consent, or if the complainant earned below the BCEA threshold). Strict time limits apply.

Remedies include compensation (unlimited) and damages (limited to the BCEA threshold).

UNFAIR DISMISSALS AND UNFAIR LABOR PRACTICES
The majority of disputes must be referred to the CCMA or Bargaining Council with jurisdiction for conciliation. If conciliation fails, the nature of the dispute determines whether the dispute must be referred to adjudication at the Labor Court, or arbitration at the CCMA or Bargaining Council. Strict time limits apply.

Remedies are primarily reinstatement (possibly retrospective) and compensation, limited to a maximum of 12 months’ remuneration for unfair dismissal and 24 months for automatically unfair dismissal.

FAILURE TO INFORM AND CONSULT
There is no separate cause of action for failure to consult, but this may constitute the basis of a finding of procedural unfairness in an operational requirements dismissal. Where only procedural unfairness is found, the reinstatement remedy is not available.

CRIMINAL SANCTIONS
Employment law is largely de-criminalized; however, specific legislation renders some behavior a criminal offense. For instance, disclosure of the private information of employees to third parties is an offense.
SOUTH KOREA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law jurisdiction, though court precedents play an important role. South Korean Won (KRW). Korean.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign companies may directly engage employees in Korea; however, because of potentially negative tax implications, it is uncommon for foreign companies to do so. There are four ways for foreign nationals to engage in business activities in Korea: (i) establishing a local corporation; (ii) opening a private business; (iii) opening a branch; and (iv) opening a liaison office. Payroll withholdings are required.

PRE-HIRE CHECKS

REQUIRED
Immigration checks are generally required.

PERMISSIBLE
Under the Personal Information Protection Act (PIPA), to conduct background checks that go beyond the scope generally required to enter into an employment agreement, consent must be obtained from the applicant. Separate consent must be obtained if sensitive information such as an employee’s health information or criminal records are to be checked.

IMMIGRATION

Long-term and short-term general work visas are available to visit Korea for business-related purposes. 2 short-term visas are available (C-3-4 and C-4 visas), and 3 long-term visas are available (D-7, D-8 and E-7 visas). The appropriate visa type depends, among other things, on the nature of the assignment/employment and the type of employing entity located in Korea.

Special work visas (E-4, D-5 and D-9 visas) are available for foreign nationals working in highly specialized areas of expertise; and special resident visas (F-4 and F-5 visas) are available which allow a foreign national to live and work in Korea without requiring a separate work visa.

HIRING OPTIONS

EMPLOYEE
Employees may be employed on either an indefinite basis (referred to as “regular” workers) or a definite/fixed-term basis for a maximum term of 2 years (“non-regular” workers). Fixed-term employees may be deemed to be employed on an indefinite basis if employed for a period of greater than 2 years, in principle.

Employees can be engaged on a full-time or part-time basis.
INDEPENDENT CONTRACTOR
Independent contractors may be engaged and companies should be careful to avoid establishing ‘employee’ status whereby the individual is entitled to all of the benefits of an employee including severance and employment security, thus, increasing the compliance, tax, payroll and other risks to the company. The primary factor distinguishing employees from contractors will be the degree of supervision and control by the company over the individual.

AGENCY WORKER
Engagement governed by the Act on the Protection of Temporary Agency Workers. These are “dispatched employees” employed by a temporary work agency, who provide services for a user company (under their direction and instruction) in accordance with the terms and conditions of a contract on temporary placement of workers, executed between the temporary work agency and the user company. The employment relationship is with the temporary work agency.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Under the Labour Standards Act (LSA), all employers in Korea must enter into a written agreement with their employees which details, among other working conditions: wages, working hours and recess periods, weekly paid days off, and paid annual leave. Any agreement that does not satisfy the standards prescribed by the LSA and other binding laws relating to working conditions will be void to the extent that it fails to meet those legal requirements.

PROBATIONARY PERIODS
No fixed period for probation by statute, though parties may agree to a probationary period. Generally a period of 3-6 months will be adopted.

POLICIES
Rules of Employment are required in companies with 10 or more employees in Korea. Apart from that, no mandatory policies. However, the Occupational Health and Safety Act (OHSA) establishes a basic framework of general standards for occupational health and safety, and requires most workplaces to establish an industrial safety and health committee which is to make regular reports to the government.

THIRD-PARTY APPROVAL
Rules of Employment must be filed with the labor authorities. Apart from that, none required.

LANGUAGE REQUIREMENTS
No language requirements.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
Generally all. Employees and dispatched employees are entitled to statutory employment rights, such as statutory severance pay and paid annual paid leave, while other types of workers (such as independent contractors) are not.
WORKING HOURS
Statutory limit is 8 hours per day and 40 hours per week. Employees in managerial or supervisory positions and employees handling confidential information are not subject to the statutory limits on working hours.

OVERTIME
Limited to 12 hours per week, to be paid at 150% of ordinary wage.

WAGES
The Minimum Wage Act (MWA) provides for minimum wage levels. The minimum wage can be fixed on an hourly, daily, weekly or monthly basis. The hourly minimum wage rate in effect for 2016 is KRW 6,030. The minimum wage is calculated by adding fixed allowances to basic pay, although it excludes other compensation, for example, discretionary bonuses, overtime pay and fringe benefits.

VACATION
Employees must be given a minimum of 15 days’ paid annual leave for at least 80% attendance during the previous year, while employees who do not meet the overall yearly requirement of 80% attendance in the previous year must be afforded at least 1 day of paid annual leave for each full month of attendance. Following completion of the first year of service, this entitlement increases by 1 day after each 2 years of service, up to a maximum of 25 days.

SICK LEAVE & PAY
There is no legal requirement for employers to provide leave to employees for non-work related illnesses or injuries. It is not uncommon, however, for companies to provide paid sick leave whether or not an injury or illness is work related. Employees will generally use their annual paid leave as personal sick days if paid sick leave is not available. Employers are required under the LSA to provide paid leave for work-related illnesses or injuries.

MATERNITY/PARENTAL LEAVE & PAY
Employers must grant pregnant female employees 90 days (120 days in case of multiple births) of paid maternity leave, which can be used before or after childbirth. Compensation for the first 60 days (75 days in case of multiple births) is paid by the employer, while the remaining days are paid from the Employment Insurance Fund, a state-run fund established by the Ministry of Employment and Labour under the Employment Insurance Act. The statutory 90/120 days’ maternity leave includes holidays and Sundays. At least 45 days (60 days in case of multiple births) must be used after childbirth so that even where more than 45 days (60 days in case of multiple births) were used before childbirth, an employer must allow 45 days (60 days in case of multiple births) of maternity leave after childbirth.

Male employees are entitled to 3 days’ paid leave, with 2 additional days of unpaid leave which can be taken at the employer’s discretion, within 30 days of the child’s birth.

Employees with children under the age of 8 or under the second year of elementary education have an entitlement to unpaid childcare leave of up to 1 year. This entitlement is applicable to both fathers and mothers. The employee must have worked for the same employer for at least 1 continuous year. The employer is not obliged to pay wages during childcare leave, however, employees are instead paid under the employment insurance system and may receive 40% of their ordinary wage up to KRW 1 million with 25% of this amount payable 6 months after the employee’s return to work.
DISCRIMINATION

The LSA prohibits discrimination against employees on the grounds of sex, nationality, religion or social status. Discrimination is also prohibited under statutes protecting disabled employees, female employees, foreign workers, and non-regular workers. Age discrimination is also prohibited.

BENEFITS & PENSIONS

Employers must subscribe to mandatory social insurance programs, the National Pension, the National Health Insurance, the Unemployment Insurance and the Industrial Accident Compensation Insurance.

DATA PRIVACY

Under the PIPA, an employee is entitled to request the employer to allow access to, correct or delete his or her personal information. The PIPA requires an employer to obtain the consent of the individual employee when his or her personal information is obtained or provided to third parties.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The transferee automatically assumes the transferor’s responsibilities as regards to the employees (including their working terms and conditions, and liabilities), unless the employees otherwise agree. Unless there is just cause, employees are protected against dismissal (before or after the transfer).

EMPLOYEE REPRESENTATION

Employees have the right to establish and operate trade unions, and collective bargaining will have binding legal effect.

Each workplace with 30 or more employees must have a Labor Management Council (LMC). LMCs are composed of an equal number of members representing employers and workers, and there shall be no less than 3 and not more than 10 members.

TERMINATION

GROUNDS

The LSA provides that an employer may only terminate for “just cause”, though “just cause” is not defined. The courts have generally held that “just cause” only exists in limited circumstances, including:

- Fault attributable to the employee making continued employment untenable: for example where the employee is guilty of sufficiently grave misconduct making it impossible to continue the relationship; continuous and persistent unsatisfactory performance; criminal or deliberate tortious acts against the employer; serious criminal acts not in the line of duty; improper relationships with other employees; or material misrepresentation in the hiring process;

- Urgent business necessity to try and save a failing business from imminent bankruptcy.
EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees are covered if 5 or more employees are employed by an employer.

RESTRICTED OR PROHIBITED TERMINATIONS
Employees on sick leave due to a job-related illness or injury (and for 30 days after their return); employees on maternity leave (and for 30 days after their return); and employees on childcare leave.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
None required.

MASS LAYOFF RULES
Lawful, provided an employer can show there is an “urgent business necessity,” that the employer has made best efforts to avoid the termination and that an objective selection process is conducted.

A duty to report dismissals may be triggered depending on the number of employees routinely hired:

• Where 99 or less employees are routinely hired, 10 or more dismissals will trigger a duty to report;
• Where 100-999 employees are routinely hired, dismissal of 10% of the workforce will trigger a duty to report; and
• Where 1000 or more employees are routinely hired, 100 or more dismissals will trigger a duty to report.

NOTICE
If an employee is dismissed, the LSA requires that the company provide the employee with 30 days’ prior notice or 30 days’ ordinary wages in lieu of notice. The company can be exempted from this requirement if either: (i) it can establish that it is impossible to maintain its business due to a natural disaster or other unavoidable reason; or (ii) the employee intentionally causes substantial problems for the company or intentionally damages company property.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
A statutory right to 30 days’ payment in lieu of notice. Garden leave possible if provided for in contract of employment or under company policy.

SEVERANCE
Employers must adopt a retirement benefit system. The default is the statutory severance pay system whereby upon termination of employment for any reason (including employee resignation), where the employee has been employed for at least 1 year, the employee is entitled to severance pay of 30 days “average wages” (all wages generally including bonus paid within the previous 3 months) for each year of continuous service.
POST-TERMINATION RESTRAINTS

Restrictive covenants are generally enforceable in South Korea provided they are reasonable and protect an employer’s trade secrets.

NON-COMPETES

Enforceable if reasonable and protect employer’s trade secrets.

CUSTOMER NON-SOLICITS

Enforceable if reasonable and protect employer’s trade secrets.

EMPLOYEE NON-SOLICITS

Enforceable if reasonable and protect employer’s trade secrets.

WAIVERS

Permissible. Terminations are often implemented through mutual agreements.

REMEDIES

DISCRIMINATION

Employee may bring claim before the National Human Rights Commission with possible remedy of recommendation for cease of discriminatory activities and/or damage compensation, etc.

UNFAIR DISMISSAL

Employee can bring claim before the relevant Regional Labour Relations Commission (RLRC) with possible remedy of reinstatement with back pay. Where the employee does not wish to be reinstated, a lump sum can be provided to the employee. Employees dismissed without cause may also initiate civil proceedings in the District Court.

FAILURE TO INFORM & CONSULT

In certain circumstances the employer’s action can be deemed null and void in the absence of required consultation. Action for breach of contract may be possible but damages should be substantiated.

CRIMINAL SANCTIONS

If the ruling of unfair dismissal is finalized by the court and the employer does not comply with the reinstatement order from RLRC, the employer may be subject to an imprisonment of up to 1 year or a criminal fine of up to 10 million KRW.
SPAIN

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law. Member of European Union (EU), so required to implement relevant EU Directives. Euro EUR. Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage employees in Spain with proper payroll registrations, subject to business, corporate and tax considerations. Withholdings for income tax and social security to be done through payroll.

PRE-HIRE CHECKS
REQUIRED
Immigration compliance. For certain roles (e.g., security guards), the employee must provide the potential employer with a certificate proving lack of criminal records (the authorities issue certificates in this sense). Such certificates cannot be stored by the employer nor transferred to any other entity.

PERMISSIBLE
Reference and education checks are permissible with the applicant’s consent only. Most companies and institutions prefer to deliver the information directly to the applicant so that he or she can supply it to the potential new employer directly and personally.

IMMIGRATION
Nationals of the European Economic Area (EEA) and Switzerland have a right to work in Spain. A residency and work permit are required for non-EEA/Swiss nationals.

HIRING OPTIONS
EMPLOYEE
Indefinite or fixed-term (subject to strict limitations) and full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against due to their status.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company. It is important to check that they are not misclassified, as this may create liability.

AGENCY WORKER
Agency workers can only be engaged for a fixed-term or in training situations. Agency workers have the right to equal treatment to employees in relation to their essential labor conditions through the entire length of the relationship.
EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Verbal employment contracts are legal in certain cases, but are not market practice. In any case, for employment relationships which exceed 4 weeks, certain minimum information has to be put in writing, and in all cases, a summary of the main terms of the contract (copia basica) has to be lodged with the Employment Office. For certain types of contracts (e.g., seasonal employment agreements), an official template employment agreement is also required (provided by the Employment Office).

Mandatory employment legislation and the applicable collective bargaining agreement (CBA) must be honored.

PROBATIONARY PERIODS
Permissible. Subject to the limits fixed by the applicable CBA, and where the CBA is silent, the term is 6 months for qualified employees, and 2 months for unqualified employees (3 months in companies with fewer than 25 employees).

Companies with fewer than 50 employees can enter into the so-called “contract to promote entrepreneurship,” which permits a 1-year probationary period (for qualified and non-qualified employees).

POLICIES
Not formally required, although is common practice for major companies on multinational employers.

THIRD-PARTY APPROVAL
Apart from the filing of the basic copy mentioned above, there are no requirements for employment contracts or policies to get approved by any third party. However, if policies include work control systems (e.g., policy regarding the use of the IT systems) or professional formation plans, then employees’ representatives should be invited to provide a non-binding report.

LANGUAGE REQUIREMENTS
The basic copy of the employment agreement (copia basica) must be in Spanish. The official template employment contract is provided by the Employment Office only in Spanish. If companies issue additional employment agreements, they could technically be in any language, but a Spanish version is highly recommended, as in case of conflict the judge will decide based on the Spanish translation.

MINIMUM EMPLOYMENT RIGHTS
EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All employees, except that employees subject to special employment regulation of senior management (Royal Decree 1382/1985) are not subject to the minimum employment rights established by the Workers’ Statute, unless otherwise agreed. In addition, most CBAs exclude senior managers from their scope.
WORKING HOURS
As a general rule, there is a 40 hour per week limit on working time. CBAs may establish reduced working hours.

OVERTIME
Only with employee consent (except in cases of force majeure). Overtime must be compensated in cash (with a value at least equivalent to the ordinary hour) or time off in the following 4 months. CBAs may establish a more beneficial treatment for the employee.

WAGES
The minimum wage fixed by the Spanish government for 2016 is: EUR 21.84 per day, EUR 655.08 per month and EUR 9,171.12 per year (14 payments) for a full-time worker.

All CBAs establish salary charts with higher minimum wages.

VACATION
30 days per year (plus 14 public holidays). CBAs may establish longer vacation.

SICK LEAVE & PAY
Employees are entitled to take time off for sick leave (usually up to 18 months). There is a mandatory sick pay to be borne by the Social Security Scheme. CBAs may require the employer to improve social security benefits.

