A GUIDE TO
HIRING AND FIRING IN EUROPE
A GUIDE TO HIRING AND FIRING IN EUROPE

By

Morrison & Foerster LLP

2014
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PREFACE

An organization’s workforce is one of its most important assets, and maintaining good employee relations can be key to ensuring business runs smoothly. For organizations with an international presence, this means being aware of and complying with the employment laws and customs that apply in each country in which they operate.

This Guide focuses on laws and practices relating to the recruitment of staff and the termination of those relationships. It covers 17 jurisdictions – 15 European Union Member States, one candidate Member State, and Switzerland, which, although not a Member State, is a signatory to certain free trade and free movement treaties. Due to the volume of European-level employment legislation, employment law and human resource practice across the region are afforded some degree of similarity. Despite this, however, significant differences apply. This Guide seeks to highlight those differences, and assist organizations to comply with local laws, whilst streamlining its practices and processes, insofar as it’s possible to do so.
ABOUT THE AUTHOR

A Guide to Hiring and Firing in Europe was prepared by the Employment and Labor Group of Morrison & Foerster LLP and was compiled and edited by Hanno Timner, partner, in the firm’s Berlin office and Caroline Stakim, associate, in the firm’s London office.

Founded in 1883, Morrison & Foerster is now a preeminent global law firm dedicated to delivering business-oriented results to clients around the world. With over 1,000 lawyers spread across 17 offices in the world’s key financial and technology centers, Morrison & Foerster handles some of the world’s largest cross-border transactions and resolves major disputes across multiple jurisdictions.

Morrison & Foerster’s Employment and Labor Group represents companies from early stage companies to multinationals as well as non-profits and public-sector entities. The hallmark of the practice is high-stakes litigation involving theft of trade secrets, wage and hour class actions and other complex employment litigation, workplace privacy, and traditional labor relations. The group provides counseling, auditing, and litigation avoidance strategies concerning all aspects of the employment relationship in the United States, Europe and Asia. In addition, the group assists clients in the multijurisdictional employment aspects of domestic and international mergers and acquisitions, dispositions and sourcing transactions.


ACKNOWLEDGMENTS

In producing this Guide, Morrison & Foerster collaborated with its network of contacts across Europe. The firm would like to thank the following law firms that contributed information about the jurisdictions indicated:

Austria: Cerha Hempel Spiegelfeld Hlawati
www.chsh.com

Belgium: Tack
www.tack-law.eu

Denmark: Accura Advokatpartnerselskab
www.accura.dk

Estonia, Latvia and Lithuania: SORAINEN
www.sorainen.com

Finland: Merilampi Attorneys
www.merilampi.com

France: Jeantet Associés
www.jeantet.fr

Germany: Morrison & Foerster LLP
www.mofo.com

Ireland: Matheson
www.matheson.com

Italy: NCTM Studio Legale Associato
www.nctm.it

Netherlands: NautaDutilh
www.nautadutilh.com

Serbia: Zivkovic Samardzic
www.zlaw.rs

Spain: Uría Menéndez
www.uria.com

Sweden: Mannheimer Swartling
www.mannheimerswartling.se

Switzerland: VISCHER
www.vischer.com

UK: Morrison & Foerster (UK) LLP
www.mofo.com
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AUSTRIA: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by placing advertisements in newspapers or on the Internet. Professional recruitment agencies are used for more senior or more qualified employees.

Pre-employment references and background checks

During the application process, an employer is not allowed to ask questions that might infringe an applicant’s privacy. Generally, requesting the applicant to undergo a medical examination is only permitted in relation to diseases that may be detrimental to other employees or that could restrict the applicant’s ability to carry out the role. Drug and alcohol testing will, in general, infringe the applicant’s privacy. It is common however, for employers to ask for criminal record checks and references from previous employers.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of sex, race, color, nationality, ethnic or national origin, disability, age, sexual orientation, religion or belief, or trade union activities or membership.

Itemized pay slips

Employers must give their employees itemized pay statements specifying gross and net salary, and the amount and purpose of any deductions (e.g., income tax and social insurance contributions).

Health and safety

Employers are obliged to safeguard the health and safety of their employees. In order to do so, they must carry out a risk assessment and take any measures necessary.

Written contract of employment

Generally, there is no requirement that a contract of employment be in writing. However, immediately following commencement of work, an employer is obliged to give the employee a written statement setting out the essential rights and obligations arising from the employment ("Dienstzettel"). The statement must include the names of the parties, start date, nature of employment, period of notice, proposed place of work, employee’s salary scheme classification, job title, annual vacation entitlement, working hours, the applicable collective bargaining agreement and the fund administering the contributions for severance payments. Typically, a more senior employee is given a written employment contract, and the conditions are discussed prior to the acceptance of a job offer. Formal offer letters are seldom used.

Implied duties of the employer and the employee

In general, the terms and conditions set out expressly in the contract of employment, collective bargaining agreement or shop agreement, along with statutory employment law protections, govern the employment relationship. There are no standard terms which are implied into every employment contract.

Company rules

There is no requirement in Austria to have company rules, and it is not common practice to have such rules in place.

Data protection

An employer has duties under the Data Protection Act in respect of the personal data and sensitive personal data of its employees. Personal data may be processed only for a specific, explicit and legitimate purpose, and the employee must be informed of every use of his or her data, e.g., processing payroll and recording working time. Disclosure of employee personal data to third parties is prohibited, unless the employer has a legitimate purpose, e.g., disclosing personal data to the employee’s bank in order to pay salary. Employee consent is required in order to use or transmit personal data for any other reason.

The use of sensitive personal data, such as data relating to health or religion, is limited further. These may only be used for a purpose listed in the Data Protection Act unless the Data Protection Commission gives it prior approval.

STATUS

In Austria, an employer can enter into employment contracts, apprenticeship contracts, contracts for work and services, or service contracts.
Employees

An employment relationship gives the employer a greater ability both during and after the employment to protect company confidential information and intellectual property, and prevent the former employee from setting up in competition or poaching other staff. Historically, a distinction has been drawn between white-collar employees and blue-collar employees with both categories being subject to different statutory provisions and collective bargaining agreements.

Independent contractors and consultants

An independent contractor may be engaged under either a service contract ("freier Dienstvertrag") under which the worker undertakes to provide services for a certain period of time, or a contract for work and services ("Werkvertrag") under which the work to be provided is specified and guarantees a specific and successful result. Independent contractors are quite common in Austria. An independent contractor does not have to perform the work personally, is not integrated into the organization and uses his or her own resources. Further, an independent contractor is not bound by specific working hours or a specific place of work, and is not subject to any instructions from the engaging entity. Social insurance premiums are only payable in respect of service contracts, and not contracts for work and services, and it is the individual worker who is responsible for payment. For this reason, independent contractor arrangements are increasingly scrutinized by the tax and social insurance authorities. In recent years, changes to the law have narrowed the difference in treatment between independent contractors and employees in respect of entitlement to severance pay and cover under the social insurance system.

Agency workers

Agency workers are commonly used in Austria. The Agency Work Act ("Arbeitskräfteüberlassungsgesetz") contains extensive provisions to protect such workers, and entitles agency workers to equal pay with comparable employees and cover under the social insurance system.

PRACTICALITIES

Restrictions on overseas individuals working in Austria

Citizens of most countries within the European Union (EU) or the European Economic Area (EEA) do not need work permits. However, citizens of Croatia will need a work permit until June 30, 2020, if they have not already worked in Austria prior to Croatia joining the EU on July 1, 2013. All other non-EEA citizens who wish to work in Austria must obtain a residence and working permit.

An employer who employs workers without the necessary permits can be fined up to €50,000 for each illegal foreign worker engaged.

Tax and social security contributions

Salaries paid to employees are subject to income tax, to be withheld by the employer and directly forwarded to the tax office. Income tax is assessed on a progressive basis up to a maximum rate of 50 percent. The social security contribution payable is approximately 18 percent by the employee and 23 percent by the employer. In general, social insurance contributions are calculated on an assessment basis, which corresponds to all monetary or in-kind benefits received by the employee from the employer but are capped at a maximum salary. For 2014, this is €4,530 per month. If the salary is higher than the maximum, the additional part of the salary is not subject to contributions.