MATERNITY/PARENTAL LEAVE & PAY
16 weeks’ paid maternity leave and 15 days’ paid paternity leave. In both cases, the pay is to be borne by the Social Security Scheme and equivalent to 100% of the regulatory base (that is, the employee’s salary determined pursuant to a specific formula over which public benefits are calculated), except the first 2 days of the paternity leave, where the cost is covered by the employer at the employee’s regular salary. Employees have a right to return to work. CBAs may require the employer to improve social security benefits. In some cases, the father can take a part of the maternity leave days.

DISCRIMINATION
Characteristics protected: age, disability, gender reassignment, marriage or civil status, pregnancy or maternity, race, religion or belief, sex or sexual orientation, political ideas, union membership, family relationships with co-workers and language.

Discrimination cases are not frequent in Spain, with the exceptions of trade union related issues, or discrimination based on family related rights (i.e., maternity, paternity).

BENEFITS & PENSIONS
Minimum benefits and pensions fixed by law and covered by the Social Security Scheme. CBAs may establish further benefits or pensions complementing those set out by the public system.
DATA PRIVACY

Employees generally must be notified of personal data processing (and in certain cases, have to give consent). Registration of databases with the Spanish Data Protection Commissioner (AEPD) is required. Special rules apply to data transfers, even between companies belonging to the same group. International data transfers are subject to a stringent regime of administrative approvals and consents. Significant restrictions on monitoring email and Internet use at the workplace.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive and Section 44 of the Workers’ Statute in case of change of employer (e.g., sale of an independent stand-alone business unit, merger, or spinoff). Right of the employees to maintain the same terms and conditions. The transfer is not by itself a cause for fair dismissal. Duty to inform, and in case labor measures are planned (e.g., change of work center, change of employment conditions, collective dismissal), duty to consult with employee representatives.

EMPLOYEE REPRESENTATION

Both trade unions and work councils occupy a preeminent position in Spanish labor law. Industry level CBAs are very common. They may co-exist with CBAs agreed at a company level.

In companies with 11-49 employees (or in companies with 6-10 employees if requested by the majority of employees), employees can invite elections to personnel delegates, in companies with 50 or more employees, elections to a works council. Personnel delegates and works commits have the same rights. The company cannot initiate such elections (but also cannot hinder employee rights in that regard).

TERMINATION

GROUNDS

Decided unilaterally by the employer: redundancy of the job position based on economic, organizational, productivity or technological reasons on individual or on collective basis; disciplinary dismissal (including performance).

Other termination grounds: employee resignation; constructive dismissal; mutual agreement; grounds legally agreed in the contract; expiration of a fixed-term contract; death; permanent disability; employee’s retirement; force majeure; death or permanent disability.

EMPLOYEES SUBJECT TO TERMINATION LAWS

All.

RESTRICTED OR PROHIBITED TERMINATIONS

Some employees are protected against unfair dismissal (e.g., pregnant employees, employees enjoying reduced working time to take care of a child, employee representatives, employees who have filed a claim against the company). Protected employees can be terminated, but only for fair cause, or they will be entitled to reinstatement and back wages.
THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Third-party approval not required for individual terminations. Termination documents in accordance with employment legislation are required.

MASS LAYOFF RULES
Collective dismissal rules will be triggered in the case that the number of affected employees exceed the legal thresholds (e.g., 10 terminations in a 90-day period in companies with fewer than 100 employees).

Strict information and consultation rules apply, which require involving both the employees’ representatives and the labor authority. However, there is no need to obtain approval for termination.

Terminations can be challenged by the employees, the employee’s legal representatives, and in exceptional cases by the administration.

NOTICE
15 days’ notice in case of redundancy of common employees. Senior managers are entitled to a minimum 3 months’ notice.

Not required in case of disciplinary dismissal.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
If the 15 days’ notice is not honored, payment in lieu of notice is required.

Garden leave is not expressly regulated, although employers sometimes use garden leave (which may result in issues given the employee’s right to work).

SEVERANCE
Fair individual redundancy: 20 days of salary pay per year of service up to 12 months. For collective layoffs, usually increased through collective consultations.

Fair disciplinary dismissal: no severance.

POST-TERMINATION RESTRAINTS
Those aimed to protect the employer’s legitimate business interests can be enforced provided that:

a) the employee receives adequate consideration and

b) they do not exceed 2 years for qualified employees and 6 months for non-qualified employees.

NON-COMPETES
Permissible under the abovementioned rules.

Once agreed the employer cannot unilaterally waive and therefore must pay the agreed compensation. This restriction is usually agreed with high profile employees only.
CUSTOMER NON-SOLICITS
Permissible under the abovementioned rules. Extensive solicitation could also be subject to civil law claims under unfair competition rules.

EMPLOYEE NON-SOLICITS
Permissible under the abovementioned rules. Extensive solicitation could also be subject to civil law claims under unfair competition rules.

WAIVERS
In principle, statutory rights cannot be waived and any waiver of the rights will be null and void. However, some exceptions apply.

REMEDIES

DISCRIMINATION
Remedies include declaration of nullity of the company’s decision; order to immediately stop the discriminatory practice; damages compensation; and/or reinstatement of the employee to his/her position prior to the violation of the fundamental right. In addition, companies can face a fine ranging from EUR 6,251 to EUR 187,515 to be imposed by the Labor Inspector, but subject to appeal firstly before higher administrative bodies and subsequently before the labor courts.

UNFAIR DISMISSAL
In case of null and void redundancy or disciplinary dismissal (e.g., due to breach of fundamental rights, or due to discrimination): automatic reinstatement plus payment of back wages; in some cases, an additional damages compensation.

In the case of unfair redundancy or disciplinary dismissal: The employer must choose between:

a) reinstatement plus payment of back wages or

b) payment of a severance compensation, as follows:

   (i) From the hire date until 11 February 2012: 45 days of salary per year of service capped at 42 monthly instalments, plus

   (ii) From 12 February 2012 to the termination date: 33 days of salary per year of service capped at 24 monthly instalments.

In principle, the total severance cannot exceed compensation for 720 days of work, except that the employee is entitled to a higher severance by application of the 45-day rate, in which case compensation is capped at 42 monthly instalments.

Employee representatives who are unfairly terminated will have the right to choose between payment or reinstatement.
FAILURE TO INFORM & CONSULT
Failure to inform the employee representatives of individual redundancy will lead to the declaration of unfairness of the termination.

Failure to comply with information and consultation duties in a collective dismissal will lead to the declaration of nullity of the terminations and a fine ranging from EUR 6,251 to EUR 187,515. If the rights of the trade union are violated, an additional uncapped compensation can be imposed (normally between EUR 3,000 and EUR 6,000).

Failure to inform or entrust in the start of TUPE will result in a fine ranging from EUR 651 to EUR 6,251 and exceptionally, declaration of nullity of the transfer of employees.

CRIMINAL SANCTIONS
There are criminal sanctions related to employment issues such as those linked to work-related accidents and social security fraud.

Generally, legal persons shall be held criminally accountable for the felonies committed in their name or on their behalf, and to their benefit, by their legal representatives and de facto or de jure administrators. Legal persons shall also be criminally accountable for the felonies committed when perpetrating the corporate activities and on account and to the advantage thereof.
SWEDEN

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law. Member of European Union EU, so required to implement relevant EU Directives. Swedish Krona (SEK). Swedish language.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign company can engage employees in Sweden with proper payroll registrations, subject to business, corporate and tax considerations. Employers are obliged to pay social security charges on top of gross salary and most benefits. The social security charges amount to approximately 31% to be borne by the employer. The Swedish personal tax system operates with a progressive rate varying from approximately 28% to approximately 57%.

The employer shall deduct from the gross salary and deliver an employee’s personal tax to the Swedish Tax Authority.

PRE-HIRE CHECKS
REQUIRED
No pre-hire checks required in general.

PERMISSIBLE
On immigration compliance, references and education checks are common and permissible with applicant consent. Criminal record checks are only permissible for specific roles (e.g., childcare positions) and subject to proportionality requirements.

IMMIGRATION
Nationals of the Nordic countries, most EU/European Economic Area (EEA) countries and Switzerland are permitted to begin working immediately upon entering Sweden, but must register at the Migration Board no later than 3 months after entering the country. Most non-EU/EEA, non-Nordic and non-Swiss citizens who intend to enter Sweden to work need a work permit.

HIRING OPTIONS
EMPLOYEE
Indefinite, fixed-term, full-time or part-time. An employer may not put an employee working part-time or employed on a fixed-term contract in a disadvantage by providing a less favourable salary or other employment terms, compared to employees in a similar situation working full-time or those in permanent employment.
INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company. However, engagement may be subject to misclassification exposure. Also, hiring of independent contractors may be subject to consultation requirements if the employer is bound by a collective bargaining agreement.

AGENCY WORKER
Agency workers can be hired in order to assign them to user undertakings to perform work under the user undertaking’s supervision and direction. The equal treatment principle under the Swedish Act on Agency Work requires that the employer (i.e., the temporary work agency) ensure that the basic working and employment conditions for the employee who has been assigned to a user undertaking shall be at least those that would have applied if the employee had been employed directly by the user undertaking to perform the same work.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Within 1 month of the commencement of employment, employees must be provided with certain information regarding minimum terms, e.g., name of employer, salary, work place, vacation, type of employment etc. Issuing employment agreements is common best practice.

PROBATIONARY PERIODS
Permissible. Subject to a statutory limit of 6 months.

POLICIES
No requirement of written policies, but they are commonly used. It is generally advisable for an employer to have policies, e.g., concerning unilaterally issued benefits and use of work equipment (Internet access, computers and mobile phones).

THIRD-PARTY APPROVAL
No requirement.

LANGUAGE REQUIREMENTS
No statutory requirements, but it would be advisable to ensure that all employees understand the language of the documents provided.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
Standard working hours are 40 hours per week. The employer may require the employees to work overtime for up to 48 hours during a period of 4 weeks or 50 hours during 1 month, subject to a maximum of 200 hours per year (general overtime). An employer may require, provided that there are special reasons and the situation cannot be resolved in any other way, overtime in addition to general overtime subject to a maximum of 150 hours per year (additional overtime).
OVERTIME
There is no statutory right to overtime payments, however, collective bargaining agreements typically include a right to overtime payments for employees in lower positions.

WAGES
There are no statutory regulations on minimum wages in Sweden. However, collective bargaining agreements typically include provisions regarding minimum wage/salary. Thus, subject to any collective bargaining agreement and non-discrimination law, an employer and employee can freely agree upon the level of salary to be paid and any future salary increases.

VACATION
Employees are entitled to 25 days of paid holiday (public holidays excluded), after 1 year of employment (qualifying year), pursuant to the Swedish Holiday Act. 30 days of annual holiday is common for white collar employees and professionals either by individual contract or by a collective bargaining agreement.

SICK LEAVE & PAY
Employees are entitled to sick pay for 14 days under the Swedish Sick Pay Act, subject to a qualifying day (karensdag).

Sick pay amounts to 80% of the employee’s salary and benefits. As of day 15, employees are entitled to sickness allowance from the Swedish Social Insurance Office (Forsakringskassan).

MATERNITY/PARENTAL LEAVE & PAY
Employees are entitled to parental leave under the Parental Leave Act. The mother is entitled to 7 weeks before birth as well as 7 weeks after birth (both included in the 480 days mentioned below). The father is entitled to 30 days in connection with the birth to be taken at the same time as the mother. Parents are also granted different types of leave (e.g., total leave) until the child has reached the age of 18 months or, provided that the parent is still in receipt of a full parental allowance, for a period of time after the child has reached the age of 18 months.

The employer is not required to pay the employee any salary during the time he or she is on parental leave (although the employee will accrue holiday during the parental leave as if the employee had worked for up to 120 days, or in case of a sole parent up to 180 days). Instead, an employee is entitled to a parental allowance from the government. Parental leave is closely related to the right to parental allowance. Parental allowance is paid by the Swedish state for at most 480 days (450 days for children born before 2002), until the child has reached 12 years (8 years for children born before 2014). For children born 1 January 2014 and after, parental allowance is paid for at most 96 days when the child is between age 4 and 12. Similar rights to parental leave are also available to employees adopting a child. Of the 480 days, 90 days are reserved for each parent respectively.

DISCRIMINATION
The Discrimination Act covers discrimination on the grounds of: sex, ethnic origin, religious or other belief, disability, sexual orientation, age and transgender identity or expression. The Discrimination Act contains provisions on active measures, supervision, and invalidity of discriminatory provisions in individual and collective bargaining agreements, entitlement to compensation and legal proceedings.
BENEFITS & PENSIONS

In general, benefits are either introduced by the individual contract of employment or by the collective bargaining agreement. The benefits provided to an employee usually depend on the level of seniority in the organization. Common benefits, at least for persons at a more senior level, are additional paid holidays, contributions to a private pension insurance; health and death insurance; mobile-telephone; company car/car allowance; and contributions (in addition to what is paid from the Swedish state) from the employer during parental leave. Collective bargaining agreements typically include provisions regarding payment of pension contributions into private pension insurance. Benefits generally are subject to social security charges to be paid by the employer and taxes to be paid by the employee.

DATA PRIVACY

The Swedish Personal Data Act applies to the processing of employees’ personal data. The employer must ensure that the fundamental requirements for processing of the employees’ personal data are fulfilled (e.g., personal data must be correct, adequate and relevant in relation to the purposes of the processing and may not be retained for a longer period than is necessary in light of the purposes of the processing), there must be a legal basis for the processing, such as performance of the employment agreement or consent, and the employee must receive adequate information regarding the processing. Special rules apply to data transfers outside the EEA.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a business transfer are automatically transferred, under the Employment Protection Act (EPA). The employer has a duty to inform and consult with trade unions if the company is bound by a collective agreement, or with any trade union that whose members employed by the company will be affected by the transfer. Any dismissal connected to the transfer would be in breach of the EPA, unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

Sweden has a high rate of trade union affiliation among employees, totalling around 75-80%. The Co-Determination Act (medbestammandelagen) consists of rules regulating collective agreements, rules of procedure regarding negotiations, consultations and employee representation. Pursuant to the Co-Determination Act, both employees and employers have the right to belong to an organization of employees or employers and to exercise the rights of membership in such organization. The right of association may not be infringed upon. Collective bargaining in Sweden is centralized and historically bargaining in the private sectors has taken place on three levels: national (between the Confederation of Swedish Enterprises and the employee federations); industrial-wide (between industrial-wide organizations on both sides); and local (between the company and the local union). Legally binding agreements are concluded at all levels of bargaining. Traditionally, the industrial-wide level has been the focus of bargaining and there are industrial-wide collective agreements in almost every sector of the Swedish economy.

The concept of works councils is not recognized in Sweden (besides European Works Councils). Instead, employees’ influence is safeguarded by the trade unions.
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**TERMINATION**

**GROUNDS**
The EPA requires that the employer has a “just cause” in order to terminate employment. The EPA distinguishes between termination due to personal reasons (e.g., poor performance, misconduct or disloyalty) or economic reasons (e.g., restructuring or reorganization, closing down of business, etc.). Redundancy is generally deemed to constitute just cause for termination under the EPA (the employer must, however, follow the substantive and the formal rules laid down by the EPA). Conversely, termination due to personal reasons is deemed to be a last resort by the courts and the burden of proof is on the employer. An employee may also be summarily dismissed in a situation where he or she grossly neglects obligations towards the employer.

**EMPLOYEES SUBJECT TO TERMINATION LAWS**
The EPA applies regardless of employment period and form of employment and to all employees with only a few minor exceptions, e.g., employees in managerial or similar positions (in respect of salary, position and job assignment), members of employer’s family, employees engaged in the employer’s household and employees assigned public temporary work.