Taxation of individuals working in Austria

Every employee who stays 183 days or more in Austria is liable for Austrian income tax on his or her worldwide income.
THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th><strong>Probationary Period</strong></th>
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</thead>
<tbody>
<tr>
<td>Probationary periods are commonly agreed by the parties or set out in collective bargaining agreements (CBAs). They may not last longer than one month.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Minimum Wage</strong></th>
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<tbody>
<tr>
<td>No uniform minimum wage, but CBAs set minimum wages for almost every business.</td>
</tr>
</tbody>
</table>

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<tr>
<th><strong>Non-Pay Benefits</strong></th>
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<tbody>
<tr>
<td>Fringe benefits are not a legal requirement, but they are common and may include:</td>
</tr>
<tr>
<td>- Company cars</td>
</tr>
<tr>
<td>- Mobile telephones to employees (senior employees in particular)</td>
</tr>
<tr>
<td>- Bonuses</td>
</tr>
<tr>
<td>- Stock options</td>
</tr>
</tbody>
</table>

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<tr>
<th><strong>Hours of Work</strong></th>
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</thead>
<tbody>
<tr>
<td>Standard working hours are up to eight hours per day and up to 40 hours per week. The maximum limits are generally 10 hours per day and 50 hours per week. CBAs may provide otherwise.</td>
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</tbody>
</table>

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<thead>
<tr>
<th><strong>Holiday Entitlement</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees are entitled to a minimum of 30 working days each year, increasing to 36 for those with 25 years’ service or more.</td>
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</tbody>
</table>

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<tr>
<th><strong>Default Normal Retirement Age</strong></th>
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</thead>
<tbody>
<tr>
<td>There is no default compulsory retirement age. However, in order to qualify for the maximum old-age pension under the social insurance system, currently a female employee must be 60 and a male employee must be 65.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Sick Pay Entitlement</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally, employers must pay their employees their normal salary for a certain period of time when off sick, depending on his or her length of service. The minimum level is six weeks of full pay and a further four weeks of half pay. After this period expires, statutory sick pay may be payable from the social insurance system.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th><strong>Rate of Tax Payable by Employee</strong></th>
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<tbody>
<tr>
<td>There is a sliding scale of tax payable up to a maximum of 50 percent.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Rates of Social Security Payments</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers’ social security contributions are approximately 23 percent of employees’ salaries. Employees’ contributions are approximately 18 percent of salary up to a salary cap (currently €4,330 per month).</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Maternity Benefits</strong></th>
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</thead>
<tbody>
<tr>
<td>Expectant mothers must not work at all from eight weeks before the expected date of birth until eight weeks after the birth (the “Protection Period”). After the Protection Period, the employee is entitled to request maternity leave until her child reaches the age of two. The minimum period of leave is two months. During the Protection Period, the employee receives her pay from the Social Insurance Authority. After the Protection Period, the employee receives, for a maximum period of three years, Childcare Compensation, the amount of which depends on the mother’s former income and the duration of the leave. In addition, there is Family Allowance, which depends on the age of the child. Currently, it amounts to €150.40 per month at birth and increases on a sliding scale up to €152.70 per month at the age of 19 (these amounts will increase by four percent from July 2014). Family Allowance may be claimed in certain circumstances until the child is 25 years of age.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Paternity Benefits</strong></th>
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</thead>
<tbody>
<tr>
<td>Fathers are entitled to take paternity leave. Maternity and paternity leave may be divided between the parents but may not be taken by both at the same time. Childcare Compensation may vary, depending on the division of leave taken by both parents.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th><strong>Flexible Working</strong></th>
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</thead>
<tbody>
<tr>
<td>There is no right to request to work flexibly. However, flexible and part-time programs can be mutually agreed, either on an individual or collective basis.</td>
</tr>
</tbody>
</table>
**Equal Opportunities**

Employees are protected against discrimination on the grounds of sex, sexual orientation, age, religious or philosophical beliefs, national origins or ethnic affiliation, and disability.

**Protected Employees**

Protected employees include expectant mothers, mothers and fathers on parental leave until four weeks after the end of the leave, disabled persons and employees doing military service or community service in lieu of military service, Works Council members, apprentices, and those employees dismissed in connection with the exercise of a statutory right or for being active in trade union matters.

**Minimum Notice Period**

Employers who wish to terminate a white-collar employee without cause are bound by set termination dates and a minimum notice period of six weeks during the first two years of employment; two months after the second year of employment; three months after the fifth year; four months after the 15th year; and five months after the 25th year.

For blue-collar employees, generally a two-week mandatory period of notice is required. As a general rule, the employer is not bound by any set termination date. However, CBAs or individual agreements may provide otherwise or may provide for specific termination dates.

**Collective Agreements**

The provisions of a CBA take precedence over any detrimental provision in an employment contract. CBAs are applicable to nearly every private business in Austria. The applicable CBA must be cited in the employment contract or Dienstzettel. There are no CBAs in the public sector.

**Disciplinary Rules**

Disciplinary action against an employee can only take place if it is provided for in a CBA or shop agreement and the Works Council agrees to the action. A simple reprimand along with a request to act in accordance with the employee’s duties in future, however, will not generally constitute disciplinary action in this sense.

**Grievances**

Generally, CBAs or shop agreements set out how an employee should raise a complaint to his or her employer.
AUSTRIA: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal
Before taking any disciplinary action against an employee or issuing notice of dismissal, employers must notify the Works Council, if established. (Employers with five or more employees are required to have a Works Council in place.) Only disciplinary actions and sanctions set out in a collective bargaining agreement (CBA) or a shop agreement, and which the Works Council has expressly approved, are valid.

Grievances
Generally, the rules relating to how an employee should raise a complaint to his or her employer and the procedure that should be followed in dealing with that complaint are set out in a CBA or shop agreement.

Consultation with employees
Employers are required to notify the Works Council in advance of any intended terminations. The Works Council is given five working days to comment on the proposed termination by either approving or objecting to it or refraining from any comment. An objection from the Works Council (or the employee) will not prevent the termination taking effect and the employer may proceed with the termination following the expiry of the five-day period. Failure to comply with the obligation to notify the Works Council invalidates the notice of termination. Any subsequent termination may therefore be contested either by the Works Council or the employee at the Labour Court for being socially unjustified.

INDIVIDUAL TERMINATIONS
Employers do not need to have a reason to terminate an employee's employment. Either party may do so by serving the required notice on the other.

All employees whose employment contract was entered into prior to 2003 are entitled to a severance payment upon termination without cause. The amount of the payment depends on the employee's length of service. It ranges from 1/6th of the employee's annual salary after three years' service to one years' salary after 25 years' service.

For employment contracts entered into on or after January 1, 2003, and “service contracts” entered into on or after January 1, 2008, employers do not need to pay severance calculated in this way. Instead, during the employment, the employer is obliged to pay 1.53 percent of the employee’s monthly salary to a fund, generally administered by an insurance company or bank. On termination of employment, employees are entitled to either receive payment of the sum accumulated in the fund or retain their vested rights to the fund if they start work for a new employer.

In the event of termination without cause, employees are also entitled to receive full pay for any accrued but untaken vacation and compensatory time off.

Contractual claims
Where the employee is dismissed summarily without good cause or resigns with good cause, the employment terminates, and the employee is entitled to the salary he or she would have earned if notice had been properly given. In addition, the employee is entitled to mandatory severance pay (if employed prior to 2003) or payment from the fund (if employed during or after 2003) and to the payment of any accrued but untaken vacation. There are no separate contractual claims which would entitle employees to any additional payments on termination.

Statutory claims
Employees who have more than six months’ service with a company that employs at least five permanent employees may contest their dismissal as being “socially unjustified” at the Labour Court. The claim must be brought within one week of the employee being notified of the dismissal. An employee will be successful with this claim if he or she can show that his or her material social interests would be jeopardized by their employment being terminated and the employer cannot prove that, for personal or stringent business reasons, the termination was inevitable. A successful claim leads to the reinstatement of the employee and the employer paying all wages accrued during the pending court proceedings.

Certain employees are afforded special protection against dismissal. They include members of and candidates for a Works Council, expectant mothers until four months after giving birth, a mother or father on parental leave until four weeks after the end of
the leave, employees doing military service or community service in lieu of military service and disabled persons. In all these cases, the employer must obtain the prior consent of the Labour Court or a government agency to terminate employment and consent is only granted in special circumstances. Notice of termination given before such consent is obtained is not valid. However, the employee can chose to accept the dismissal and claim damages for the amount he or she would have received if notice had been duly given, up to a maximum period of six months. Such a claim would have to be filed within six months of the effective date of termination.

**Redundancy payments**

Employees have no right to receive any payments on termination where the reason for termination is redundancy, other than the payments described above.

Employees are, however, entitled to statutory unemployment compensation, which is generally provided for between 20 and 30 weeks, provided the employee has collected 156 insurance weeks during the last five years. The unemployment compensation includes a basic amount, “family benefits” and, if needed, an additional amount. The basic amount is 55 percent of daily net income. The maximum amount is approximately 80 percent of the most recent net income for those entitled to family benefits and 60 percent of net income for those without such entitlement.

**Discrimination**

The Equal Treatment Act prohibits any discrimination, direct or indirect, by an employer in relation to the termination of employment because of the employee’s sex, sexual orientation, age, religious or philosophical beliefs, national or ethnic origin, disability, or because of membership in an employee organization. It also prohibits sexual harassment by an employer, as well as the failure of an employer to prevent sexual harassment by third parties.

If an employee brings a claim against the employer because of a dismissal on one of these grounds and wins the case, the dismissal is invalid and the employee retains his or her job. Alternatively, the employee can choose to accept the dismissal and claim compensation equal to six months’ pay.