**RESTRICTED OR PROHIBITED TERMINATIONS**
If employment is terminated due to redundancy, the notice period for an employee on full parental leave does not commence until the employee returns to work or the date the employee would have returned to work. If an employee is given notice of termination during the employee’s vacation, the notice of termination shall be deemed effective not earlier than the day after the vacation ends.

Moreover, termination of employment may not be in violation of applicable anti-discrimination laws (e.g., the Discrimination Act and the Parental Leave Act). Employees who also are trade union representatives (fackliga fortroendeman) may be protected under the Trade Union Representative in the Workplace Act (lag om facklig fortroendemons stallning på arbetsplatsen).

**THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**
Not required.

**MASS LAYOFF RULES**
If more than 5 employees may be affected by a potential redundancy, the employer is obligated to notify the Swedish Public Employment Service in writing. Additionally, normal redundancy rules under the EPA must be adhered to.

**NOTICE**
The minimum statutory period of notice for the employer is 1 month and the period of notice increases by 1 month for each 2 years of service, up to a maximum of 6 months when the employee has a length of service corresponding to 10 years. However, it is permissible to have longer notice periods and it is common both in individual employment contracts and in collective bargaining agreements.

The EPA includes extensive formal and substantive rules to observe in relation to termination. An employer who intends to terminate an employee’s employment for personal reasons shall notify the employee and his or her trade union at least 2 weeks in advance prior to handing over the termination notice. Thereafter the employee and his/her trade union have a right to request consultations. The termination cannot be effected until the consultations are concluded. In case of termination without notice (summary dismissal), the notification shall be given at the latest 1 week before the termination becomes effective.
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STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Employees are both entitled to and have a duty to work during the notice period. Garden leave and payment in lieu of notice is subject to the employee’s consent.

SEVERANCE
Severance is not mandatory. However, at least in midsize to large companies it is standard practice to include a severance payment on top of the notice period for a managing director (typically not covered by employment protection) in the employment agreement. The severance pay is normally corresponding to 6 to 12 months’ fixed salary. In addition, in a specific termination situation, it is common that the employer pays a severance payment in addition to notice in a settlement agreement, especially if it is unclear whether just cause for termination exists or if there are other issues – e.g., in relation to issues in relation to non-compliance with the last-in-first-out-rule (LIFO).

POST-TERMINATION RESTRAINTS
There are no specific statutory rules under Swedish law prohibiting post-contractual restraints. Instead, the rules are normally contained in collective bargaining agreements which may allow post-contractual restraints under certain circumstances. However, such restraints may be deemed unreasonable and set aside or adjusted by a Swedish court. If the employee is provided with compensation (at least 60% of the employee’s monthly salary) during the restricted period, the chances of the restrictions being enforceable are typically better.

NON-COMPETES
Normally 9 months or at most 18 months. The latter normally only applies in exceptional circumstances.

CUSTOMER NON-SOLICITS
Permissible; can however be adjusted by a court ruling.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS
Enforceable, the employee may sign a settlement agreement waiving statutory rights.

REMEDIES
DISCRIMINATION
Any individual or legal entity that violates the prohibitions against discrimination and reprisals, or fails to fulfill the obligations to investigate and take measures against harassment, may be ordered to pay compensation to the individual who has been affected by the breach. An employer may also be liable to compensate for the economic loss that arises to the employee.
UNFAIR DISMISSAL
Employees can challenge a dismissal due to redundancy or due to personal reasons. If the termination is found unjust and deemed to be invalid, the employee is entitled to reinstatement; compensation for loss of income; and damages for other losses suffered and the infringement of the employee’s rights. If the employer refuses to comply with a court’s judgment regarding reinstatement, the employer is additionally liable for damages equal to 16-32 monthly salaries. If the employee does not ask for reinstatement, he or she will be entitled to economic damages to cover lost salary, capped at a maximum of 32 monthly salaries. In addition to economic damages, the employee would be entitled to general damages.

FAILURE TO INFORM & CONSULT
Liability for damages to trade unions. Damages seldom exceed SEK 150,000 per breach.

CRIMINAL SANCTIONS
An employer who intentionally or negligently fails to comply with an order or prohibition issued by the Swedish Work Environment Authority pursuant to certain regulations may be fined or sentenced to imprisonment for a maximum of 1 year.
SWITZERLAND

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil law. Not a member of the European Union (EU), but member of the European Free Trade Association (EFTA). Swiss Francs (CHF). German, French, Italian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can generally engage employees in Switzerland subject to business and corporate tax planning considerations and provided the employee can validly work in Switzerland.

Social charges vary according to canton and the employer’s chosen pension fund scheme. Employer’s contributions have to be paid in addition to the gross salary, at approx. 12-20% of the gross salary. Employee’s contributions have to be deducted from the employee’s gross salary, at approx. 10%-17% of the gross salary. The employer has to deduct employee’s tax at source where applicable.

PRE-HIRE CHECKS

REQUIRED
Immigration compliance. Criminal and credit reference checks for specific roles (e.g., attorneys-at-law, bank executives).

PERMISSIBLE
Criminal and credit reference checks are only permissible if they are relevant to the proposed work and are subject to proportionality requirements. Reference and education checks are common and permissible with applicant’s consent.

IMMIGRATION
For all non-Swiss nationals, a work permit is required but EU citizens may generally start working as soon as the request is filed. Swiss people have voted in early 2014 in a referendum that aims to terminate the agreements with European Union. Currently, we are uncertain about the legal consequences of this. The referendum has to be implemented within three years. The work permit is generally easily granted for EU/EFTA nationals with certain restrictions for Bulgarian and Romanian citizens.

HIRING OPTIONS

EMPLOYEE
Indefinite, fixed-term, with maximum duration, full-time or part-time.
INDEPENDENT CONTRACTOR
Independent contractors can be engaged with such status only if they can organize their time and duties themselves and effectively bear the economic risk related to their activity. Engagement may be subject to misclassification exposure.

AGENCY WORKER
Generally, agency workers have to be formally employed by specifically authorized companies. If an extended collective employment agreement applies to the receiving company’s employees, agency workers will also benefit from its provisions regarding salary and work duration.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
The employee should at least receive, within the first month of employment, written indication regarding the names of the parties, the starting date, the position, the salary and possible additional salary elements and the weekly work duration.

Mandatory legal provisions must be observed, as well as collective labor agreements whose scope has been extended by the State to all employers in a specific industry (which is the case, for instance, in the construction industry, furniture industry, hospitality and restaurant sectors, private security services and retail).

PROBATIONARY PERIODS
Permissible. Up to 3 months (statutory limit).

POLICIES
So-called “industrial companies” (i.e., factories manufacturing and processing goods and enterprises using machines and/or automatic processes) must have a written health and safety policy and, where necessary, a disciplinary measures policy. These are optional for other companies. It is common to have expense reimbursement policies. Specific grievance policies are highly recommended.

THIRD-PARTY APPROVAL
An industrial company’s mandatory health and safety policy needs to be reviewed by the Cantonal Labor Authority.

LANGUAGE REQUIREMENTS
No statutory requirements.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All, except that top managers are not subject to a specific maximum work duration.
WORKING HOURS
45 hour a week limit on working time for most workers (supplementary time possible within appropriate limitation, e.g., in case of emergency, and generally for max. 2 hours a day and 170 hours a year). Generally, working hours of employees should be recorded.

OVERTIME
Overtime must be compensated at 125%. The employee can consent to compensation by time off. As long as overtime is not over the maximum legal duration, the employer and the employee can have a written agreement providing for other compensation (e.g., at 100% instead of at 125%) or even no additional compensation at all when the agreed salary arguably compensates the overtime, and overtime is not much more than what could be expected when signing the contract.

WAGES
No general legal minimum wage; minimum wages are sometimes stated in specific collective labor agreements and specific standard employment agreements.

VACATION
At least 4 weeks per year (5 weeks for employees under 20 years old), and generally 9 public holidays (depending on the canton).

SICK LEAVE & PAY
Sick leave is paid in proportion to increasing seniority. Companies and employees can opt for a derogatory scheme (e.g. loss of earning insurance providing for 80% of salary up to 720 daily indemnities).

MATERNITY/PARENTAL LEAVE & PAY
16 weeks’ maternity leave after childbirth (14 weeks paid by the Federal insurance, 2 additional weeks in Geneva canton). 1 week paternity leave common in practice but not mandatory.

DISCRIMINATION
Gender discrimination is directly prohibited. Other kinds of unjustified discrimination are indirectly prohibited (i.e., only if the employee is able to prove that the discrimination has led to a violation of his or her personality, that is when he or she has suffered a painful worse treatment than other employees, without any objective reason).

BENEFITS & PENSIONS
Old-age, survivors and disability risks are covered by a three-tier system: first tier: mandatory social security contributions (AVS/AI); second tier: mandatory occupational insurance (the employer can agree an occupational insurance over and above the mandatory requirements); third tier (optional and not related to the employment relationship): voluntary payments with tax exemption.
DATA PRIVACY
Employees should in general be notified of personal data processing (and in certain cases, give consent). Registrations with the Federal Data Protection Commissioner are required in certain circumstances. Special rules apply to data transfer outside of Switzerland. Significant restrictions on monitoring email and Internet use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
Automatic transfer of all employment agreements in case of transfer of business undertakings (mostly asset deals). Duty to inform and consult with employee representatives if any, or, if none, with the employees.

EMPLOYEE REPRESENTATION
Workers are entitled to elect a representative in companies with more than 50 workers. Trade unions are prevalent in certain sectors. Industry level collective bargaining agreements are common. Trade-union arbitrators often act as conciliators when there is collective labor dispute.

TERMINATION

GROUNDS
Termination of indefinite duration contracts is possible for any reason, except for “abusive reasons”. Certain reasons cannot serve as a fair basis for a termination (individual characteristics, complaints made by employee regarding his or her working conditions or his or her agreement not being respected, trade-union membership, etc.) and a fair process must be followed in any case.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees.

RESTRICTED OR PROHIBITED TERMINATIONS
When employee is unfit for work (accident, sickness) for limited periods increasing with seniority (30 to 180 days), or is pregnant or in military service, or within the 16 weeks following giving birth.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Not required.

MASS LAYOFF RULES
Information and consultation rules apply when at least 10 employees are to be made redundant within 30 days, depending on various thresholds. The employer must also notify the Cantonal Labour Authority of the result of the consultation.

Depending on the canton, specific rules may also apply when at least 6 employees are dismissed within the same calendar month.
In bigger companies (250 employees and over), the employer must hold negotiations with the aim of preparing a social plan if it intends to make at least 30 employees redundant within 30 days (redundancies over a longer period of time that are based on the same operational decision are counted together). In other cases, a social plan is not mandatory unless a collective bargaining agreement provides for it.

**NOTICE**

Unless otherwise stated in the contract: 7 calendar days within the probation period; 1 month’s notice to the end of a month during the first year of service, then 2 months’ notice to the end of a month from the second to ninth years of service and 3 months’ notice to the end of a month thereafter.

The contract can provide for different notice periods, but no less than a 1 month’s notice after the probation period.

No notice required for terminations for very serious misconduct (such terminations have to be notified within 2 – 3 days after having discovered the breach).

**STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE**

No.

**SEVERANCE**

Due only to employees of at least 50 years of age and 20 years or more of service provided there is a shortfall in pension benefits. Due to this last condition, this statutory entitlement almost never applies. The severance amount would be between 2 to 8 months’ pay.

Written agreements and collective labor agreements may adopt specific provisions.

**POST-TERMINATION RESTRAINTS**

**NON-COMPETES**

Possible provided the working relationship allows for employees to have knowledge of their employer’s clientele or manufacturing and commercial secrets. Non-competition clauses based on knowledge of the client are in principle unacceptable in circumstances where the relationship between employees and clients is essentially a personal one based on employees’ abilities and their particular relationship with clients. The restraint has to be appropriately restricted with regard to place, time and scope such that it does not unfairly compromise the employee’s future economic activity. Typically no more than 1 year if based on the knowledge of the employer’s clientele, and no more than 3 years if based on knowledge of manufacturing and commercial secrets.

**CUSTOMER NON-SOLICITS**

Permissible (similar restrictions to non-compete).

**EMPLOYEE NON-SOLICITS**

Permissible (similar restrictions to non-compete).
WAIVERS

Waivers of mandatory entitlements agreed during the employment and the month after termination of employment are only enforceable if the waiver is made against well-balanced concessions.

REMEDIES

DISCRIMINATION

Gender discrimination at hiring: up to 3 month’s salary.

Sexual harassment: up to 6 months based on the Swiss average salary. Moral sufferance: generally no more than CHF 25,000.

UNFAIR DISMISSAL

Maximum penalty of an amount equivalent to 6 months’ salary (rarely more than 4 months). Unfair dismissal decided in retaliation against a gender claim may lead to reinstatement in the company (rarely invoked).

FAILURE TO INFORM & CONSULT

Mass redundancies: 2 possible consequences: a) the employment agreements are not considered as terminated as long as the Cantonal Labor Authority has been notified with the result of the consultation; b) the dismissal is considered as unfair, giving right to compensation capped to 2 months’ salary.

Transfer of business undertakings: general remedies (reimbursement of damages). Merger: possibility to block the merger.

CRIMINAL SANCTIONS

Failure to comply with health and safety legal requirements; undeclared or illicit work; sexual and psychological harassment.
TAIWAN

LEGAL SYSTEM, CURRENCY, LANGUAGE

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
Foreign companies cannot directly engage employees in Taiwan, but can set up branches, subsidiaries and representative offices, all subject to different registration procedures.

Withholdings for taxes, labor insurance, pension, and health insurance.

PRE-HIRE CHECKS

REQUIRED
Work permit and residency compliance.

PERMISSIBLE
Non-criminal record certificates, reference and education checks are permissible with applicant consent, although some restrictions apply.

IMMIGRATION
All foreign nationals, including Hong Kong and Macau citizens, require work permits to work in Taiwan. Chinese citizens are not considered foreigners and are subject to special rules, depending on the purpose of their stay. Companies employing foreigners are required to abide by industry, quota, and credential restrictions.

HIRING OPTIONS

EMPLOYEE
Fixed-term and non-fixed contracts. Full-time or part-time.

INDEPENDENT CONTRACTOR
Independent contractors fall outside the scope of the Labor Standards Act (LSA). Courts will review the degree of control over a worker in deciding whether he or she is subject to the LSA and is in fact an employee.

AGENCY WORKER
Called “dispatch worker” in Taiwan and subject to government restrictions.
EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Employment contracts are not mandatory for Taiwanese nationals, but are common. Employment contracts are required for foreign employees.

PROBATIONARY PERIODS
Permissible, but there are no provisions under the LSA which govern probationary periods. Accordingly, advance notice and severance are required for terminations.

POLICIES
Work rules containing health, safety and grievance policies required for organizations with over 30 employees.

THIRD-PARTY APPROVAL
Foreign worker contracts are required to be submitted to the Ministry of Labor. Work rules must be submitted to the local labor authorities.

LANGUAGE REQUIREMENTS
No statutory requirements, but any supporting documents must be presented to the courts in Chinese in the case of any disputes.

MINIMUM EMPLOYMENT RIGHTS
EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
8 hours per day and 40 hours per week. Depending on the industry and with approval from a labor-management conference, employers are allowed to adopt various types of flexi-time schedules. The 2-hour flexible schedule allows a worker to distribute up to 2 hours to other days, with a limit of not more than 48 hours a week. For a 4-week schedule, a worker can distribute hours within 4 weeks but the distribution must not go over 2 hours a day, and there must be at least 2 days off in a span of 2 weeks. The LSA also allows for a redistribution of hours over 8 weeks provided that regular working time is no more than 8 hours per day and not over 48 hours per week.

OVERTIME
Total work time (normal hours plus overtime) cannot exceed 12 hours per day. Overtime is 1/3 of hourly rate for less than 2 hours overtime, 2/3 for 2 to 4 hours of overtime, and double pay during national emergencies.

WAGES
Minimum wage is TWD 120 per hour (TWD 20,008 a month).
VACATION
7 days of paid vacation leave after 1 year. 19 days off for public holidays, with varying dates.

SICK LEAVE & PAY
30 days of 1/2 pay sick leave per year.

MATERNITY/PARENTAL LEAVE & PAY
8 weeks of maternity leave at full pay (1/2 for employees who have worked less than 6 months). Those suffering a miscarriage will also be entitled to leave. 5 days of paid paternity leave. Unpaid parental leave for up to 2 years for each child under 3 years old.

DISCRIMINATION
Characteristics protected from unlawful discrimination and harassment: age, disability, class, thought, facial features, language, gender reassignment, marital status, political party, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

BENEFITS & PENSIONS
Labor and National Health Insurance systems covered through payroll deductions and contributions. There are 2 pension systems (older LSA and New Pension Act). Foreigners are only allowed to participate in the LSA pension system unless they are married to a Taiwanese citizen.

DATA PRIVACY
The collection, processing, and use of employee personal information is governed by the Personal Information Protection Act. The Act has notice and consent requirements that can be applicable to the collection, processing and use of employee information and are if there will be cross-border transmission of the information or any use outside of the norms of a domestic employment relationship.

Under amendments to the Employment Services Act that came into force in late 2012, the amount of personal information that an employer may request from an employee or prospective employee has been severely restricted. Prohibited or restricted personal information includes: physiological Information: for example, medical tests and fingerprints; psychological Information: for example, psychiatric tests and polygraph tests; and personal lifestyle information: for example, financial records, criminal records, family information and plans, and background checks.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
There is no automatic transfer of employees in an asset sale. The new employer must inform the employees of the new terms and regulations and obtain the employees’ formal consent to the offer of new employment. If the employee refuses to accept the new terms and conditions, the previous employer must make severance payments to the employee. There is also a duty to inform and consult with employee representatives (unions).

In a merger and acquisition situation, 30 days’ advance notice of the acquisition and the terms and conditions of employment with the new employer must be provided to the employees. Employees then have 10 days to accept or decline the offer with the new employer. The employee's failure to respond presumes consent. Past seniority must be recognized.
EMPLOYEE REPRESENTATION

Unions are allowed, but highly regulated. 30% of the labor force are union members.

For businesses with more than 30 employees, which are regulated by the LSA, it is mandatory to have a labor management council. In practice, however, these councils are rarely used because many larger corporations have unions in any event.

TERMINATION

GROUNDS
Allowed without notice and severance for acts of violence, serious contract/rule breaches, equipment abuse, misrepresentation of qualifications, unjustified absence from work for 3 days, or a jail sentence that cannot be commuted to a fine.

Termination is allowed in other cases, but advance notice and severance are required. Employers may terminate the employment of employees for redundancy only: where the employer is ceasing business or the ownership of the employer is being transferred; where the employer suffers a loss or is curtailing business operations; where the operations of the employer are suspended for more than 1 month due to force majeure (i.e., when performance of contractual obligations are prevented by an event or circumstance outside the parties’ control); where the business nature of the employer has been altered, a reduction in the number of employees is necessary, and there are no other suitable job openings for the redundant employees. Employees can also be terminated on performance grounds where the employee is proven to be incapable of carrying out the work assigned to him/her.

EMPLOYEES SUBJECT TO TERMINATION LAWS
Most employees (95.3%), including foreigners, are covered under the LSA.

RESTRICTED OR PROHIBITED TERMINATIONS
No prohibitions, although termination is not allowed if there are available job openings for redundant employees.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Not required, absent a mass layoff.

MASS LAYOFF RULES
The Mass Layoff Protection Act (MLPA) applies depending on number of employees and time frame. Where the MLPA applies, 60 days’ advance notice and public announcements must be given to (i) the labor union of which the affected employees are members of (if applicable); (ii) the employees’ representatives at the Labor-Management Conference; and (iii) the employees affected by the redundancies. Further, the employer must notify the local labor authorities of the redundancy plans. Within 10 days of the date of notification of the redundancy plans, the employer and the affected employees must engage in discussion to reach agreement regarding the mass redundancies.

NOTICE
10 days’ notice after 3 months to 1 year of employment, 20 days for 1 to 3 years, 30 days for 3 years of more. Notice not required for very serious misconduct.
STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Both permitted.

SEVERANCE
Generally 50% of average monthly pay per year of service up to a maximum of 6 months’ pay. For foreigners and local employees still under the LSA pension system, 1 month’s average pay for each year of service.

POST-TERMINATION RESTRAINTS
Assessed by the courts on a case-by-case basis. Generally, they are enforceable to the extent that they are reasonable. In order for an employer/employee non-competition agreement/provision to be valid and enforceable, the following requirements must be met:

i. there are special interests of the employer that deserve protection;

ii. the employee occupies a certain level of position in the company;

iii. the restrictions on the new employment in respect of the employee, duration, geographical area and professional activities should be reasonable;

iv. a competitive action by the employee would be a violation of trust and faithfulness to the employer;

v. employees need to be compensated for loss from the non-competition obligation; and

vi. the amount of any penalty must be reasonable.

NON-COMPETES
Up to 24 months. No specific laws, only government guidelines.

CUSTOMER NON-SOLICITS
Permissible for restraint periods up to 24 months.

EMPLOYEE NON-SOLICITS
Permissible, no longer than 24 months recommended.

WAIVERS
Waivers of statutory claims may not be enforceable in Taiwan.

REMEDIES
DISCRIMINATION
Penalties range from TWD 300,000 to TWD 1.5 million. Severance and pay in lieu of notice may also be required in dismissal cases.
UNFAIR DISMISSAL
Employee usually entitled to severance and pay in lieu of notice. In unfair dismissal cases regarding pregnancy/ miscarriage, or occupational injury, penalties range between TWD 90,000 to TWD 450,000.

FAILURE TO INFORM & CONSULT
While consultation is required for a mass lay off, there is no requirement to consult the employees in case of individual redundancies unless a mass layoff is involved. Failure to inform would result in the employer being required to pay statutory severance as well as payment in lieu of notice. Penalties range from TWD 100,000 to TWD 500,000.

CRIMINAL SANCTIONS
Not a concern.
THAILAND

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law influenced by Common Law. Thai Baht (THB). Thai.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage employees in Thailand subject to certain business and tax considerations and proper payroll registration.

The employer must withhold tax at source, file a withholding tax return (Form PND 1, 2 or 3 as the case may be) and remit the amount of tax withheld to the District Revenue Office.

PRE-HIRE CHECKS

REQUIRED
Visa and work permit compliance. Age of the employee (the employee must not be younger than 15).

PERMISSIBLE
The use, publication or distribution of any information obtained requires consent from the candidate who has given such information.

A candidate can be asked to have a medical examination but this should only be after the employer has made a conditional offer of employment to a selected candidate.

If criminal or education checks are carried out, or employer references are sought, the candidate’s consent should be obtained.

IMMIGRATION
A foreign person intending to work in Thailand must obtain a valid non-immigrant business (‘B’) visa before entering Thailand and a work permit in Thailand before commencing any work.

Visa
The applicant must apply for a non-immigrant business (‘B’) visa at the Royal Thai Embassy or Consulate before entering Thailand.

The applicant will initially be permitted to stay in Thailand for a period of 90 days. The foreign employee must leave Thailand by the expiry date or apply for an extension of stay with the Thai Immigration Bureau. A 1 year visa may be granted to an applicant whose initial non-immigrant business (‘B’) visa has 30 days remaining. The 1 year non-immigrant business (‘B’) visa will be granted in 2 consecutive periods of 1 month and 11 months respectively.
Work permit

Once the employee has entered Thailand, a work permit application may be made. There must be 4 Thai employees for every 1 foreigner and the employer must have paid up registered capital of at least 2 million Baht per foreign employee (except where the employer obtains promotional privileges from the Board of Investment or other applicable exemptions apply). Processing the work permit application normally takes 2 weeks.

HIRING OPTIONS

EMPLOYEE

A “hire of services” is a contract whereby a person, called the employee, agrees to render services to another person, the employer, who agrees to pay remuneration for the duration of services. Employment can be full-time, part-time, definite or indefinite.

INDEPENDENT CONTRACTOR

A “hire of work” is a contract whereby a person, called the contractor, agrees to complete work for the service recipient, who agrees to pay remuneration upon completion of the work. In general, the service recipient will not have the power to control the contractor. An independent contractor will neither be protected nor entitled to employment rights under the Labour Protection Act B.E. 2541 (1998) (“LPA”) nor the Labor Relations Act B.E. 2518 (1975) (“LRA”).

AGENCY WORKER

According to the LPA, where an employer assigns another person to recruit a worker and it is not a job procurement business operation and such work is part of the manufacturing process or the work is for part of a business for which the employer is responsible, the employer shall be deemed to be the joint employer of the worker as if he/she were contracted under a hire of services contract by the employer (whether or not the employer supervises the work or is responsible for the payment of wages to the worker). The worker is entitled to claim for any benefit against the employer or such other person and the employer will be deemed to be the employer as if the employee were engaged by it directly. However, the employer may recover any payment made to the worker from such other person if there is an agreement providing for such reimbursement.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS

There is no requirement under Thai labor laws to have a written employment contract. However, in practice it is advisable to set out key terms and conditions of employment because those terms shall be considered as working conditions.

PROBATIONARY PERIODS

Permissible. A 3 to 6 month probationary period is common.
POLICIES
Where the employer employs 10 or more employees, work rules are mandatory. These must be provided in the Thai language and, as a minimum requirement, contain particulars of the following: working days; regular working hours and rest periods; holidays, and rules for taking holidays; rules concerning overtime work and work on holidays; date and place of payment of basic pay, overtime pay, holiday pay and holiday overtime pay; leave and rules for taking leave; discipline and punishment; submission of complaints; and termination of employment, severance pay and special severance pay.

In addition, a workplace having 20 or more employees shall have a written working conditions agreement which will form part of the employees’ contractual employment terms. This should include as a minimum: employment or working conditions; working days and hours; wages; welfare; termination of employment; petition procedure for the employee; and an amendment or renewal procedure of the working condition agreement.

THIRD-PARTY APPROVAL
Not required.

LANGUAGE REQUIREMENTS
No statutory requirement except for work rules which must be in Thai.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
Employees employed under a hire of services (including agency workers) whether under open-ended, fixed-term, full-time or part-time employment are entitled to minimum employment rights.

WORKING HOURS
Must not exceed 8 hours per day and 48 hours per week with a rest period of at least 1 hour once the employee has worked for 5 consecutive hours. The rest period may be split into intervals of not less than 20 minutes or taken at one time (although an employee may agree not to have a rest period if the work necessitates continuous performance and stopping may damage the work or the work is urgent). An employee is also entitled to at least 1 day off per week and the interval between days off shall be no longer than 6 days.

Work which may be harmful to the health or safety of the employees as prescribed by Ministerial Regulations shall not exceed 7 hours per day and 42 hours per week.

OVERTIME
No employer shall be permitted to require an employee to work overtime on a working day except with prior consent of the employee on a case by case basis. Where the nature or type of work necessitates continuous performance and stoppage may damage the work, or where the work is urgent (or in other circumstances prescribed in the Ministerial Regulations), the employer may require the employee to work overtime.

Where the overtime work is for more than 2 hours, the employer shall arrange for the employee to have a rest period for not less than 20 minutes before the employee commences the overtime work.
For employees who are paid on a daily or monthly basis, the employer shall pay compensation of at least 1 1/2 times the employee’s hourly wage rate for each hour of overtime worked (and of at least 3 times the employee’s hourly wage rate for each hour of overtime worked on a holiday). For employees who are paid wages based on the amount of work performed, the employer shall pay compensation of at least 1 1/2 times the employee’s wage rate per unit on the working day based on the amount of work performed during the extra hours worked (and of at least 3 times the employee’s wage rate per unit on the working day for each hour of overtime worked on a holiday).

**WAGES**
Minimum wage of THB 300 per day.

**VACATION**
An employee who has worked consecutively for 1 full year is entitled to an annual holiday with pay of not less than 6 working days during the following year, which shall be fixed in advance by the employer or fixed as agreed by the employer and employee. Where an employee has worked for less than 1 year, he/she is entitled to a pro-rata amount.

In addition, employees are entitled to 13 public holidays per year as prescribed and announced in advance by the employer.

**SICK LEAVE & PAY**
An employee who has worked consecutively for 1 full year is entitled to sick leave as many days as he/she is actually sick. He/she will be entitled to payment of his/her ordinary wages for up to 30 days. Where the employee takes 3 consecutive days’ sick leave, the employer may require the employee to present a medical certificate issued by a First Class medical practitioner or by a government clinic or hospital.

**MATERNITY/PARENTAL LEAVE & PAY**
A female employee who is pregnant is entitled to a period of 90 days’ maternity leave, during which she will be entitled to payment of her ordinary wages for 45 days.

There is currently no statutory paternity leave provided for the private sector. Paternity leave of 30 days can be given (with payment equal to 15 days’ salary) to public servants.

**DISCRIMINATION**
The Thai Constitution prohibits discrimination and the unequal treatment of employees. All persons are equal and shall enjoy equal protection under the law. Unjust discrimination against a person on the ground of origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education, or political views, is not permitted.

The LPA also provides for equality in the work place for employees and requires that an employer should treat male and female employees equally in their employment, unless the nature or conditions of the work does not allow the employer to do so.
BENEFITS & PENSIONS

Statutory benefits

Workmen’s Compensation Fund

Thailand has a worker’s compensation scheme which requires employers to pay medical expenses incurred by employees due to injury or disability caused by accidents arising out of and in the course of employment. Maximum compensation for total disability is 60% of salary for up to 5 years. Compensation for death is limited to 60% of salary for 8 years.

Social Security Fund

Every employer is required to register with the Social Security Fund. The government, employer and employee jointly contribute to the fund every time wages are paid. The rate of contribution is 5% of an employee’s salary with a maximum of THB 750 per month. As a member of the Social Security Fund, an employee is entitled to receive compensation benefits in non-work-related cases.

Voluntary benefits

Provident Fund

An employer may alternatively and voluntarily establish a Provident Fund which is used to provide security to an employee in the case of retirement, resignation, death or termination. The employee can contribute a minimum of 2% to a maximum of 15% of his/her wages, and the employer must contribute no less than the employee’s contribution.

DATA PRIVACY

There are currently no provisions governing data privacy under Thai law, although the Constitution offers general data privacy protection.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There is no automatic transfer of the employment relationship from one entity to another under the LPA. Employees can be transferred in two ways: either (i) the transfer of employment from the transferor to the transferee with the employee’s clear written consent or with a tripartite agreement entered into between the transferor, transferee and the employee, stipulating that all rights and benefits enjoyed by the employee during his/her employment with the transferor will continue and the employee’s service with the transferor will be recognized by the transferee; (ii) or full termination of the employee’s employment with the transferor and entering into of a new employment with the transferee. In this case, the transferor will be liable to pay statutory severance pay to and other compensation as provided under the LPA and the employee’s employment contract. With the employee’s employment fully terminated by the transferor, the transferee can offer the employee new employment with different terms and conditions (which may be less favourable from those offered by the transferor) and the employee’s service with the transferor will not be recognized.