**GROUP TERMINATIONS**

**Redundancies**

Employers have to notify the competent regional office of the Federal Employment Office (“Arbeitsmarktservice”) (the “Office”) in writing of any collective dismissals. A collective dismissal occurs if, within a period of 30 days, the employment of at least five employees in undertakings with usually 20 to 99 employees terminates; at least five percent of the employees in undertakings with 100 to 600 employees terminates; at least 30 employees in undertakings with usually more than 600 employees terminates; or at least five employees who have reached the age of 50 terminates. For this purpose, termination includes termination effected by notice or by mutual consent.

Such notification must be filed at least 30 days before the first notice of termination is given. The termination of an employment contract shall be null and void if it takes place before the notification is received by the Office or, after receipt but within the 30 day period, without the prior approval of the Office.

In addition, employers must inform the Works Council of the planned dismissals. Where the employer has at least 20 permanent employees, certain measures for the prevention, elimination or mitigation of the impact of the dismissals may be adopted by shop agreement (“social plan”). The social plan shall, in particular, take into consideration the interests of the older employees. If the parties do not reach an agreement, either one can refer the matter to a specific conciliation body at court.

**Business transfer**

In the event of a business transfer, the new owner enters into the existing employment contracts, upon transfer, “as employer with all rights and obligations.” As a matter of general principle, Austrian law does not provide for a general right of employees to object to this automatic transfer of their employment contract. However, an employee may object to a transfer of the employment contract to the acquiring entity if the new owner does not take over any provisions on protection against termination as set forth in a CBA applicable before the transfer of the business or any pension commitment (direct benefit scheme) of the selling entity.
Employees may give notice of termination on the transfer of a business if the applicable CBA or shop agreement results in substantially less favorable working conditions after the transfer. In this case, the employee has the same claims that he or she would have if notice of termination had been given by the employer; that is, he or she is entitled to statutory severance pay.

The mere change of a service provider without additional aspects of a business transfer does not trigger the above consequences.
BELGIUM: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisement and professional recruitment agencies.

Pre-employment references and background checks

Employers often use references for the purpose of assessing a candidate's suitability, and can request a judicial record extract (“extrait de casier judiciaire”/“uittreksel uit het strafregister”) which details any prior criminal record or offenses. Psychological testing may also form part of the recruitment process to the extent it is reasonably necessary to determine whether the candidate is fit for the position. As a rule, medical references may not be requested except to the extent it is strictly necessary to determine whether the candidate is able to perform certain duties or to meet health and security requirements.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate on the basis of sex, race, color, nationality, ethnic or national origin, disability, physical or genetic patterns, social origin, age, sexual orientation, religion or belief, or trade union activities or membership.

Itemized pay slips

Employers must give their employees itemized pay statements (“décomptes”/“afrekeningen”) specifying certain mandatory information such as gross and net salary, benefits in kind, and the amount and purpose of any deductions, e.g., withholding tax and social security contributions.

Health and safety

Employers are obliged to safeguard the health and safety of their employees at work. This includes ensuring that accidents are immediately addressed and reported. Employers are also obliged to obtain insurance in respect of accidents at work.

Written contract of employment

An employment contract may be concluded orally or in writing, but if it seeks to achieve any of the following purposes, it must be in writing: (i) to restrict the employee's right to compete with his or her employer following termination of the employment; (ii) to limit the term of the employment to a specified period or to the time necessary to perform a particular assignment; (iii) to provide for part-time employment; (iv) to provide employment to students or trainees; (v) to provide a working from home arrangement; (vi) for employees whose annual gross compensation exceeds €65,771 (2014 amount), to agree on the notice period for termination; and (vii) for employees whose annual gross compensation exceeds €65,771 (2014 amount) and who are in charge of the management of the operations of the company or divisions, to agree on arbitration as a dispute resolution mechanism.

An employment agreement will typically include at least the following terms: position/duties, commencement date and term, place of work, remuneration and benefits, vacation days, exclusivity (i.e., restricting the employee’s other activities), confidentiality and non-compete (if applicable). There are certain language requirements in respect of employment contracts and other communications with personnel. For example, Dutch must be used if the business is located in the Flemish region.

Typically, a Belgian employer will send the employee an offer letter and follow up with a written employment contract. As a rule, employment contracts for employees (also referred to as white-collar workers) are more detailed than for blue-collar workers. In addition, both employees and blue-collar workers may be subject to their employer’s working regulations and/or collective bargaining agreements, which are agreed at national level, industry level and company level.

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly, the Belgian law also implies certain additional terms into every employment relationship. These include the following:

- Employees have a duty to be ready and willing to work, to use reasonable care and skill, and to obey lawful and reasonable instructions;
Both parties are bound by a mutual obligation of loyalty and good faith. For an employee, this means that he or she cannot set up in direct competition with his or her employer, solicit customers while employed or use or disclose the employer’s, or its clients’, confidential information or trade secrets; and Employers have a duty to pay the employee and (in some cases) provide work, and to take care of the employee’s health and safety.

Company rules

Company rules (referred to as working regulations (“règlement de travail”/“arbeidsreglement”)) typically set out rules relating to working time, working organization (e.g., shifts), workplace accidents and illnesses, health and safety rules, equal opportunities, disciplinary rules or procedures, personnel to whom workplace grievances can be raised, termination periods and employee representatives. Employers may also have a staff handbook or guide in place.

Data protection

An employer has duties in respect of the personal data and sensitive personal data of its current and former applicants, employees, workers, contractors, consultants and agency staff. These duties mean an employer must fairly and lawfully process data; process them only for limited purposes; and ensure they are adequate, relevant and not excessive, accurate, up to date, not kept for longer than necessary, processed in line with the data subject’s rights, kept secure, and not transferred to other countries that do not have adequate protection.

STATUS

A key consideration for any business setting up in Belgium is how to staff its operation. In Belgium, a business will need to decide on the appropriate status of the individual. It can employ employees (white-collar workers) or blue-collar workers under a contract of employment, or engage independent contractors or consultants as self-employed independent service providers or through their management companies. The status of the individual dictates the level of statutory protections they are entitled to receive and their rights.

Employees

To some extent, an employment relationship gives the employer a greater ability both during and after employment to protect the company’s confidential information and trade secrets. Non-competition restrictions contained in an employment contract are also enforceable against certain employees such as those earning more than €65,771 (2014 amount), unless prohibited under a collective bargaining agreement, or those earning between €32,886 and €65,771, provided this is permitted under a collective bargaining agreement. Those earning less than €32,886 or who are dismissed during their first six months of employment cannot be restricted in this way. Certain additional conditions must also be met for a non-competition restriction to be enforceable. For example, the restriction generally cannot last for more than 12 months after termination and the non-competition clause must provide for payment of a lump sum to the employee.

Independent contractors or consultants

It is very common in Belgium for a high earner to perform his or her services as a self-employed independent service provider or through a management company, as this has significant benefits for both the individual and the engaging entity in respect of the level of tax and social security contributions payable. In addition, the engagement of a contractor or consultant is governed by the terms of the services or consultancy agreement, and the individual has few statutory protections or rights. For example, there are no mandatory termination notice periods that must be observed and no automatic transfer of the contract to any purchaser of the business. These types of arrangements are often scrutinized by the tax and social security authorities and can be subject to challenge in the labor courts.

Agency workers

If the business has short-term demands or needs to cover absences, it may use temporary workers from an employment agency. These workers are exclusively the employees or workers of the agency and benefit from the same statutory rights and protection as all employees and blue-collar workers.
PRACTICALITIES

Restrictions on overseas individuals working in Belgium

Except for nationals of the European Economic Area and Swiss citizens, foreign workers must (i) have a work permit “B” which is valid for employment with only one employer for a period of 12 months but which is renewable; and (ii) have a visa if they stay in Belgium for more than three months. It is an offense to employ someone who is not entitled or permitted to work, and committing the offense can lead to imprisonment of between three months and three years; criminal fines of between €3,600 and €36,000; administrative fines of between €1,800 and €18,000; and closure of the operations of the employer.

Tax and social security contributions

If the organization has employees in Belgium, then it is responsible for working out the income tax withholdings and social security contributions that need to be paid on each employee’s wages or salary, and paying them over to the relevant authorities.

When paying the employee’s salary, the employer must deduct the contributions due by the employee (the employee's contribution) and pay the total amount of employer’s and employee’s contributions to the National Office of Social Security. In the private sector, employee social security contributions are 13.07 percent of gross salary. The employer also pays an employer social security contribution at the rate of approximately 32 percent of the gross salary paid.

In addition, when paying the salary, the employer must deduct the professional withholding tax (calculated on the basis of the gross salary less the employee’s social security contributions), and pay it to the tax authorities. This monthly withholding is a prepayment of the final income tax due by the beneficiary. Depending on the taxable basis for a given income year and the actual income tax due, the employee will be entitled to a refund of a portion of the professional withholding tax or will be required to pay an additional sum.

Taxation of individuals working in Belgium

Persons resident, ordinarily resident and domiciled in Belgium are liable for Belgium income tax on their worldwide income, subject to the application of double tax treaties. Benefits in kind derived from employment are generally subject to income tax and social contributions. There is, as a rule, no capital gains tax in Belgium. Belgium also has a law providing for a favorable tax treatment of stock options granted to employees (employees are subject to tax on stock option plans at the time the options are granted; any gains realized upon the exercise of the options would not normally attract income tax). Individuals working for an overseas company who are sent to Belgium for the purpose of working in its Belgian business operations will, in broad terms, only be resident in Belgium if their actual residence in Belgium in any tax year lasts 183 days or more.
THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

Probationary Period
Probationary (trial) periods used to be fairly common in Belgium, however, since January 1, 2014, they no longer exist.

Minimum Wage
National minimum wage is currently €1,501.82 per month for full-time workers aged 21 and above; €1,541.67 for workers aged 21-and-a-half and above and having at least six months’ service; and €1,559.38 for workers aged 22 and above and having at least 12 months’ service.

Non-Pay Benefits
Fringe benefits are not a legal requirement, but they are extremely common and may include:

- Private health care
- Permanent health insurance
- Death in service benefit
- Company cars
- Pension contributions
- Bonuses
- Share options
- Meal vouchers
- Mobile telephones
- Laptops

Hours of Work
Working hours may not exceed eight per day or 38 per week. Exceptions may be relied upon in certain circumstances provided working hours do not exceed either 11 hours per day or 50 hours per week.

Holiday Entitlement
Employees are entitled to a minimum of 20 working days’ paid annual leave. In addition, there are 10 public holidays per year.

Default Normal Retirement Age
Employees are entitled, but not obliged, to retire at 65 years of age.

Sick Pay Entitlement
Employees (white-collar workers) are entitled to full wages for the first month of illness. If the absence continues, the compulsory social insurance scheme provides payment of 60 percent of earnings for up to one year (currently capped at €78.96 per day) followed by payment of between 40 and 65 percent of earnings (currently capped at €52.64 to €85.54 per day), depending on the employee’s personal situation.

Blue-collar workers are entitled to full wages for the first seven days of illness, then 85.88 percent of wages for the next seven days. For the 15th to the 30th day of absence, 25.88 percent of wages not exceeding €103.24 per day (current amount) and 85.88 percent of wages exceeding €131.60 are paid. Parts of these payments are covered by the federal social insurance scheme. Following this, the social insurance scheme provides further payment for a maximum of one year.

Separate rules apply in respect of absences related to work accidents.

Rate of Tax Payable by Employee
Federal personal income tax is payable at a rate ranging from 25 percent to 50 percent, all income in excess of €37,330 (2014 amount) being subject to the 50 percent rate, and increased by local taxes.

Rates of Social Security Payments
Employers’ social security contribution rates are 32 percent. Employees’ contribution rates are 13.07 percent.

Maternity Benefits
Women may take up to 15 weeks’ maternity leave. At least nine weeks must be taken after the birth and at least one week must be taken before the date the baby is due. Women receive maternity benefits paid by the social security system while on maternity leave. The benefit is equivalent to 82 percent of uncapped salary for the first 30 days,
then 75 percent of salary subject to a statutory cap (currently €98.70 per day).

**Paternity Benefits**

Following the birth of a child, the father has a right to 10 days’ paternity leave, which must be taken within four months following the birth, in one or several instalments. Employers must pay full salary for the first three days of paternity leave and then 82 percent of salary subject to a statutory cap (currently €107.91 per day) from the social security system for the remaining seven days of leave.

**Flexible Working**

Employees have a right to make a request to work flexibly.

**Equal Opportunities**

Employees are protected against discrimination on the grounds of sex, marital status, gender, physical or genetic patterns, race, color, nationality, ethnic, social or national origin, disability, sexual orientation, age, language, and religion or belief.

**Protected Employees**

All employees and blue-collar workers are protected by law. Certain types of employees enjoy additional (and significant) protection, such as employee representatives, pregnant women, and those on maternity leave.

**Minimum Notice Period**

**Employment contracts entered into prior to December 31, 2013**

For blue-collar workers, the minimum period of notice to be provided by employers is 28 days to 129 days, depending on the seniority of the worker.

For employees (white-collar workers), the minimum period of notice to be provided by employers depends on the employee’s salary and length of service, and the date the employment contract was entered into. Generally, for those employed under employment contracts entered into prior to January 1, 2012, the minimum period of notice is three months’ notice for each commenced five-year period of service. Generally, for those employed under employment contracts entered into after January 1, 2012, the minimum period of notice is approximately 30 days per commenced year of service (91 days if the length of service is less than three years, 120 days if the length of service is between three and four years, 150 days if the length of service is between four and five years, 182 days if the length of service is between five and six years, with an additional 30-day notice period for each additional year of service commenced).

**Employment agreements entered into after January 1, 2014 (and future effects of employment agreements entered into prior to December 31, 2013)**

New rules aimed at removing the difference in treatment between blue-collar workers and employees in respect of notice periods took effect on January 1, 2014. As a result, the same termination notice periods apply to each group of workers, and such periods are solely based on seniority.

The new regime applies not only to employment agreements entered into after January 1, 2014, but also to employment agreements entered into prior to that date. In other words, in respect of employment agreements entered into prior to December 31, 2013, two notice periods apply: (i) a first notice period according to the old provisions, considering the seniority acquired before January 1, 2014; and (ii) a second notice period which will be added to the first, calculated on the basis of the new regime and considering the seniority acquired after January 1, 2014.

The new termination notice periods which apply after January 1, 2014, can be summarized as follows:

<table>
<thead>
<tr>
<th>Seniority</th>
<th>Notice Period (weeks)</th>
<th>Seniority</th>
<th>Notice Period (weeks)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 3 months</td>
<td>2</td>
<td>4 years</td>
<td>15</td>
</tr>
<tr>
<td>3 – 6 months</td>
<td>4</td>
<td>5 years</td>
<td>18</td>
</tr>
<tr>
<td>6 – 9 months</td>
<td>6</td>
<td>From the 6th year onwards, 3 additional weeks per additional year of seniority</td>
<td></td>
</tr>
<tr>
<td>9 – 12 months</td>
<td>7</td>
<td>20 years</td>
<td>62</td>
</tr>
<tr>
<td>12 – 15 months</td>
<td>8</td>
<td>21 years</td>
<td>63</td>
</tr>
<tr>
<td>15 – 18 months</td>
<td>9</td>
<td>22 years</td>
<td>64</td>
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<tr>
<td>18 – 21 months</td>
<td>10</td>
<td>23 years</td>
<td>65</td>
</tr>
<tr>
<td>21 – 24 months</td>
<td>11</td>
<td>24 years</td>
<td>66</td>
</tr>
<tr>
<td>From 2 years</td>
<td>12</td>
<td>25 years</td>
<td>67</td>
</tr>
<tr>
<td>3 years</td>
<td>13</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Collective Agreements**
Collective bargaining agreements do not need to be referenced in the employment agreement. Collective bargaining agreements are essential in Belgian labor law and are entered into at national level, industry level and company level. Collective bargaining agreements entered into at the national level and at the industry level prevail over any terms of an employment contract or working regulations.

**Disciplinary Rules**
The employee must be told of any applicable disciplinary rules. These are generally set out in the working regulations. There are no statutory rules governing the conduct of the disciplinary process.

**Grievances**
There are no laws governing the rules that an employer must follow when responding to a grievance by an employee. These rules are generally set out in the working regulations.
BELGIUM: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal
Except in relation to specifically protected workers (pregnant women, women on maternity leave, employee representatives, etc.), there are no statutory rules pursuant to which an employer would be required to follow a specific procedure before deciding on disciplinary action or dismissal of an employee. Usually, however, a procedure is provided for in the working regulations.

Grievances
Employees may raise complaints about their treatment at any time during the course of their employment, but there are no statutory rules specifically governing how these complaints must be addressed.

Consultation with employees
Prior to making the decision to dismiss, employers may, in certain limited circumstances, be required to inform and consult with employees, employee representatives or a recognized trade union. This includes where there is a collective dismissal or a business transfer.

Individual terminations
Employment contracts can be unilaterally terminated by either party without the need to consult with employees or employee representatives, and without obtaining the prior approval of any mediation, arbitration or legal body. Exceptions to this principle apply in respect of certain protected employees and in respect of collective dismissals.

If an employee is dismissed or the engagement with a self-employed contractor is terminated, he or she will generally have no claim against the employer as long as it has observed the terms of the contract, including in respect of applicable notice periods. The notice period is either the minimum set by statute or the period set out in the individual’s employment contract, if longer. During the notice period the employee can be required to work as normal for all or part of the period, or the employer can terminate the employment early by paying in lieu of the remaining notice period. In the latter case, the employee is free to start a new job during what would have been their notice period and is under no obligation to repay any of the payment in lieu of notice.

Notice of termination is valid only if it is given in writing and sets out the duration of the notice period and the date notice begins. It must also be sent either by registered mail or served by a bailiff.