Change of ownership of business

A mere transfer of shares in the employing entity will not be considered a transfer of business as the employing entity will remain the same.
EMPLOYEE REPRESENTATION

Employees representatives

The employees have the right to elect representatives (no more than 7 people) to participate in the negotiations about working conditions.

Any demand by the employer or employee to make or amend the working conditions agreement must be made in writing to the other party. If an employee submits the demand, such demand shall specify the names and signatures of the employees in support of the demand, which shall be not less than 15 per cent of the total number of the employees who hold interest in such demand.

Employee Committee

In a workplace of 50 or more employees, the employees may establish an Employees’ Committee. The employer must organize a meeting with the Employees’ Committee at least once every 3 months or upon the request of more than one-half of the Employees’ Committee members or the labour union. The purpose of the meetings is: (1) to provide employees’ welfare; (2) to consult about working regulations which may be beneficial to the employer and employees; (3) to consider any complaints by the employees; and (4) to compromise and settle disputes in the work place.

Labour Union

The LRA contains detailed provisions on the duties, formation and powers of labour unions. Certain rules and requirements need to be satisfied by officials before a labour union can be recognized. The labour unions have no mandatory collective bargaining agreements, but the labour union can assist in the settlement of disputes, acknowledgement of arbitral awards and in employee strikes.

TERMINATION

GROUNDS

Whether an employer has reasonable grounds for termination will be determined on a case by case basis. The following are grounds for termination of employment under the LPA:

1. being guilty of dishonesty or intentionally committing a criminal offence against the employer;
2. wilfully causing damage to the employer;
3. being guilty of recklessness which causes serious damage to the employer;
4. violating work rules or regulations or disobeying a fair and lawful order of the employer and in relation to which the employer has already given a written warning (except in serious cases where the employer does not need to give a warning). A written warning shall be effective for not more than 1 year from the date the employee committed an offence;
5. abandoning duties without justifiable grounds for 3 consecutive working days regardless of whether or not there is a holiday in between; and
(6) being sentenced to imprisonment by a final court judgement; provided that in the case of an offence committed due to recklessness or misdemeanours, the employer must have suffered damage as a result.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees hired under a hire of services.

RESTRICTED OR PROHIBITED TERMINATIONS
An employer cannot dismiss, reduce the wages of, punish and/or withhold the performance of duty of any employee who is a member of the Employees’ Committee unless permission to do so has been given to the employer by the Labour Court.

THIRD-PARTY APPROVAL FOR TERMINATION TERMINATION DOCUMENTS
No third party approval is required except for the termination of employee who is a member of the Employees’ Committee (in which case approval from the Labour Court is required).

MASS LAYOFF RULES
Only apply in the case of termination of employment due to the introduction of machinery or replacement of machinery or application of technology. There is no numerical threshold to be reached before the rules apply.

NOTICE
For an employee who is party to an open-ended contract, either the employer or the employee may serve to the other notice of termination on or before any salary payment date to take effect on the following salary payment date. However, it is not necessary to provide notice more than 3 months in advance.

Advance notice is not required if an employer terminates the employment with cause attributable to the employee as provided in the LPA.

For an employee employed under a definite period contract, an employer does not need to provide prior notice in order to terminate such employment at the agreed time. However, if the employment is renewed or extended regularly, this may be deemed to be an open-ended contract and notice of termination will be required.

In the case of termination of the employee’s employment by the employer as a result of reorganisation, improvement of the production process, distribution or service due to the introduction of machinery or replacement of machinery or application of technology which results in reduction of the number of employees, the employer must give 60 days’ notice of termination to the employee. A failure to give such notice will result in payment of special severance equal to the last 60 days’ wages.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Only the employer has the right to make a payment in lieu of notice.

There is no concept of garden leave under Thai laws. Employer and employees may agree thereto on a case by case basis.
SEVERANCE
LPA provides that an employer who terminates the employment of an employee without any cause attributable to the terminated employee as specified in the LPA (please refer to Grounds), is obliged to pay a severance payment to the employee at the rate prescribed by the LPA together with other due payments, e.g., payment in lieu of advance notice and other accrued obligations such as payment for unused annual leave, overtime payment, etc.

An employee employed under a definite period contract or a project contract whose employment is terminated according to such specified period is not entitled to any severance payment.

Rates of severance payment are as follows:

<table>
<thead>
<tr>
<th>Period of employment</th>
<th>Severance pay (wage equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>120 days but less than 1 year</td>
<td>30 days’ wages</td>
</tr>
<tr>
<td>1 year but less than 3 years</td>
<td>90 days’ wages</td>
</tr>
<tr>
<td>3 years but less than 6 years</td>
<td>180 days’ wages</td>
</tr>
<tr>
<td>6 years but less than 10 years</td>
<td>240 days’ wages</td>
</tr>
<tr>
<td>10 years or more</td>
<td>300 days’ wages</td>
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</tbody>
</table>

Special severance pay
If an employer terminates an employee due to the introduction of machinery or replacement of machinery or application of technology, and such employee has been working for 6 consecutive years or more, the employer shall pay additional special severance pay (in addition to the severance pay above) of not less than the last 15 days’ wage rate per year of employment capped at an amount equal to the last 360 days’ wage rate. For any period of less than a 1 year, if the fraction of employment period is more than 180 days, it will be rounded up to 1 full year of employment.

POST-TERMINATION RESTRAINTS
Those that protect the employer’s legitimate business interests can be enforced to the extent that they are reasonable and fair to the parties.

NON-COMPETES
Non-competition agreement is permissible to the extent that it is reasonable and fair to the parties. Generally, the restricted period of not more than 2 years and within a restricted area (such as Southeast Asia) are acceptable.

CUSTOMER NON-SOLICITS
Non-solicitation agreement is permissible to the extent that it is reasonable and fair to the parties. Generally, a restricted period of not more than 2 years and within a restricted area (such as Southeast Asia) are acceptable.

EMPLOYEE NON-SOLICITS
Non-solicitation agreement is permissible to the extent that it is reasonable and fair to the parties. Generally, the restricted period of not more than 2 years and within a restricted area (such as Southeast Asia) are acceptable.
WAIVERS
Enforceable to waive contractual rights. While an employee can be asked to waive statutory rights, there is some uncertainty as to whether such a waiver would be effective. According to the Civil and Commercial Code of Thailand, waiver in relation to statutory rights under LPA and LRA may be void if such provision relates to public order and good moral.

REMEDIES
DISCRIMINATION
The employer violating discrimination provisions contained in LPA will be subjected to criminal penalty of a fine of not more than THB 20,000.

UNFAIR DISMISSAL
Unfair termination or unfair dismissal is where termination of employment is without cause or without reasonable or necessary cause. In the case of unfair dismissal, an employee is entitled to file a case against the employer claiming that his/her termination is unfair.

If the termination is considered as unfair dismissal, the Labour Court may order:
• re-instatement – where the employee is re-employed to the same position
• re-engagement – where the employee is re-employed to at least the same level as he/she was previously employed, or
• financial compensation.

FAILURE TO INFORM & CONSULT
No statutory requirement.

CRIMINAL SANCTIONS
LPA and LRA both provide criminal sanctions including penalties of both fine and imprisonment. Further, in some instances, liability can be passed to the director of the employing company.
TURKEY

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law. Turkish Lira (TRY). Turkish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign company without local corporate registration cannot directly engage employees in Turkey. When a foreign entity engages in commercial activities in Turkey, these activities should be performed through a branch office or a private company. The employees should be registered under the payroll of the branch office or the company. If a foreign entity will only engage in market research in Turkey and not in any commercial activity, the activities can be performed through a liaison office. The employees should be registered under the payroll of the liaison office.

All employers should register the employees with the Social Security Institution as of their first day of employment and make the statutory contributions.

PRE-HIRE CHECKS

REQUIRED
None.

PERMISSIBLE
Criminal and credit reference checks are only permissible for specific roles (e.g., certain finance positions). Reference and education checks are common and permissible with the applicant’s consent.

IMMIGRATION
Foreign employees can work in Turkey once they obtain work and residence permits. After 3 months of work in Turkey, such expats (who are registered under the social security of a foreign country) must be registered by the employer under the social security system of Turkey, subject to bilateral social security treaties executed with the relevant foreign countries.

HIRING OPTIONS

EMPLOYEE
Definite period, indefinite period, full-time, part-time, for a maximum or minimum term, seasonal, temporarily, on call. All employees have the right not to be discriminated against due to their status.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company.
AGENCY WORKER
Payroll subcontracting, while sometimes used in practice, is not permissible and is subject to an administrative fine. Outsourcing employees to a third-party agency is deemed to be payroll subcontracting from a Turkish labor law perspective and has no legal basis. Thus, the employees lent from the agency would be regarded as employees of the hiring company from the beginning of the employment relationship in any potential litigation initiated by such employees against the agency and/or the hiring company or as a result of an investigation to be conducted by the labor authorities.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
It is not mandatory to execute an employment contract, but it is common practice to do so. In cases where there is no written employment contract, within 2 months of the commencement of employment the employer must provide the employee with a written document bearing the employer’s signature and stating the general and special conditions of employment.

PROBATIONARY PERIODS
According to the Labor Law, the parties may agree on a probationary period of up to 2 months, which can be extended to up to 4 months through collective bargaining agreements.

POLICIES
No mandatory policies.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get an approval from any third party.

LANGUAGE REQUIREMENTS
All employment documents must be in Turkish.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
45 hours a week limit on working time.

OVERTIME
Overtime work is any work performed beyond 45 hours in a week. Employee’s consent is required for overtime work.

WAGES
Minimum monthly gross wage is TRY1,647,00 TL for 2016.
VACATION
14 days’ leave for 1 to 5 years (including 5th year) of employment; 20 days’ leave for more than 5 but less than 15 years of employment; 26 days’ leave for 15 years of employment and more (including 15th year). For employees below the age of 18 and above 50, the length of annual leave with pay shall not be less than 20 days.

SICK LEAVE & PAY
The employee is entitled to paid sick leave and sickness allowances for as long as the sickness lasts (subject to a company termination right after a certain period of time), and as long as s/he proves her/his sickness with a health certificate obtained from the competent authorities. Under the Social Security and General Health Insurance Law, temporary disability allowance (sickness allowance) shall be paid for each day of temporary incapacity as from the 3rd day of the incapacity to work to insured persons who have paid sickness insurance contributions for a certain time determined under this law. The temporary disability allowance paid by the Social Security Institution due to sickness can be deducted from the wage paid to the salaried employee remunerated on a monthly basis.

MATERNITY/PARENTAL LEAVE & PAY
Female employees are not allowed to work 8 weeks before an expected birth and 8 weeks after having the baby. In case of multiple pregnancies, an extra 2 weeks’ leave is added to the 8 weeks before an expected birth. If the employee is a salaried employee, the employer must pay the employee her full salary during her statutory maternity leave. Otherwise, the employee is entitled to receive temporary disability allowance from the Social Security Institution.

As per recent changes to the Labor Law, employees will have the right to work part-time (that is, up to 2/3 of the total weekly working time) following completion of statutory maternity leave. An employee wishing to work part-time can make such a request at any time from the end of the statutory maternity leave until the child’s compulsory elementary education age. The request for part-time work can be made either by the mother or father, but such leave may be used by only one of them.

On the request of a female employee, an employer must give unpaid leave of up to half the weekly working time following the end of statutory maternity leave for 60 days for the first birth, 120 for the second birth and 180 for the third birth.

DISCRIMINATION
No discrimination based on language, race, color, sex, disability, political opinion, philosophical opinion, religion or similar reasons, union membership or non-membership, or maternity is permissible.

BENEFITS & PENSIONS
No benefits required above those covered under social security contributions.
DATA PRIVACY

Employees generally must be notified of personal data processing and their prior written consent should be obtained for such processing and transfer of their personal data.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer in a business sale. Significant restrictions on changing terms and conditions following a transfer. Any dismissal connected to the transfer would be unfair unless for an economic, technical or organizational reason.

EMPLOYEE REPRESENTATION

A trade union – representing at least 1% of the employees who are engaged in a given branch of activity and more than half of the employees employed in the workplace of a company or, if there is more than 1 workplace, 40% of the employees employed in all workplaces of the company at the enterprise level – shall have the power to conclude a collective bargaining agreement covering the workplace or workplaces in question.

Apart from the union’s workplace representatives, work councils or employee committees are not regulated under the Law on Unions and Collective Bargaining Agreement. The union’s workplace representatives are appointed by the union, which is authorized to execute a collective bargaining agreement and appointed from among the employees working in the workplace who are members of such union. If there are up to 50 employees – at least 1 representative; 51 to up to 100 – 2 representatives; 101 to up to 500 – 3 representatives; 500 to up to 1,000 – 4 representatives; 1,001 to 2,000 employees – 6 representatives; more than 2,000 – 8 representatives can be appointed.

TERMINATION

GROUNDS

Requirements for termination of an employment contract vary, depending on whether such contract has an indefinite or definite term.

Employment contracts for a definite period terminate automatically with the expiration of the period.

Employment contracts, regardless of whether they are for definite or indefinite period, could be terminated for just cause pursuant to the Labor Law (in which case no notice/severance would be due).

Termination based on valid cause triggers notice and severance payment. Such valid cause could relate to efficiency or behaviour of an employee or requirements of the enterprise, workplace or work. Moreover, whether the employment contract has a definite duration or not, it may be terminated with the mutual consent of the parties.

The job security provisions do not apply for employees with less than 6 months’ service and/or for a workplace with fewer than 30 employees. In such cases the employer does need to give notice, but does not need to show cause.
EMPLOYEES SUBJECT TO TERMINATION LAWS
Employees in companies with fewer than 30 employees and/or employees who have less than 6 months’ employment in a company are not entitled to job security.

RESTRICTED OR PROHIBITED TERMINATIONS
The employment contract cannot be terminated for the following reasons: participation in union activities; filing of a complaint against the employer involving alleged violations of laws; race, color, sex, marital status, family responsibilities, pregnancy confinement, religion, political opinion and similar reasons; absence from work during maternity leave when female employees must not engage in work; temporary absence from work during the waiting period due to illness or accident foreseen in the relevant article of the Labor Law.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
Not required.

MASS LAYOFF RULES
Collective redundancy occurs when in establishments employing between 20 and 100 employees, a minimum of 10 employees are dismissed on the same date or in a 1-month period; in establishments employing between 101 and 300 employees, a minimum of 10% of employees are dismissed on the same date or in a 1-month period, and in establishments employing 301 and more employees, a minimum of 30 employees are dismissed on the same date or in a 1-month period.

NOTICE
Less than 6 months of employment – 2 weeks; 6 months to 1.5 years of employment – 4 weeks; 1.5 years to 3 years of employment – 6 weeks; more than 3 years of employment – 8 weeks.
No need to comply with the notice in case of termination based on just cause determined under the Labor Law.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
A company entitled to pay wages corresponding to the term of notice (notice pay). Garden leave depends on contract or prior consent of the employee is required.

SEVERANCE
The employee’s employment must last for at least 1 year for the employee to be entitled to severance payment of 30 days’ pay for each year of service. Any period in excess of each full year is to be compensated on a pro rata basis. There is a ceiling in calculating the severance payment each year. Severance payment shall be paid if the employer terminates the employment contract with notice based on an objective valid cause relating to the efficiency or behaviour of an employee or business requirements (redundancy). In principle, an employee is not entitled to severance payment upon termination of employment without notice based on a just cause specified under the Labour Law. An employee is not entitled to a severance payment upon voluntary resignation.