Where the employment is terminated for “serious cause” (“motif grave”/”dringende reden”), no notice or termination payment is required. Serious cause is any fault or serious shortcoming which makes any future relationship between the parties impossible. In the case of termination for serious cause, a maximum of three business days may elapse (i) between discovery of the fault or shortcoming and the resulting termination, and (ii) if separate notices of termination and of serious cause are given, between the giving of these notices.

Contractual claims
A wrongful dismissal claim is a contractual claim. It is where an employer terminates the employment of an employee in breach of its contractual obligations. An employer may only terminate an employment contract without giving proper notice where it has a contractual entitlement to do so, or for serious cause (as described above).

Statutory claims
Since January 1, 2014, employers are required to explain any termination decision on request from a dismissed employee or blue-collar worker. The request must be made by registered letter, generally within a two-month period following the termination of employment. The employer must provide its response within two months of receipt. If the employer fails to do so, it becomes liable to pay a lump-sum fine equal to two weeks’ compensation to the dismissed worker.

Although there is no set list of acceptable reasons for dismissal, workers are protected against patently unreasonable dismissal.

A dismissal will be patently unreasonable if the reason for dismissal (i) has no connection with the suitability or behavior of the worker, (ii) is not based on the operating requirements of the company, service or department, and (iii) is not one a prudent and reasonable employer would have implemented.
A worker who is the victim of a patently unreasonable dismissal is entitled to an indemnity ranging from three to 17 weeks' compensation, the actual amount being set by the relevant labor court. This amount is without prejudice to the termination indemnity to which the terminated worker is entitled as well as certain other potentially applicable indemnities (e.g., non-compete indemnity) and in addition to certain other potentially applicable indemnities (e.g., the specific protection indemnity to which certain classes of specifically protected workers are entitled and which is discussed further below).

There are also three categories of employees who have additional protection against dismissal. The first is pregnant women and women on maternity leave. From the date the employer is informed of the pregnancy (e.g., by a medical certificate) to the last day of the month following the end of the maternity leave, the employer may not terminate the employment agreement by reason of the physical condition of the employee resulting from pregnancy or childbirth. If the termination is for that reason, or the employer fails to establish a reason for the termination, the employee is entitled to a specific termination payment equal to six months' salary payable in addition to salary during the notice period or payment in lieu of notice.

The second category is candidates and members of the Works Council ("conseil d'entreprise"/"ondernemingsraad") or the Committee for Prevention and Protection of the Workplace ("comité pour la prévention et la protection au travail"/"comité voor preventie en bescherming op het werk"). Members and candidates of these bodies may only be dismissed by observing specific procedures, and solely on the basis of two grounds: (i) for serious cause, which must be accepted by the labor court prior to termination; and (ii) for economical or technical reasons which must be accepted by the industry joint committee ("commission paritaire"/"paritair comité") prior to termination. Any termination which does not comply with these requirements triggers the obligation to pay termination payments equal to two, three or four years of salary (depending on the seniority of the employee representative. If the employee representative has requested his or her reinstatement and the employer refuses, this amount is increased by the salary due for the period between the termination date and the end of term as employee representative (elections take place every four years).

The third category is trade union representatives. If the employer terminates the employment contract of an employee in this category without observing specific procedures, it must pay the employee an indemnity equal to one year's salary in addition to salary during the notice period or payment in lieu of notice.

An employee or blue-collar worker may bring a claim of constructive dismissal if the employer has unilaterally changed essential terms and conditions. This typically relates to pay, working time, or place of work. The employer's unilateral action would result in the employment terminating and the employee would be entitled to notice of termination in the normal way.

Claims related to termination of employment must be made within one year following the termination date.

**Redundancy payments**

There are no additional payments due on termination of employment by reason of redundancy.

**Discrimination**

It is unlawful to discriminate on the grounds of sex, marital status, gender, physical or genetic patterns, race, color, nationality, ethnic, social or national origin, disability, sexual orientation, age, language, religion or belief, or trade union activities or membership in relation to the taking of disciplinary action or dismissal. A discrimination claim can be brought by any person who is discriminated against. A claimant does not need a period of continuous service in order to bring such a claim, and compensation that is awarded may be unlimited.

**Group Terminations**

**Redundancies**

Collective dismissals are subject to special notification and consultation requirements. A collective dismissal is deemed to occur if, during any 60-day period, notice of termination is given to (i) more than 10 employees when the enterprise employs between 20 and 100 workers; (ii) 10 percent of the workforce if the enterprise employs between 100 and 299 workers; or (iii) at least 30 workers if the enterprise employs at least 300 workers. For this purpose, an enterprise is
an economic business unit and not necessarily
the legal entity itself.

Before making a decision on a collective
dismissal, management must consult with the
Works Council, or, in the absence thereof, with
the Trade Union Delegation, or in the absence
thereof, with the entire staff or employee
representatives, on the possibilities of avoiding
the collective dismissal or reducing its scope
and mitigating its consequences. Management
is required to provide written information
relating to the proposed dismissals, including
the reasons for the proposals, the number and
the categories of employees to be dismissed,
the time frame, the criteria for selection of the
employees, and details and calculations of any
termination payments. A copy of any written
information must be forwarded to the local
bureau of the Regional Employment Office
("directeur van de subregionale
tewerkstellingsdienst"/"directeur du service
sub-régional du travail").

Employees and their representatives are
entitled to ask questions and make suggestions
and counter-proposals regarding the
proposals, which management must answer.
Ordinarily, several consultation meetings take
place between the parties, however, there are
no rules as to the number or frequency of
those. A decision regarding the dismissals can
only be taken once the process is complete,
which can take anything between one week
and several months. In practice, this is
evidenced in written minutes signed by both
management and the employee
representatives.

Following completion of the consultation,
management must give formal notice of the
projected collective dismissal in a second letter
to the Regional Employment Office. This
notice must include, amongst other things,
evidence of compliance with the consultation
requirements. Generally, dismissals may take
place only 30 days after this second letter has
been issued, however, the Regional
Employment Office can extend the waiting
period to 60 days in some cases.

Failure to comply with the consultation
procedure is subject to various sanctions: (i)
employee representatives may compel the
employer to restart the consultation
procedure, resulting in an increased salary cost
for the employer; (ii) employees may request
the annulment of the termination of their
contract; (iii) the employer may have to
reimburse government subsidies received
during the period of five years preceding the
collective dismissal; and (iv) the employer
(along with the individuals who made the
decision on behalf of the employer) may be
subject to criminal sanctions.

No additional payments are due to employees
in a collective dismissal situation, except a
marginal collective-dismissal payment which
is payable to workers with less than seven
months’ service.

Finally, and perhaps most importantly, it
should be noted that although the employees
or their representatives cannot ultimately
challenge management’s business decision to
proceed with a collective dismissal, the
consultation requirements outlined above may
lead to difficult negotiations on various
requests by the employee representatives for
additional payments, which can be significant
in the case of blue-collar workers. These
requests may be reinforced by various sorts of
industrial action.

Business transfer

The sale of a business, and more generally a
contractual transfer of the activities of an
enterprise or of a division of an enterprise
which results in a change of the legal identity
of the employer, will generally qualify as a
transfer under Collective Bargaining
Agreement No. 32bis of June 7, 1985, as
subsequently amended. Its key provision is
that all existing employment agreements of the
seller are automatically transferred to the
buyer. The transferor and transferee must
inform and consult representatives of any of
their own employees who will be affected by
the transfer or by measures taken in
connection with it. This obligation arises
regardless of the number of affected
employees.
DENMARK: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements and professional recruitment agencies.

Pre-employment references and background checks

Employers may, with the consent of the candidate, request a reference from a previous employer. Other background checks, such as criminal record checks, can only be requested if they are relevant to the job and the candidate has given his or her permission.

Selection of employees or workers

An employer may not discriminate in the recruitment practices, or in the terms and conditions it offers to a successful candidate on the basis of sex, race, color, social, ethnic or national origin, sexual orientation, religion or belief, political views, trade union activities or membership, age, pregnancy or disability.

Itemized pay slips

Employers are not required to give their employees itemized pay statements. However, employers must provide their employees with information regarding taxes being withheld and, in practice, this is done by providing pay slips.

Health and safety

Employers are obliged to safeguard the health and safety of their employees, visitors to their premises and the public. This includes a duty to carry out workplace health and safety assessments. Employers are also obliged to obtain employers' liability insurance.

Written contract of employment

There is no requirement that a contract of employment be in writing. However, no later than one month after the commencement of an employee’s employment, an employer is obliged to give the employee a written statement setting out certain specified terms. The statement must include details of all material terms of employment, such as the names and addresses of the employee and the employer, the place of work, job title or a description of the employee’s duties, the date of commencement of employment, the expected duration of the employment if it is time limited, and details of salary and wages including time of payment, ordinary working hours, the right to holidays, notice of termination and any collective agreements, if applicable. The statement must also specify any disciplinary rules or procedures applicable to the employee. Often, a Danish employer will, rather than sending the employee an offer letter or a written statement, provide the employee with a written contract of employment for immediate signature. This applies both to junior and senior employees; however, typically, the more senior the position, the more extensive the contractual provisions.

Implied duties of the employee and the employer

In addition to the terms and conditions set out expressly, Danish law and customs also imply certain additional terms into every employment relationship. These include the following:

- Employees have a duty to be ready and willing to work, to use reasonable care and skill, and to obey lawful and reasonable instructions;
- Both parties are bound by a mutual obligation of loyalty and good faith. For an employee, this means, among other things, that he or she cannot set up in direct competition with his or her employer, solicit customers while employed, or use or disclose his or her employer’s, or its clients’, confidential information or trade secrets; and
- Employers have a duty to pay the employee and (in some cases) provide work, and to take care of the employee’s health and safety.

Company rules

It is common for employers to have internal rules and policies relating to maternity, paternity and parental leave, sickness, use of IT and Internet, and smoking. Often such policies are set out in an employee manual, referred to in the contract of employment. Employees are obliged to follow these rules and policies in the same way as the express terms of their contract.

Data protection

An employer has duties and obligations under the Act on Processing of Personal Data (“persondataloven”) in respect of personal
data and sensitive personal data of its current and former applicants, employees, workers, contractors, consultants and agency staff. These duties and obligations mean an employer must fairly and lawfully process data; process them for a specific and legitimate purpose; and ensure they are adequate, relevant, not excessive, accurate, up to date, not kept for longer than necessary, processed in line with the data subject’s rights, kept secure, and not transferred to other countries that do not have adequate protection.

**STATUS**

Generally, there are three categories of workers in Denmark: salaried employees (white-collar workers), other employees (blue-collar workers) and self-employed persons.

A salaried employee is subject to mandatory protection under the Danish Salaried Employees Act (“funktionærloven” or the “Act”). The Act only covers certain types of workers, such as commercial and office assistants engaged in selling or buying, or carrying out office work or equivalent warehousing work; individuals whose work consists of providing technical or clinical assistance of a non-craftsman like or non-manufacturing nature, and other assistants carrying out comparable work; and individuals whose work consists exclusively or essentially of managing or supervising the work of others on behalf of the employer. The Act only covers those employees who perform work for more than eight hours per week on average, and who hold a position where the employer has the right to direct and control the way in which the employee performs his or her duties.

Employees falling outside the definition of a salaried employee will generally be referred to as blue-collar workers. No statutory regulation applies to the general terms of employment of blue-collar employees. However, collective agreements might apply. The engagement of an independent contractor is possible. However, this is subject to strict requirements to ensure that it is not in fact an employment relationship.

**Employees**

An employment relationship gives the employer a greater ability to protect the company’s confidential information and intellectual property, and prevent the former employee from setting up in competition or soliciting costumers or other staff. Non-competition and non-solicitation restrictions must be contained in the employee’s contract and will only be enforceable against salaried employees if certain conditions are met, including that the employee receives compensation in respect of the restriction.

**Independent contractors or consultants**

There are significant legal and administrative advantages of engaging self-employed individuals such as freelancers and consultants. For example, the engaging entity does not need to pay any holiday allowance, salary during sickness or any payments during maternity or paternity leave. However, these types of arrangements are often scrutinized by the Danish tax authorities.

**Agency workers**

If the business has short-term demands or needs to cover absences, it can use temporary workers from a temporary employment agency. Temporary workers are employed by the agency and the agency provides its employees for assignments to its customers. Temporary workers are typically employed on a day-to-day basis and are not obliged to accept work offered by the agency. The Danish Act on Temporary Agency Work (“vikarloven”) implements a principle of equal treatment. This means that a temporary worker is entitled to equal treatment in respect of certain employment terms as they would have enjoyed if they had been recruited directly. This applies to terms relating to working hours, salary (including benefits), overtime, breaks, rest periods, night work and holidays.

**PRACTICALITIES**

**Restrictions on overseas individuals working in Denmark**

Employers must ensure that all employees have permission to work in Denmark. Failure to do so can result in an employer being issued with a fine of between DKK 10,000 and DKK 20,000 (between approximately €1,340 and €2,680) per month per employee. Nordic citizens or those who hold a Danish residence permit based on family connection or asylum, or hold a residence permit on humanitarian grounds, do not need permission to work in Denmark. Citizens from European Union (EU) or European Economic Area member states or Swiss citizens seeking residence in Denmark based on the EU rules on freedom of movement are subject to special regulations.
Other employees must apply for a work permit.

**Tax and social security contributions**

When paying A-income, an employer must withhold applicable taxes and social security contributions. Salary paid to employees is generally considered to be A-income. However, payments made by a company not resident in Denmark are not considered A-income and therefore are not subject to withholdings, unless the company has a permanent establishment in Denmark.

**Taxation of individuals working in Denmark**

Persons residing in Denmark are liable for Danish income tax on their worldwide income and for Danish capital gains tax on their worldwide capital gains. Benefits in kind derived from employment are likely to be subject to income tax. The same applies to gains derived from share option or incentive schemes associated with employment. However, the taxation of gains on share option schemes may be postponed to the time when the shares are sold, and taxed at a lower tax rate provided that certain conditions are met. Individuals working for an overseas company who are sent to Denmark for the purpose of working in its Danish business operations will, in broad terms, only be resident if they are present in Denmark for more than three months, or their actual residence in Denmark in any 12-month period is 180 days or more.
THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

**Probationary Period**
For salaried employees, the probationary period must be agreed in writing and it must last no longer than three months. For all other employees, three to six month probationary periods are common, subject to any applicable collective bargaining agreements. During the probationary period, either party may terminate the employment on 14 days’ notice.

**Minimum Wage**
There is no statutory minimum wage but collective agreements may set this.

**Non-Pay Benefits**
Fringe benefits are not a legal requirement, but they are common and may include:

- Private health care
- Death in service benefit
- Company cars
- Mobile phone, PC, Internet, newspaper subscriptions
- Pension contributions
- Bonuses
- Share options

**Hours of Work**
There is a 48-hour average maximum working week (calculated over a four-month period). There is a daily rest entitlement of 11 hours, and a weekly rest entitlement of 24 hours.

**Holiday Entitlement**
Employees are entitled to a minimum of five weeks' holiday per holiday year (1 May to 30 April). There are nine public holidays per year. It is also common for employers to offer five contractual days of holiday in addition.

**Default Normal Retirement Age**
Employees are entitled to a public pension at the age of 65 or 67 (depending on the employee’s date of birth). Employers and employees can agree a retirement age provided that is not lower than 70 years.

**Sick Pay Entitlement**
Salaried employees are entitled to full salary during sickness absence. If the absence lasts more than 30 days, the employer can receive a refund equal to the statutory sickness benefit rate (currently up to DKK 4,075 (approximately €546) per week). Other employees are not entitled to salary during sickness absence (unless set out in the employment contract, or a collective agreement), but they may be entitled to receive the statutory sickness benefit from either their employer or the relevant authority during the first 30 days of absence.

**Rate of Tax Payable by Employee**
There is a sliding scale of tax payable up to approximately 55.5 percent of salary.

**Rates of Social Security Payments**
The contribution rates for 2014 are as follows (based on full-time employment):

- Labor-marked supplementary pension (ATP): DKK 90 (approximately €12.06) per month, paid quarterly by the employee and DKK 180 (approximately €24.12) per month, paid quarterly by the employer;
- Occupational injury insurance: the employer is obliged to take this out. The annual premium depends on the industry sector of the employer and insurance company;
- Labor market industrial diseases insurance: the level of employer contribution depends on the industry sector of the employer and the number of employees in Denmark. Annual premiums vary from DKK 331 to DKK 3,003 (approximately from €44.34 to €402.24) per employee. The contributions are paid quarterly;
- Maternity equalization regime: the quarterly premium for each full-time monthly paid employee is DKK 187.50 (approximately €25.11), which is paid in quarterly installments by the employer;
- Employers’ reimbursement system: the annual premium is DKK 3,026 (approximately €405.32) per year per full-time employee, which is paid in quarterly installments by the employer;
- Financing contributions: this covers part of the state’s expenses for ATP contributions for those who are unemployed. The employer must pay DKK 215.50 (approximately €28.87) per full-time monthly paid employee, and the contribution must be paid in quarterly installments.
Maternity Benefits
A pregnant woman is entitled to maternity leave from four weeks before the expected date of birth until 14 weeks after birth. The first two weeks of leave after birth are compulsory. Employees covered by the Danish Salaried Employees Act are entitled to receive half-salary during maternity leave although this is often extended to full salary for the first 28 weeks of leave under the terms of their employment contract or applicable collective bargaining agreement. Employees not covered by the Act are not entitled to any salary during maternity leave but may receive benefits from the state.

Paternity Benefits
Fathers are entitled to two weeks' paternity leave. There is no statutory right to pay during this period.