POST-TERMINATION RESTRAINTS
Written form is a condition for the validity of a non-competition agreement and valid if the employee must be employed within a position whereby there is the opportunity to acquire valuable knowledge or trade secrets.
NON-COMPETES
No longer than 2 years. No compensation is required for the validity of the non-compete clause.

CUSTOMER NON-SOLICITS
Permissible.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS
A release deed is valid provided that it is executed in written form after at least 1 month has passed since the termination of the employment contract.

REMEDIES

DISCRIMINATION
Compensation of up to 4 months’ wages plus other claims, such as unpaid wages, bonuses or other social allowances of which the employee has been deprived due to discriminatory acts of an employer.

UNFAIR DISMISSAL
If the employee benefits from job security provisions and the court reinstates the employee back to work, the employer shall make payment of up to 4 months’ total of the wages of the employee and other entitlements if the employer reinstates the employee in accordance the court’s decision. If the employer does not reinstate the employee, it shall make (i) payment of up to 4 months’ total of the wages of the employee and other entitlements; (ii) pay reinstatement compensation, to be not less than employee’s 4 months’ wages and not more than employee’s 8 months’ wages. In the calculation of the reinstatement compensation, only the basic wage of the employee shall be taken into consideration.

FAILURE TO INFORM & CONSULT
Subject to administrative fines.

CRIMINAL SANCTIONS
Criminal sanctions are not generally a concern, except in cases such as sexual harassment or an occupational accident.
UNITED ARAB EMIRATES

LEGAL SYSTEM, CURRENCY, LANGUAGE

Federal and Civil legal system — employment matters are governed by Federal Law No. 8 of 1980 (the Labor Law) (as amended). There are also relevant provisions in the Penal Code and Civil Code. Dirhams (AED). Official language is Arabic.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in the UAE. It would always need to have at least a branch or representative office to engage even local nationals, because they still need a work permit (which requires a local sponsor); the only other way around this would be to have a secondment type arrangement, whereby a local entity sponsors the local national for their work permit, but the local national is then seconded out to the foreign entity.

PRE-HIRE CHECKS

REQUIRED
Foreign employees must receive prior approval from the Ministry of Labor (MOL) and immigration authorities before they can be hired on local employment contracts. The level of background checking and screening carried out by the UAE authorities varies according to the nationality of an individual. As part of this approval process, since January 2016 employers are now required to submit a completed offer letter (signed by both parties) using the MOL’s standard form offer letter. The terms of the employee’s employment contract cannot then differ from the terms of the offer letter.

PERMISSIBLE
Generally, employers in the UAE are not able to obtain the same level of information from background checks as they can in other jurisdictions and in most cases, the employees themselves will be required to provide this information.

IMMIGRATION

In order to legally work and reside in a particular Emirate, all employees except GCC and UAE nationals (who require a work permit only) are required to have a residence visa and work permit under the sponsorship of their employer, which must have an entity established in the UAE, or, in the case of a married woman, under the sponsorship of their husband.

When an employee is only required to work in the UAE for a short period of time, there are alternative permits and visas that may be applied for, including business visit visas and mission visas.
HIRING OPTIONS

EMPLOYEE
Unlimited or fixed term. Part-time employment is legally possible, but is not common.

INDEPENDENT CONTRACTOR
There is a limited concept of a consultant, unless individuals have established their own professional licence and business. This is due to the requirement for employees to have sponsorship, which is generally obtained by the employer.

AGENCY WORKER
There is no general concept of an agency worker or “temp” in the UAE. Some Emirati-owned employment agencies are licensed to provide manpower on a temporary basis; those workers would remain under the relevant agency’s sponsorship.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Employers are required to issue the MOL standard form offer letter to employees containing the key terms and conditions of employment.

Employees are then required to sign a government employment contract to obtain their work permit (and residence visa, in the case of non-UAE/GCC nationals only). This contract is in English and Arabic. Since January 2016, such contracts are based on a new MOL standard template. The employment contract must reflect exactly the terms of the offer letter previously provided to the employee; any changes must be approved by the MOL and the employee and must be to the employee’s benefit; otherwise, it is unlikely they will be approved.

PROBATIONARY PERIODS
Permissible. Maximum duration of 6 months.

POLICIES
There are no mandatory policies. If an employer wants to rely on a disciplinary policy and procedure document, however, this must first be lodged with the MOL. Employees should be provided with any relevant staff handbook and the employer’s policies (if applicable) on commencement of employment.

THIRD-PARTY APPROVAL
The government employment contract must be lodged with the Ministry of Labor or relevant free zone authority to obtain the employee’s work permit and residence visa. As indicated above, changes to the terms of the employment contract for employees operating onshore (i.e., not in a free zone) require the prior approval of the MOL and the employee and such changes must be to the employee’s benefit.

LANGUAGE REQUIREMENTS
Pursuant to the Labor Law, all employment contracts and records must be in Arabic. Where a foreign language is used in addition to Arabic, the Arabic version shall prevail.
MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All. Additional rights are also available to young workers (those under the age of 18) and women.

WORKING HOURS
8 hours per day or 6 hours during Ramadan. This equates to a 48-hour maximum working week for a 6-day working week, Sunday to Thursday (inclusive), or 36 hours for a 6-day week during Ramadan. The working hours provisions presume that the employee is working a 6-day week.

OVERTIME
Not to exceed 2 hours per day, unless the work is essential for preventing a substantial loss or serious accident or for eliminating or relieving the impact of a serious accident.

The overtime and maximum working time provisions in the Labor Law do not apply to employees holding senior executive managerial or supervisory positions.

WAGES
At present, there is no minimum wage to be paid to employees in the UAE save in respect of Emirati employees where a fairly low minimum threshold of AED5,000 per month applies for employees (degree holders) to count for emiratisation purposes.

VACATION
2 calendar days per month where the employee’s period of service is more than 6 months but less than 1 year; 30 calendar days per year where the employee’s period of service is more than 1 year.

SICK LEAVE & PAY
An employee is not entitled to statutory sick leave during the probationary period or 3 months thereafter. Employees are entitled to 90 calendar days’ sick leave per year of service thereafter (15 days at full pay, 30 days at half pay and the remaining days without pay).

MATERNITY/PARENTAL LEAVE & PAY
After 1 year’s continuous service, 45 calendar days’ maternity leave at full pay. Before completion of 1 year’s service, it is 45 days at half pay. Employees can take a further 100 consecutive or non-consecutive days if the employee falls ill as a result of her pregnancy or the delivery of her baby.

There is no concept of parental leave or pay in the UAE.

DISCRIMINATION
Since August 2015, new legislation has been in force which was primarily designed to combat religious contempt and intolerance. However, through the introduction of the wide definition of “discrimination” it could have broader consequences for the workplace. Under the new legislation discrimination is defined as any distinction, restriction, exclusion or preference on the basis of one of the protected characteristics (religion, creed, doctrine, sect, caste, race, color or ethnic origin). This new discrimination law does not remove the discriminatory provisions in existing law such as positive discrimination in favor of national employees or any advantage, preference or benefit upon women, children, disabled persons, the elderly or others prescribed by any other legislation.
There are also specific anti-discrimination provisions in the Dubai International Financial Centre Free Zone Employment Regulations and the Abu Dhabi Global Market Regulations.

Under the UAE Labor Law, there are provisions which state that a woman must be paid the same as a man if she performs the same work.

Under the new discrimination legislation, it is important to note that the representative, director or agent of a legal entity may be held vicariously liable for offenses under that law committed by employees of that entity. In order for vicarious liability to arise, the offense must have been committed with the knowledge of the representative / director / agent and the employee must have been acting in the entity’s name or to its interest.

**BENEFITS & PENSIONS**

In respect of UAE national employees and GCC national employees, the employer is required to set up (and contribute to) a pension fund. All other employees are entitled to receive an end of service gratuity (EOSG) on termination, calculated by reference to age and length of service, unless the employer contracts out of these arrangements with its employees by providing a savings scheme or pension scheme. EOSG is reduced if the employee resigns within the first 5 years of service and is forfeited if the employee is summarily dismissed for one of the reasons under Article 120 of the UAE Labor Law.

Once fully implemented in 2015 and 2016, the new Health Insurance Law, passed in 2013, requires all employers to provide compulsory health insurance to every employee and their dependents and anyone under the employee’s sponsorship (e.g., domestic workers).

**DATA PRIVACY**

With the exception of the Dubai International Financial Centre Free Zone, there are no clear laws in the UAE comparable with those in the US or Europe concerning the handling and transmission of employees’ personal information, nor do any provisions address the cross-border flow of data. However, it is advisable to seek prior written consent for the processing of personal data from the employee to the extent necessary to address the privacy protections set out in UAE law, including the protections set out in the UAE Penal Code and the UAE Constitution.

**RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

No automatic transfer principles and no laws covering business transfers. Employees transfer through termination and rehire in an asset deal.

**EMPLOYEE REPRESENTATION**

No. Membership in an unauthorized trade union and industrial action are both criminal offences for which an individual could be fined and imprisoned and, in the case of expatriate workers, deported.
**TERMINATION**

**GROUNDS**
Termination possible on these grounds: by agreement, on the expiry of a fixed term contract, resignation, incapacity or death, dismissal with notice provided it is for a valid reason, or summary dismissal (by reason of any of the grounds listed at Article 120 of the Labor Law).

**EMPLOYEES SUBJECT TO TERMINATION LAWS**
All employees.

**RESTRICTED OR PROHIBITED TERMINATIONS**
Employees who have not exhausted the statutory sick leave entitlement are protected from dismissal on grounds of health, until the full sick leave entitlement has been taken (i.e., 90 calendar days per year of service).

**THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS**
UAE nationals are entitled to higher protection from dismissal. Approval from the Ministry of Labor is required before the employment of a UAE national can be terminated.

**MASS LAYOFF RULES**
No.

**NOTICE**
30 days’ statutory minimum notice. 3 months maximum permitted notice.

**STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE**
No. Depends on contract terms.

**SEVERANCE**
Unless terminated under Article 120 of the Labor Law, employees are entitled to salary and benefits to the termination date, notice (or payment in lieu), payment in lieu of accrued but untaken annual leave, the cost of a flight/air ticket to repatriate the employee to his or her home country (unless (i) dismissal is attributable to employee and the employee has the funds to pay his/her own costs; or (ii) the employee has obtained alternative sponsorship to remain in the UAE), an end of service gratuity payment, and reimbursement of unpaid business expenses. In case of employer termination, the end of service gratuity is computed at 21 days’ pay per year of service for the first 5 years of employment, provided the employee has reached a year’s service (pay to include basic pay and potentially bonus and/or commission but not allowances) and 30 days’ pay for each subsequent year, and such payment cannot exceed 2 years’ pay.
POST-TERMINATION RESTRAINTS

It is permissible to include restrictive covenants in the employment contract, provided that the employee is at least 21 years of age when entering into the restrictions, the employee has become acquainted with the employer’s clients or the secrets of the business, and the covenants are reasonably drafted in relation to their duration, geographic scope and the nature of the business to be protected.

Parties are permitted to include a liquidated damages clause in the employment contract, because it is not possible to obtain an injunction onshore in the UAE although there are rules against “exorbitant” penalties being applied in employment contracts under the Civil Code.

NON-COMPETES
Typically no longer than 6 to 12 months.

CUSTOMER NON-SOLICITS
Typically no longer than 6 to 12 months.

EMPLOYEE NON-SOLICITS
Permissible.

WAIVERS
Waiver agreements are commonly used, but their enforceability has not been tested by the UAE courts.

REMEDIES

DISCRIMINATION
Potential penalties for breach of anti-discrimination provisions under the new law are imprisonment for a minimum of 5 years and / or a fine of a minimum of AED 500,000 and a maximum of AED 1 million.

ARBITRARY DISMISSAL
The maximum award is 3 months’ pay (to include salary and benefits/allowances).

FAILURE TO INFORM & CONSULT
Not applicable.

CRIMINAL SANCTIONS
Criminal sanctions can be imposed for a variety of reasons, including but not limited to the setting up of a trade union, breach of health and safety obligations, breach of immigration laws, breach of data protection laws and breach of confidentiality.
UNITED KINGDOM

LEGAL SYSTEM, CURRENCY, LANGUAGE
Common Law. Pound Sterling (GBP or £). Member of the EU and required to implement relevant EU Directives. English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage in the UK with proper payroll registrations, subject to business and corporate tax planning considerations. Withholdings for pay-as-you-earn (e.g., social charges – up to approx. 13.8% employer portion and up to approx. 14% employee portion) and income tax (up to 45%) to be done through payroll. Self-employed independent contractors are paid gross and are responsible for their own taxation.

PRE-HIRE CHECKS
REQUIRED
Immigration compliance. For certain limited occupations (e.g., solicitors, chartered accountants), a criminal records’ check.

PERMISSIBLE
Criminal and credit reference checks are only permissible for specific roles (e.g., certain finance positions) and subject to proportionality requirements. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION
Nationals of the EEA (European Economic Area) and Switzerland – right to work in the UK (with an exception for Croatia). Other non-UK nationals = immigration permission likely to be required. Companies employing non-EEA/Swiss nationals may be required to register with the UK Border Agency.

HIRING OPTIONS
EMPLOYEE
Indefinite, fixed-term, full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against on the basis of such status.

INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly by the company or via a personal services company. Engagement may be subject to misclassification exposure; whether as employee or worker.
WORKERS
A “worker” has less rights than an employee but more than an independent contractor. A worker works under a contract for personal service (i.e., he cannot send a substitute) with another party whose status is not one of customer or client to the individual.

AGENCY WORKERS
Agency workers are common and typically will be either employees or workers. Agency workers have the right to equal treatment to employees in relation to pay and other benefits terms after a 12-week qualifying period.

EMPLOYMENT CONTRACTS & POLICIES

EMPLOYMENT CONTRACTS
Common best practice. However note that within 2 months of commencement of employment, employees must be provided with certain minimum terms in writing.

PROBATIONARY PERIODS
Permissible. No statutory limit, but 3-6 months is common.

POLICIES
Written health and safety policy and disciplinary and grievance policy mandatory. The latter must be referenced in the contract of employment.

THIRD-PARTY APPROVAL
No requirement to lodge employment contract or policies with or get approval from any third-party.

LANGUAGE REQUIREMENTS
No statutory requirements, but all documents should be in English.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All.

WORKING HOURS
48 hour a week limit on working time, opt-out possible. Rules on rest breaks, night work and rest periods between shifts.

OVERTIME
No obligation to provide pay for overtime worked, as long as pay overall does not fall below the statutory minimum.
WAGES

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Rate As At 1 April 2016 (£)</th>
<th>Rate As At 1 October 2016 (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 year olds or over</td>
<td>7.20</td>
<td>7.20</td>
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<tr>
<td>21 – 24 year olds</td>
<td>6.70</td>
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<td>18 – 20 year olds</td>
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<td>16 – 17 year olds</td>
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<td>4.00</td>
</tr>
<tr>
<td>Apprentices</td>
<td>3.30</td>
<td>3.40</td>
</tr>
</tbody>
</table>

VACATION
5.6 weeks’ per year (which includes 8 public holidays).

SICK LEAVE & PAY
No right to take time off for sick leave, but most contracts allow this. Employees are entitled to receive 28 weeks’ statutory sick pay at GBP88.45 per week (generally funded by the employer).

MATERNITY/PARENTAL LEAVE & PAY
52 weeks’ maternity leave, paid for 39 weeks (90% of pay for first 6 weeks, then statutory rate), right to return to work. 2 weeks paternity leave at birth (paid at statutory rate subject to eligibility requirements). 18 weeks’ unpaid parental leave. Same rights for adopting parents. From April 2015, subject to eligibility, a mother may end maternity leave after 2 weeks and both parents may share 50 weeks of shared parental leave (paid at statutory rate, if eligible).