Parental Benefits
Fourteen weeks after the date of birth, both parents are entitled to an additional 32 weeks' parental leave, which may be extended to 40 or 46 weeks. Therefore, the total leave period for both parents combined is 112 weeks. There is no statutory right to pay during parental leave, but that may be agreed in an individual or collective agreement. If the right to parental leave is used, the relevant parent will receive public benefits amounting to DKK 4,075 (approximately €545.83) per week (2014 rate). However, even though each parent is entitled to 32 weeks' parental leave, the parents together will only be entitled to 32 weeks' public benefits.

Flexible Working
Employees have the right to make a request to work flexibly. There is no obligation for the employer to accept such a request. However, if an employee has returned from pregnancy, maternity, paternity or parental leave and makes a request for flexible working hours (e.g., a change in the time of working), the employer is required to consider the request and to answer the employee in writing.

Equal Opportunities
Employees are protected against discrimination on the grounds of sex (including pregnancy, and maternity and paternity leave, etc.), race, colour, social, ethnic or national origin, sexual orientation, religion or belief, political views, trade union activities or membership, age and disability.

Protected Employees
Protected employees include trade union officials, trade union members (in certain circumstances), health and safety officials, pregnant employees, employees with disabilities, those on maternity, paternity, parental or adoption leave, those working part-time or under a fixed-term contract, members of the Works Council, members of the information and hearing committee, and employee representatives in the company supervising board.

Minimum Notice Period
In most circumstances, the statutory minimum period of notice to be provided by an employer to salaried employees depends on the employee's length of service, and is increased by one month for each third year of employment.

<table>
<thead>
<tr>
<th>Length of service</th>
<th>Notice</th>
</tr>
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<tbody>
<tr>
<td>Less than 5 months</td>
<td>1 month to the end of a calendar month</td>
</tr>
<tr>
<td>Less than 2 years and 9 months</td>
<td>3 months to the end of a calendar month</td>
</tr>
<tr>
<td>Less than 5 years and 8 months</td>
<td>4 months to the end of a calendar month</td>
</tr>
<tr>
<td>Less than 8 years and 7 months</td>
<td>5 months to the end of a calendar month</td>
</tr>
<tr>
<td>More than 8 years and 7 months</td>
<td>6 months to the end of a calendar month</td>
</tr>
</tbody>
</table>

The minimum period of notice to be provided by a salaried employee is one month to the end of a month.

Minimum notice periods for blue-collar workers are set out in collective agreements and are typically shorter than the statutory minimum notice that applies to salaried employees.

An hourly paid worker who is not subject to a collective agreement may be terminated on reasonable notice. Reasonable notice will, in this respect, often be a notice similar to notices under the collective agreement within the area of business in question.

Collective Agreements
Any applicable collective agreements must be referred to in the employment contract. Collective agreements are
very common in both the private and the public sector.

**Disciplinary Rules**

Generally, no statutory disciplinary rules apply in the private sector. For the public sector, the Danish Public Administration Act ("forvaltningsloven") applies, according to which, among other things, the employee is entitled to be consulted before the employer takes disciplinary action. Disciplinary rules do not need to be set out in the employment contract.

**Grievances**

No statutory rules apply in relation to the handling of employee grievances in the private sector. However, the public sector is subject to the rules in the Danish Public Administration Act.
DENMARK: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

Once a salaried employee has been employed for 12 months, they are protected against unfair termination. Non-salaried employees might also be protected against unfair termination under the terms of an applicable collective agreement.

Where an employee benefits from this protection, the termination of his or her employment by the employer must be reasonably justified based on the circumstances of the employer or the employee. Circumstances of the employee may include the employee’s poor performance or bad behavior. In order for such a termination to be reasonably justified, the employee must be provided with a prior warning and given the opportunity to respond to or rectify the matter. Circumstances of the company may include the company’s poor financial situation or restructuring.

Generally, employers are free to terminate the employment of employees who do not benefit from this protection, provided the reason for termination is not discriminatory. There is no need to issue a prior warning in that circumstance.

Grievances

No statutory rules apply in relation to the handling of employee grievances.

Consultation with employees

Employers must, in certain circumstances, inform and consult employees and employee representatives before initiating any collective redundancies. Collective agreements may also contain rules regarding the involvement of trade unions or the Works Council. In addition, the involvement of the information and hearing committee or the European Works Council can be required in certain circumstances.

INDIVIDUAL TERMINATIONS

Employers can terminate employment by serving the applicable notice or making a payment in lieu of salary and/or benefits for the duration of the notice period. In addition, for certain employees, a reason for termination will need to be given. There are no statutory requirements in respect to how notice should be served, although collective agreements may contain rules in relation to this. It is generally recommended that notice is given in writing in order to have sufficient documentary evidence of it.

In addition, salaried employees who have been employed continuously for 12, 15 or 18 years are entitled to severance pay corresponding to one, two or three months’ salary.

Where an employer implements a change to the terms of employment in a way that materially disadvantages the employees, this is likely to constitute a termination of the employment combined with an offer of re-employment on new terms. The new terms must be communicated by the employer in accordance with the applicable notice due to the employee before the new terms can become effective. In such a situation, the employee is entitled to resign by the expiry of the notice period if the new terms are unacceptable.

Statutory claims

Salaried employees who have at least one year’s service are protected against unfair termination. Non-salaried employees might also be protected against unfair termination under the terms of an applicable collective agreement.

Where an employee benefits from this protection, the termination of his or her employment by the employer must be reasonably justified based on the circumstances of the employer (e.g., the company’s poor financial position or a proposed business restructuring), or the employee (e.g., the employee’s poor performance or bad behavior). In the latter case, the employee must be provided with a prior warning and given the opportunity to respond to or rectify the matter.

Where the employer cannot reasonably justify the termination, the employee may be entitled to compensation. The level of compensation is capped at half the salary that the employee would have been paid during his or her period of notice. Where the employee is 30 years of age or older, the amount is capped at three months’ salary. However, the compensation may, depending on the seniority of the employee, amount to up to six months’ salary. In addition, collective agreements might include a right to re-instatement or set out additional compensation entitlements.
According to the provisions of the General Agreement between the Danish Employers’ Confederation and the Danish Confederation of Trade Unions (which typically applies to hourly paid workers who are bound by a collective agreement) the compensation typically will not exceed 52 weeks’ salary.

Redundancy payments
There is no statutory right to a redundancy payment unless provided for under a collective agreement. The severance payment for longer serving employees described above is not limited to termination due to redundancy.

Discrimination
It is unlawful to discriminate on the grounds of sex, race, color, social/ethnic/national origin, sexual orientation, religion or belief, political views, trade union activities or membership, age or disability in relation to dismissal. The selection of a particular employee may not be based on the employee’s current or future pregnancy. A discrimination claim can be raised by an employee. A claimant does not need a period of continuous service in order to bring such a claim, and compensation that is awarded may be unlimited (although it has been standardized by case law in respect of some characteristics). A separate discrimination court has been established in Denmark to handle discrimination complaints.

GROUP TERMINATIONS

Redundancies
Employers who intend to make collective redundancies must initiate negotiations with employees with a view to limiting the number and/or impact of dismissals. A collective redundancy takes place where the employer, within a period of 30 days, dismisses at least 10 employees in employers who normally employ between 20 and 99 employees; at least 10 percent of the total number of employees in employers who normally employ between 100 and 299 employees; and at least 30 employees in employers who normally employ at least 300 employees.

The local labor market council must be notified of the potential collective redundancy, be involved in the negotiations and be informed of the outcome of the consultation process.

Additional obligations may be set out in a collective agreement.

Business transfer
The Danish Transfer of Undertakings Act (“virksomhedsoverdragelsesloven”) outlines the rights of employees affected by the transfer of assets of a business undertaking from one legal entity to another. As a general rule, the Act is not applicable if the acquisition is arranged as a purchase of shares in the target company.

The purpose of the Act is to protect employees who are transferred to a new employer. Consequently, it is not possible to contract out of the Act. Generally, under the Act, the transferee assumes the rights and obligations of the transferor in relation to the employees on the date of the takeover. This means that all employment terms and conditions e.g., salary, benefits, etc. continue to apply without any changes following the transfer. This means that the transferee will be liable for all claims from the employees, including claims relating to the period before the transfer.

Termination of employment due to a transfer of an undertaking or a part of an undertaking cannot be regarded as reasonable (on account of the circumstances of the employer), unless the termination is caused by financial, technical or organizational reasons causing changes in the workforce situation.

In addition, under the Act, relevant employers are required to inform and consult in respect of the transfer.
ESTONIA: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements, recommendation or professional recruitment agencies.

Pre-employment references and background checks

Employers may request a reference from a previous employer with the consent of the candidate. However, use of pre-employment references is not common. Other background checks, such as medical history checks and criminal record checks, can only be requested if they are relevant to the job. However, employers often make use of public databases to investigate the background of candidates.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate on the basis of sex, racial or ethnic origin, level of language proficiency, disability, age or sexual orientation. Compensation for both economic and non-economic damage suffered can be awarded where an employer discriminates in this way.

Itemized pay slips

Employers must give their employees itemized pay statements specifying gross and net salary, and the amount and purpose of any deductions upon the employee’s request.