New rules around sharing the maternity leave entitlements between partners are expected for parents of children expected to be born or placed for adoption on or after 5 April 2015.

DISCRIMINATION
Direct and indirect discrimination prohibited, along with victimization and harassment. Employers are under a duty to make reasonable adjustments for persons with disabilities.

Characteristics protected from unlawful discrimination and harassment: Age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.

BENEFITS & PENSIONS
Currently, no benefits required above those covered under social insurance contributions.

There is a state pension system provided by the government, with eligibility determined by the national insurance contributions that have been paid or credited. In October 2012, new pension requirements were introduced which require employers to automatically enrol eligible workers into a pension scheme and pay minimum contributions. These requirements are being introduced in stages, working from the largest to the smallest employers (with size measured as at 1 April 2012) from October 2012 to April 2017, with later dates up to 1 February 2018 for new employers. Workers who are automatically enrolled have a right to opt out of the scheme.
DATA PRIVACY

Employees generally must be notified of personal data processing (and in certain cases, give consent). Registrations with the Information Commissioner are required. Special rules apply to data transfer outside the EEA. Significant restrictions on monitoring employees, including email and internet use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive/UK’s Transfer of Undertaking Protection of Employees Regulations (TUPE) in a business sale or service provision change. Significant restrictions on changing terms and conditions following a transfer. Duty to inform and consult with employee representatives. Any dismissal connected to the transfer would be unfair unless for an economic, technical or organisational reason.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors (manufacturing, transport and the public sector). 25% of workers are members, but most are employed in the public sector. Many businesses have no union or other worker representation. Works councils are uncommon. Industry level collective bargaining agreements are uncommon.

TERMINATION

GROUNDS

Termination permissible if a fair process has been followed, on the following grounds only: Misconduct, capability (including performance and ill-health), redundancy, illegality and “some other substantial reason of a kind to justify dismissal.”

EMPLOYEES SUBJECT TO TERMINATION LAWS

Employees with fewer than two years’ seniority have no unfair dismissal protection (save in certain circumstances where no seniority is required, including dismissals for whistleblowing, connected to family/pregnancy rights, trade union membership and activities, etc.).

RESTRICTED OR PROHIBITED TERMINATIONS

No statutory prohibitions.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS

Not required.

MASS LAYOFF RULES

Yes, strict information and consultation rules apply where 20 or more employees are to be made redundant over 90 days or less. The employer must also notify the Secretary of State of the redundancies (failure to do so is a criminal offence).
NOTICE
No notice required in the first month of employment. After this, 1 week per complete year of service up to 12 weeks. May be required to give longer notice, if reasonable. Not required for terminations for gross (extremely serious) misconduct. Longer notice can be agreed and set out in the contract of employment.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
No. Entitlement depends on contract terms.

SEVERANCE
Payable to redundant employees with 2 years’ seniority only: 1/2 week’s pay per year of service for service under age 22; 1 week’s pay per year of service for service aged 22 to 40; 1.5 week’s pay per year of service for service age 41 and above. “Pay” capped at GBP475 per week until 5 April 2016, GBP479 per week from 6 April 2016. More generous terms are possible.

POST-TERMINATION RESTRAINTS
Considered to be in restraint of trade and void. However, those that protect the employer’s legitimate business interests can be enforced if reasonable. Need to be tailored for the specific business and the risks posed by the employee. Garden leave is common for senior employees.

NON-COMPETES
Permissible in narrow, justifiable, circumstances. Typically no longer than 3-6 (maximum of 12) months, depending on the circumstances.

CUSTOMER NON-SOLICITS
Permissible in specific circumstances. Typically no longer than 3-6 (maximum of 12) months, depending on the circumstances.

EMPLOYEE NON-SOLICITS
Permissible. Length of restriction will depend on the circumstances.

WAIVERS
Enforceable, but employees must be represented by counsel to sign a settlement agreement waiving statutory rights. Note that a waiver of contractual and common law rights is possible without formalities.

REMEDIES

DISCRIMINATION
Uncapped compensation, based on the claimant’s financial loss + injury to feelings compensation of between GBP600 –33,000 + recommendation that the employer take action + declaration of the claimant’s rights.
Also possible to claim a declaration of rights or a recommendation (aimed at reducing impact of discrimination).

**UNFAIR DISMISSAL**

Basic award, based on claimant’s age and length of service (currently capped at GBP14,250, increasing to GBP14,370 from 6 April 2016) + compensation based on the claimant’s financial loss (currently capped at GBP78,335 (increasing to GBP78,962 from 6 April 2016) or 52 weeks’ pay – whichever is lower). In exceptional cases (e.g. whistleblowing dismissals), compensation is uncapped.

Reinstatement or reengagement is possible but rare.

From 5 April 2014 possible for the Tribunal to award a payment for “aggravating features” of between GBP100 and GBP5,000. This is paid to the government.

**FAILURE TO INFORM & CONSULT**

Redundancy = up to 90 days’ gross pay; TUPE = up to 13 weeks’ gross pay.

**CRIMINAL SANCTIONS**

Failure to notify the Secretary of State about mass layoffs is a criminal offence (although prosecution is rare). Otherwise, criminal sanctions are not generally a concern.
UNITED STATES

LEGAL SYSTEM, CURRENCY, LANGUAGE

Combination of federal statutory law, state statutory and common law, and local statutory law. Regulations vary significantly from state to state. U.S. Dollar (USD). English.

CORPORATE PRESENCE REQUIREMENTS AND PAYROLL SET-UP

A foreign entity can engage employees to do business in the US subject to certain business and tax considerations and registration as an entity qualified to do business in any state where it is engaged in business. All US employers are required to obtain a federal Employer Identification Number (EIN), to pay applicable payroll taxes and withhold certain tax contributions from its employees. Employers may be required to register employees with the specific state in which they are employed (regulations vary from state to state).

PRE-HIRE CHECKS

REQUIRED
None, except in certain regulated industries which may require fingerprinting, background checks and/or drug/alcohol screening.

PERMISSIBLE
Laws vary from state to state. Reference and education checks are common. Criminal background and credit checks generally may be performed in accordance with applicable federal, state and local law, with an increasing number of state and local jurisdictions permitting such checks following a conditional job offer. Medical examinations and drug and alcohol screening are generally permissible if conducted post-offer and in accordance with applicable law.

IMMIGRATION

All employers must complete a Form I-9 upon the commencement of the employment relationship (but not pre-hire) and employees must provide documents demonstrating they are legally authorized to work in the US, whether by citizenship, permanent residence (“green card”) status or a valid visa (which often requires sponsorship by the employer).

HIRING OPTIONS

EMPLOYEE
At will, fixed-term, full-time or part-time, temporary or seasonal. Generally the nature of employment relationship is at will, meaning both the employer and the employee may terminate the relationship at any time with or without notice and with or without cause as long as the reason for termination is not discriminatory/retaliatory and does not otherwise violate the law.
INDEPENDENT CONTRACTOR
Independent contractors can be engaged directly as individuals or through an entity (e.g., LLC, LP). Contractors must be truly independent and not be closely directed by the principal. There are multiple factors utilized (on both the federal and state level) to determine whether an individual is properly classified as an independent contractor; regulators are more likely to uphold classification if the individual is engaged through a separate business entity.

AGENCY WORKER
Employees may provide services through an employment agency or professional employer agency (PEO). The company and the agency may be deemed “joint employers” and be held jointly liable under various employment laws.

EMPLOYMENT CONTRACTS AND POLICIES
EMPLOYMENT CONTRACTS
Given the at will concept, most employees do not have any employment agreements, written or otherwise. However, high-level and mid-level executive employees tend to have written employment agreements.

Contracts are not required and if used are not required to have any specific terms.

PROBATIONARY PERIODS
Permissible, but unnecessary in a typical “at will” relationship, unless something about the terms or conditions of employment (such as right to accrue vacation or participate in group health benefits) will change following the expiration of the probationary period.

POLICIES
Policies vary from state to state. Employers are required to post notices about employee rights under various federal and state laws. Anti-harassment, discrimination and retaliation policies are highly recommended and may serve as a defense against claims. Certain government contractors are required to implement affirmative action plans. Most employers have employees sign an acknowledgment of the “at will” employment policy.

THIRD-PARTY APPROVAL
None required.

LANGUAGE REQUIREMENTS
Certain documents and notices are required to be posted or provided in the language known to be the primary language of a certain percentage of the workforce or of specific employees, if other than English. “English-only” policies in the workplace may be subject to legal challenge as discriminatory unless there is legitimate business purpose for the rule.
MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
Most employers are covered by the Fair Labor Standards Act (FLSA) which guarantees minimum wage and overtime pay for non-exempt employees. The most common exemptions are for executive, administrative, professional, outside sales, or computer professional employees. To qualify for an exemption, an employee must meet a “duties” test and generally must be paid a certain amount of salary or more; effective 1 December 2016, the salary threshold is being raised from USD 455/week (USD 23,660 annually) to USD 913/week (USD 47,476 annually). Some states impose additional wage and hour requirements on top of the FLSA requirements.

WORKING HOURS
No federal limit on number of hours per day or per work an employee over the age of 16 can work. There are restrictions on child labor and in certain professions (e.g., airline pilots), and hours may be limited by a collective bargaining agreement (with a trade union). In some states, certain employers are required to give their workers one day off each week.

OVERTIME
Generally, non-exempt employees must be paid at 1.5 times their regular rate of pay for all hours worked in excess of 40 hours per week. Overtime must be calculated on a weekly basis and cannot be “averaged” over a period of 2 or more weeks. In some states (such as California), additional overtime is required in certain circumstances (e.g., more than 8 hours per day).

WAGES
All non-exempt employees must be paid at least the federal minimum wage, which presently is USD 7.25 per hour. Some states and cities have higher minimum wage requirements, such as California (USD 10.00 per hour) and New York (USD 9.00 per hour, with incremental raises to USD 15.00 per hour by 2018 or 2021, depending on location within state). There is proposed legislation to raise the federal minimum wage to USD 10.10 per hour (or higher).

VACATION
There is no statutory requirement to provide paid vacation or holiday to any employees.

SICK LEAVE AND PAY
There is no federally mandated right to paid sick leave. Employers with 50 or more workers generally have to provide eligible employees unpaid leave under the Family and Medical Leave Act (FMLA) for up to 12 weeks in any given year due to a serious health condition of the employee or his/her family members, or for a qualifying exigency arising out of the fact that a family member is a covered military member or on covered active duty, and for up to 26 weeks to care for a family member who is a covered military member. Certain states and local jurisdictions (including New York City) have imposed more generous leave requirements and may require paid leaves. Employers also may be required to provide unpaid leave as a reasonable accommodation to a qualified employee with a disability under the Americans with Disabilities Act (ADA).
MATERNITY/PARENTAL LEAVE AND PAY
Under the FMLA, employers with 50 or more workers generally have to provide eligible employees unpaid leave for the birth or adoption of a son or daughter, or to care for a newly born or a newly-placed child, for up to 12 weeks in any given year. Certain states and local jurisdictions have more generous leave requirements. In certain states, employees who are temporarily disabled for medical reasons, including pregnancy and childbirth, are eligible to receive partial wage replacement in the form of temporary disability insurance benefits.

DISCRIMINATION
Federal law generally protects employees from discrimination, harassment or retaliation based on: race, color, religion, sex (including transgender), national origin (Title VII); age (over 40) – Age Discrimination in Employment Act (ADEA); disability – Americans with Disabilities Act (ADA); genetic information – Genetic Information Nondiscrimination Act (GINA). State and local protected categories vary and are often broader and include: creed, sexual orientation, marital status, domestic partnership status, military status, domestic violence victim status, arrest record, conviction record, alienage, citizenship status, and unemployment status.

BENEFITS AND PENSIONS
The Affordable Care Act (ACA, or Obamacare) will require certain employers to provide insurance for their employees or pay a penalty. By state law, employers generally must maintain workers’ compensation insurance for on the job injuries and unemployment insurance to provide benefits to former employees in the event of a qualified involuntary termination of employment. No retirement benefits or pensions are required.

DATA PRIVACY
Certain states restrict the use of employees’ social security numbers for any identifying purposes. Medical information must be maintained separately from personnel files and kept confidential. Otherwise, employers generally are entitled to monitor or search corporate emails of their employees and internet traffic accessed by their computer systems on the premise that employees do not have an expectation of privacy in the use of their employer’s computer systems or corporate emails (especially with a policy that says so). Jurisdictions vary as to an employer’s ability to search or monitor personal email addresses and websites accessed from an employer’s computer or premises.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS
None, except if it results in a plant closing or mass layoff, in which case employees are generally entitled to at least 60 days’ notice if feasible (see Mass Layoff Rules below). In an asset sale, employees can be transferred through termination or rehire.
EMPLOYEE REPRESENTATION

Trade unions are common in certain sectors. As of January 2016, the U.S. private sector has a unionization rate of 6.7 percent. Employees’ rights to organize and engage in “concerted activity” regarding their terms and conditions of employment are protected under the National Labor Relations Act (NLRA), whether or not they belong to a union or work in a unionized workplace.

TERMINATION

GROUNDS
Generally, absent a contract or union agreement to the contrary, an employer can terminate an employee for any non-discriminatory, non-retaliatory reason at any time, with or without notice and with or without cause.

EMPLOYEES SUBJECT TO TERMINATION LAWS
All employees. Certain government employees who are parties to a collective bargaining agreement have greater protections as dictated by their contracts.

RESTRICTED OR PROHIBITED TERMINATIONS
Employers cannot terminate employees based on any protected category, in retaliation for a complaint of discrimination or harassment based on any protected category or for engaging in protected whistle blowing. Greater protection may be afforded by collective bargaining agreements or individual contracts.

THIRD-PARTY APPROVAL FOR TERMINATION/TERMINATION DOCUMENTS
None.

MASS LAYOFF RULES
Under the Worker Adjustment and Retraining Notification Act (WARN), employers with more than 100 employees generally must provide 60 days’ notice to affected employees and certain government agencies of a plant closing or mass layoff. Some states have “mini-WARN” acts with more far-reaching requirements (i.e., applicable to employers with fewer employees and provide for longer notice period).

NOTICE
Generally, no notice is required for a termination of employment, unless otherwise required by contract or the termination involves a plant closing or mass layoff (see above).

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
Other than the right to notice under the WARN Act or its state equivalents, or as provided by contract, there is no right to pay in lieu of notice or garden leave (because no notice is otherwise required).

SEVERANCE
Other than as provided by contract or in an employer’s severance plan or policy, there is no statutory right to severance pay under federal or state law.
POST-TERMINATION RERAINTS

Permissible restraints are generally governed by state law (statutory and common law) and vary significantly from state to state. In most states restrictions which are reasonably necessary to protect employer's legitimate business interests will be enforced.

NON-COMPETES

Varies from state to state. 6 months to 1 year generally deemed reasonable, more than 2 years generally unreasonable, except in connection with the sale of a business. California prohibits non-competes in the employment context by statute, except in connection with the sale of a business.

CUSTOMER NON-SOLICITS

Varies from state to state. Generally permissible if employee was involved with customer and employer aided in developing relationship or if employee obtained confidential information from or about customer. Generally prohibited in California.

EMPLOYEE NON-SOLICITS

Varies from state to state. Generally permissible.

WAIVERS

Generally enforceable in exchange for valuable consideration. Waivers of certain statutory rights (such as federal age discrimination claims under ADEA) are only valid if they meet specific statutory requirements, including consideration and revocation period.

REMEDIES

DISCRIMINATION

Damages vary depending on statute and jurisdiction. Federal caps exist for certain claims. Other claims allow for unlimited compensatory damages, including front pay, back pay, emotional distress and attorneys’ fees. Many claims allow for the recovery of punitive damages.

UNFAIR DISMISSAL

Claim generally does not exist, unless it constitutes a discriminatory or retaliatory dismissal or a termination in violation of public policy.

FAILURE TO INFORM AND CONSULT

Claim generally does not exist, unless it constitutes a discriminatory or retaliatory dismissal, or a dismissal covered by the WARN Act or its state equivalent.

CRIMINAL SANCTIONS

Employers may be criminally liable for certain violations of wage and hour laws. In limited circumstances, employers may be vicariously liable for the criminal acts of their employees. Employers may be liable for monetary statutory penalties (such as double or treble damages) for violations of wage and hour and other laws.
GUIDE TO GOING GLOBAL • EMPLOYMENT

VENEZUELA

LEGAL SYSTEM, CURRENCY, LANGUAGE
Civil Law. Bolívar (VEF). Spanish and Venezuelan native languages

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP
A foreign entity can engage employees in Venezuela only if it sets up at least a representative office and obtains payroll and labor registrations. Withholdings for Pay As You Earn (e.g., social charges from 9% to 11% with a ceiling of 5 minimum wages and income tax of up to 34%) to be done through payroll.

PRE-HIRE CHECKS
REQUIRED
There are no mandatory requirements, apart from immigration compliance for foreign employees

PERMISSIBLE
Reference and education checks are common and permissible with applicant consent. Criminal checks are generally not permissible because Venezuelan law prohibits discrimination based upon criminal records.

IMMIGRATION
Non-Venezuelan nationals require immigration permission. At least 90% of the payroll in companies with 10 or more employees should be held by Venezuelan nationals. Certain job positions require engagement of a Venezuelan national (e.g., industrial relations and/or personnel managers HR, ship or airplane captains, foremen and similar positions), subject to some exceptions. Non-Venezuelan national employees when: (i) they have Venezuelan descendants, (ii) they are married to a Venezuelan, (iii) they have set up domicile in Venezuela, or (iv) they have resided in Venezuela for 5 or more years.

HIRING OPTIONS
EMPLOYEE
Indefinite, fixed-term and determined work contract for a specific project. Part-time and full-time.

INDEPENDENT CONTRACTOR
Independent contractors are allowed as long as the service to be performed under the contract is carried out using the contractor’s own resources and employees. Self-employed independent contractors are paid gross and are responsible for their own contributions.
AGENCY WORKER
Severe restrictions on agency workers are in force since outsourcing is generally prohibited, failure to comply with these obligations may result in joint liability for all employment related obligations when services are “inherent” or “connected” to the beneficiary’s business.

EMPLOYMENT CONTRACTS & POLICIES

REQUIREMENTS
A written employment contract is required. It must contain the following information: name, nationality, age, legal status and identity card number of the parties; description of services rendered; start date of employment; type of contract; duration; working hours; the wage stipulated; workplace.

PROBATIONARY PERIODS
There are no probationary periods expressly stated by law. However, because it is possible to dismiss an employee with no justification during the first 30 days of services, this period has been deemed to be a probationary period.

POLICIES
A written health and safety policy is mandatory.

THIRD PARTY APPROVAL
Approval from the health and safety authority is required for the written health and safety policy. There are no other approval requirements for employment documents.

LANGUAGE REQUIREMENTS
All documents addressed to the employees must be in Spanish or Venezuelan natives languages (if applicable where the employee speaks such language), or can be bilingual.

MINIMUM EMPLOYMENT RIGHTS

EMPLOYEES ENTITLED TO MINIMUM EMPLOYMENT RIGHTS
All of them.

WORKING HOURS
In general, the maximum number of working hours without overtime pay for a day shift is 8 hours per day and 40 per week. In the case of a mixed shift, the limit is 7.5 hours per day and 37.5 per week. For night shift work the limit is 7 hours per day and 35 hours per week. When a mixed shift has 4 or more night hours (between 7:00 p.m. and 5:00 a.m.), it is deemed entirely as a night time working shift.

Upper management employees as well as inspection or supervisory employees may exceed the daily or weekly limits, as long as: (i) the workday does not exceed 11 hours; (ii) the total hours worked in a period of 8 weeks do not exceed an average of 40 hours per week, and; (iii) the employee is entitled to 2 continuous days of paid rest weekly.
OVERTIME
Overtime must be paid with a surcharge of at least 50% over the normal salary value for the corresponding ordinary shift. An employer may not require its workers to work more than 10 hours per week or more than one 100 hours per year overtime.

WAGES
Venezuela has minimum wages periodically adjusted by the Government. As of November 1, 2015 the minimum wages in Venezuela for employees in the private and public sector amount to VEF 9,648.18 per month; and for adolescents and apprentices VEF 7,115.18 per month.

VACATION
Employees are entitled to 15 working days of paid vacation up to completion of 1 continuous year of service, plus 1 additional working day for each subsequent year of service up to a maximum of 30 working days per year.

In addition, employees are entitled to receive, during vacation, an additional vacation bonus equivalent to 15 days of salary, plus 1 additional day for each subsequent continuous year up to a maximum of 30 days of salary per year of salary.

SICK LEAVE & PAY
The employer must pay salary only for the first 3 days of sickness; after this period the employee will receive an indemnity from the social security in lieu of salary.

MATERNITY/PARENTAL LEAVE & PAY
Women are entitled to maternity leave of 6 weeks prior to giving birth and 20 weeks thereafter. In the event that pre-natal leave is not fully used, the remaining portion is added to the post-natal leave. If a female employee adopts a child under 3 years of age, she is entitled to a maternity leave of 26 weeks. There is no obligation for the employer to pay the employee during these periods of leave, but some employers do so to a certain extent in accordance with their internal policies, and the employee receives an indemnity from the social security authorities.

The father of a child (or male employee in case of adoption or family placement of a child under 3 years of age) is entitled to a paternity leave of 14 days, which is extended for another 14 days if the child is seriously ill or the mother’s health is in danger due to health complications. In case of multiple births, paternity leave will last 21 days and if the child’s mother dies, paternity leave will last 12 weeks. These periods of leave are paid by the social security system.

DISCRIMINATION
Discrimination, exclusion, preference or restriction in employment based on race, sex, age, legal status, religion, political opinion, nationality, sexual orientation, persons with disabilities, social origin and criminal records are prohibited. The non-discrimination principle in employment also includes the pre-contractual relationship. Employers may not include discriminatory provisions in job applications or employment agreements. No persons shall be discriminated in their right to work due to a criminal record.
BENEFITS & PENSIONS

Venezuelan labor laws establish an obligation to deposit a “guarantee of severance” quarterly. This deposit must be made in a severance fund, a company account or bank trust, and the amount is based on the salary of the employee (see under “Severance” below).

DATA PRIVACY

There is no general legislation on data protection in Venezuela. However, employees should be notified of personal data processing and in certain cases, they must give consent. In cases involving medical checks, the employee has the right to request the confidentiality of the results.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

When a transaction involves a transfer of assets, a substitution of the employer will take place and the employees, Labor Ministry and unions (if any) must be notified. The consent of employees is not necessary. However, employees may retire with justified cause within 3 months from receipt of the notice of transfer where the substitution is deemed contrary to their interests. In this case, employees are entitled to an indemnity for unjustified dismissal for the amount of their severance entitlement.

The substitute employer may not reduce the benefits granted to transferred personnel and must recognize prior periods of service for all legal purposes.

EMPLOYEE REPRESENTATION

Every employee has the right, without previous authorization, to form or affiliate a trade union, with functional autonomy and protection by the government. Trade unions are common in large or medium companies (more than 500 employees).

TERMINATION

GROUNDS

Employees may either be subject to so-called job stability (estabilidad) or protected by the bar against dismissal (inamovilidad), both of which significantly limit the scope for termination.

JOB STABILITY

Although Venezuelan labor laws sets forth a stability procedure it is not currently applicable due to the Presidential Decree on Bar Against Dismissal having been extended to all employees.

Employees covered by the stability might be dismissed with justified cause, but after the dismissal, the employer must file a “participation of dismissal” before a labor judge, explaining the facts and legal causes for the dismissal. Legal cause might include, among others reasons, misconduct, defamation of the employer; lack of due care or negligence affecting health and safety at work; unjustified absence during 3 working days in a month, material damage to working machines or tools caused intentionally or by lack of due care; disclosure of professional or trade secrets, serious failure of employment obligations, or sexual or workplace harassment.

In general, all employees are protected by job stability, except upper management employees.
BAR AGAINST DISMISSAL
Protected employees shall not be dismissed without justified cause and previous authorization of the Labor Inspector. An employee is entitled to claim reinstatement and backpay when dismissed without authorization.

Protected employees protected by inamovilidad are those, among others, whose employment relationship is suspended due to work accident, maternity leave, etc., or employees enjoying certain union privileges. Note, however, that since 2003, this protection has been extended to all employees (excluding upper management employees) by Presidential Decree. The current decree is in force until 28 December 2018.

In practice, most terminations are implemented through mutual consent.

THIRD PARTY APPROVAL FOR TERMINATION
See above under “Grounds.”

MASS LAYOFF RULES
A mass layoff takes place when a number of workers equal to or larger than the following are terminated within 3 months (or longer in critical circumstances): (i) 10% of the employees in a company with more than 100 employees; (ii) 20% of the employees in a company with 50 or more employees; or (iii) 10 employees in a company with fewer than 50 employees.

In cases of a mass layoff, the Labor Ministry may order the employer to stop the dismissals based on social interests and to reinstate the employees immediately to their positions. Contempt of the Labor Ministry’s order may result in economic and/or criminal sanctions.

There are special administrative proceedings for mass layoffs based upon financial difficulties. This procedure starts with an employer’s petition filed before the Labor Inspector along with all evidence that supports the decision regarding mass layoff.

NOTICE
There is no legal obligation for employers to give advance notice since employee are protected by stability and bar against dismissal. Employees can give notice, but if not they are still entitled to receive labor benefits up to the date of termination of employment relationship.

STATUTORY RIGHT TO PAY IN LIEU OF NOTICE OR GARDEN LEAVE
NA.

SEVERANCE
Employees must deposit a guarantee of severance quarterly, which must be equivalent to 15 days of salary, based on the salary of the last month of the quarter. Additionally, employers must deposit 2 additional days of salary after the first year and for each subsequent year up to the amount of 30 accumulated days.

In case of termination of the employment relationship, the employer must calculate the severance payment based on 30 days of salary per year or per portion greater than 6 months of service. This calculation must be based on the salary received by the employee at the termination of the employment relationship.
POST-TERMINATION RESTRAINTS

NON-COMPETES
As long as it has been agreed in writing at the beginning of the employment relationship, is based on justifiable reasons and remuneration to the employee is set forth (in an amount agreed between the parties), the employer may impose a post-termination non-compete of up to 6 months after the termination of the employment relationship.

CUSTOMER NON-SOLICITS
Permissible in specific circumstances (see non-competes above).

EMPLOYEE NON-SOLICITS
Permissible in specific circumstances (see non-competes above).

WAIVERS
Enforceable, but employees must be represented by counsel to sign the settlement agreement and the agreement must be approved by a Labor Judge or Inspector to be enforceable.

REMEDIES

DISCRIMINATION
The employee victim of discriminatory acts may file an action before the Labor Courts.

UNFAIR DISMISSAL
In case of unfair dismissal protected employees are entitled to claim the reinstatement and back pay before the Labor Inspector.

CRIMINAL SANCTIONS
Failure to comply with the mass layoff requirements or administrative decisions of reinstatement and back pay may result in imprisonment from 6 to 15 months. In practice, prosecution is not common.
# COUNTRY CONTACTS

<table>
<thead>
<tr>
<th>Country</th>
<th>Contact Name</th>
<th>Email</th>
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<tbody>
<tr>
<td>Australia</td>
<td>Nicholas Turner</td>
<td><a href="mailto:nicholas.turner@dlapiper.com">nicholas.turner@dlapiper.com</a></td>
</tr>
<tr>
<td>Austria</td>
<td>Stephan Nitzl</td>
<td><a href="mailto:stephan.nitzl@dlapiper.com">stephan.nitzl@dlapiper.com</a></td>
</tr>
<tr>
<td>Bahrain</td>
<td>Neil Crossley</td>
<td><a href="mailto:neil.crossley@dlapiper.com">neil.crossley@dlapiper.com</a></td>
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<td>Belgium</td>
<td>Eddy Lievens</td>
<td><a href="mailto:eddy.lievens@dlapiper.com">eddy.lievens@dlapiper.com</a></td>
</tr>
<tr>
<td>Brazil</td>
<td>Priscila Lago</td>
<td><a href="mailto:priscila.lago@camposmello.adv.br">priscila.lago@camposmello.adv.br</a></td>
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<tr>
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<td>Richard Nixon</td>
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</tr>
<tr>
<td>China</td>
<td>Julia Gorham</td>
<td><a href="mailto:julia.gorham@dlapiper.com">julia.gorham@dlapiper.com</a></td>
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<td>Czech Republic</td>
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<tr>
<td>Denmark</td>
<td>Jonas Enkegaard</td>
<td><a href="mailto:je@horten.dk">je@horten.dk</a></td>
</tr>
<tr>
<td>Finland</td>
<td>Jani Syrjänen</td>
<td><a href="mailto:jani.syrjanen@borenius.com">jani.syrjanen@borenius.com</a></td>
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<td>India</td>
<td>Nohid Nooreyzedan</td>
<td>AZB &amp; Partners</td>
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<td>Richard Cornwallis</td>
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<td>DLA Piper</td>
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</tbody>
</table>
Poland  
Agnieszka Lechman-Filipiak  
DLA Piper  
agnieszka.lechman-filipiak@dlapiper.com

Qatar  
Neil Crossley  
DLA Piper  
neil.crossley@dlapiper.com

Romania  
Monica Georgiadis  
DLA Piper  
monica.georgiadis@dlapiper.com

Russia  
Vladislav Mazur  
DLA Piper  
vladislav.mazur@dlapiper.com

Saudia Arabia  
Neil Crossley  
DLA Piper  
neil.crossley@dlapiper.com

Singapore  
Ian Lim  
TSMP Law Corporation  
ian.lim@tsmp.core.sg

South Africa  
Aadil Patel  
Cliffe Dekker Hofmeyr  
aadil.patel@cdhlegal.com

South Korea  
Hoin Lee  
Kim & Chang  
hoin.lee@kimchang.com

Spain  
Pilar Menor  
DLA Piper  
pilar.menor@dlapiper.com

Sweden  
Johan Sundberg  
DLA Nordic  
johan.sundberg@dlanordic.se

Switzerland  
Aurélien Witzig  
Schellenberg Wittmer  
aurelien.witzig@swlegal.ch

vilent Carron  
Schellenberg Wittmer  
vincen.carron@swlegal.ch

Taiwan  
John Eastwood  
Eiger Law  
john.eastwood@eigerlaw.com

Thailand  
Julia Gorham  
DLA Piper  
juila.gorham@dlapiper.com
Turkey

Melek Onaran Yuksel
YukselKarkinKucuk
myuksel@yukselkarkinkucuk.av.tr

United Arab Emirates

Neil Crossley
DLA Piper
neil.crossley@dlapiper.com

United Kingdom

Adam Hartley
DLA Piper
adam.hartley@dlapiper.com

United States

Mike Sheehan
DLA Piper
michael.sheehan@dlapiper.com

Venezuela

Angel Melendez Cardoza
DLA InterJuris Abogados
angel.melendez@dlainterjuris.com
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