Health and safety

Employers are obliged to safeguard the health and safety of their employees in the workplace. This includes an obligation to carry out risk assessments, have a health and safety policy, and keep a record of accidents at work. Employers are not obliged to obtain employers’ liability insurance for employees; this is on a voluntary basis only.

Written contract of employment

A contract of employment must be in writing if the term of employment exceeds 14 days (although failure to adhere to the format requirements will not invalidate the employment contract). Typically, the contract of employment is given before the employment commences. The parties are free to agree the terms of employment subject to those complying with minimum, mandatory terms set out in law. Offer letters are not commonly used.

In practice there is no difference between the employment contracts entered into with junior and senior employees, however, an employer may include more extensive restrictions for senior employees (e.g., non-compete restrictions).

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly in the contract of employment, common practice implies that both parties are bound by a mutual obligation of loyalty and good faith. For an employee, this means that he or she must perform duties loyally, bearing in mind the benefit to the employer, in accordance with his or her knowledge and skills, and with the requirements of his or her role; should notify the employer of any and all material circumstances affecting the employment; and refrain from actions which harm the reputation of the employer.

Company rules

There is no requirement in Estonia to have company rules. It is, however, common practice for employers to have such rules in place and for those to be available on the employer’s intranet and at the place of work. If work rules are introduced, they are considered mandatory.

Data protection

An employer has duties under the Personal Data Protection Act in respect of the personal data of its employees. As it maintains the personal data of its employees, the employer is considered the chief processor. The employer must appoint a person responsible for processing personal data (e.g., details of family life and data concerning trade union membership).

STATUS

In Estonia, most individuals are engaged as employees under employment contracts. Other types of service providers such as independent contractors are rarely used. This is mainly due to the fact that employees working under employment contracts are afforded better social protection than those providing work under other arrangements.
Employees
An employment relationship does not give greater protection to employers regarding their confidential information, intellectual property or anticompetitive practices, as protection of such interests can be agreed and included in contracts with independent contractors and self-employed workers.

Independent contractors or consultants
The use of self-employed independent contractors and consultants is not very common in Estonia. Statutory employment law protections such as ill health insurance benefits, overtime regulations or benefits related to absence from work and termination do not apply to these types of relationships.

Agency workers
Agency workers are used in Estonia. These workers are generally the employees or workers of an agency to which a fee (plus any applicable VAT) is paid for providing the manpower. There is no limitation or restriction on their use.

PRACTICALITIES

Restrictions on overseas individuals working in Estonia
An Estonian company must ensure that its staff has permission to work in Estonia. Failure to do so can result in civil and criminal sanctions being imposed on the company. A citizen of the European Union has the right to work in Estonia if a right of residence has been granted (for this the individual’s place of residence must be registered in Estonia). Those residing in Estonia on the basis of a temporary residence permit require a work permit in order to work.

Tax and social security contributions
An employer is obliged to withhold income tax from salary paid to the employee at a rate of 21 percent.

In addition, social taxes must be withheld. Social tax is a mandatory monthly tax from which public pensions, social security benefits and health insurance services are financed. The social tax rate is 33 percent of the gross taxable salary, made up of 20 percent social security payments and 13 percent health insurance contributions. Both employers and employees must also pay unemployment insurance premiums (at the rate of two percent for employees and one percent for employers). Employees can also join the funded pension system (which is obligatory for employees born after 1983). If they do, their employer must withhold an additional two percent of their gross salary.

All of these payments are made on a monthly basis. The employer must inform the respective state authorities of the amount of the taxes and to transfer those amounts.

Taxation of individuals working in Estonia
Persons resident, ordinarily resident and domiciled in Estonia are liable for Estonian income tax on their worldwide income. Benefits in kind derived from employment are likely to be subject to income tax.
THE EMPLOYMENT CONTRACT
Overview of key terms and legal requirements:

Probationary Period
Probationary (trial) periods are common. They must not last longer than four months (excluding temporary sick leave and vacation days). If a fixed-term employment lasts less than eight months, the period may not exceed more than half of the contract term.

Minimum Wage
National minimum wage is €355 per month and €2.13 per hour (2014 amount). There are proposals to increase this to €390 per month and €2.34 per hour in 2015.

Non-Pay Benefits
Fringe benefits are not a legal requirement, but they are common and may include:
- Company car
- Laptop
- Mobile telephone
- Share options

Hours of Work
Generally, a full-time employee’s working hours must not exceed eight hours per day or 40 hours per week. The working week is five days, usually Monday to Friday.

Holiday Entitlement
Employees are entitled to a minimum of 28 calendar days’ holiday per calendar year. Employees are entitled to take holiday after six months of employment. If there is a state or public holiday during the employee’s holiday period, the holiday is extended by the equivalent number of days.

Default Normal Retirement Age
The default normal retirement age is 63.

Sick Pay Entitlement
Employees are not entitled to any salary or compensation during the first three working days of sickness absence. From the fourth to the eighth working day of absence, employees are entitled to receive payment of 70 percent of salary from their employer. Following this, employees may be compensated by the social security system.

Rate of Tax Payable by Employee
Income tax is payable at 21 percent of salary.

Rates of Social Security Payments
Employers must pay a state social tax each month at a rate of 33 percent of their employees’ gross taxable salary. This is made up of a contribution of 20 percent towards social security payments and 13 percent towards health insurance. Employers must also pay one percent towards unemployment insurance tax. Employees contribute two percent of salary towards unemployment insurance and two percent towards a funded pension payment, if the employee has joined the funded pension system.

Maternity Benefits
Female employees are entitled to take up to 140 calendar days of pregnancy and maternity leave. Such leave must start between 30 and 70 days prior to the expected birth. During such leave, a benefit equal to the woman’s average daily income is payable by the Health Insurance Fund.

Paternity Benefits
A father may take up to 10 working days of paternity leave during the two-month period prior to the expected birth of the child and the two-month period following the birth of the child. Paternity leave is compensated by the state based on the father’s average income.

Parental Benefits
After pregnancy and maternity leave, one parent per couple is entitled to parental leave. Generally, parental leave starts after the end of pregnancy and maternity leave, and continues for up to 435 days. Parental benefit is paid by the state and is equal to the employee’s average monthly income during the previous calendar year, subject to social tax, up to a maximum monthly amount equal to three times the average income in Estonia per calendar

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In addition, after the period of parental leave, a mother or a father may be granted additional leave at his or her request for raising a child up to three years of age. The employee receives a childcare allowance from the local pensions board during that time.

### Flexible Working

There is no right to request to work part-time, however, such flexibility can be mutually agreed between the parties.

### Equal Opportunities

Employees are protected against discrimination on the grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in the armed forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership in workers’ associations, political opinions or membership in a political party, and religious or other beliefs. Treating part-time and fixed-term employees in a manner less favorably than that of comparable full-time or permanent employees is also prohibited.

### Protected Employees

Protected employees include trade union officials, health and safety officials, representatives of employees, pregnant women and those on maternity or paternity leave.

### Minimum Notice Period

The minimum periods of notice vary from 15 to 90 calendar days, depending on the employee’s length of service.

### Collective Agreements

Any applicable collective agreement must be referred to in the employment contract. Collective agreements are compulsory in a limited number of sectors and organizations. They do not generally have a significant impact on employment relations.

### Disciplinary Rules

Employers may set out their disciplinary rules in their working rules. Where the employee is in breach of his or her employment contract or duties, the employer can issue a warning and notify him or her that the next breach may result in the termination of their employment. In the case of serious breach, the employer may terminate the employment without notice or prior warning.

### Grievances

There are no statutory rules which the employer must follow in responding to a grievance and it is not common to agree to such procedures in the employment contract.
ESTONIA: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

If the employer intends to issue a disciplinary warning to an employee or dismiss an employee, the employer must first inform the employee of the possible action along with the reasons for doing so. Employees have no statutory right to appeal any warning issued to them. However, employers may establish internal rules allowing employees to do so.

Grievances

Employees may raise a complaint about the employer’s treatment of him or her at any time during the course of employment. There are no statutory rules which employers must follow in responding to such a complaint.

Consultation with employees

Employers have an obligation to consult with their employees before any collective dismissals take effect, with the intention of finding ways of avoiding or reducing the number of dismissals. Consultation includes providing relevant information on the potential dismissals to employees or employee representatives (where the affected employees are absent).

INDIVIDUAL TERMINATIONS

In order to terminate employment, employers must have suitable grounds. These can be either related to the employee’s conduct or capabilities (e.g. gross misconduct, breach of the employment contract, poor performance or permanent incapacity to work due to illness), or to economic, organizational or technological reasons of the company (e.g. a decrease in the volume of work, organizational changes or financial position of the company). The reason for dismissal must be given to the employee in writing or a format that can be reproduced in writing (e.g., by email or letter).

Employers must also observe the appropriate period of notice. This varies from 15 to 90 calendar days, depending on the employee’s length of service. The general rule is that an employer can only terminate employment without notice if the employee is guilty of gross misconduct.

Claims

An employee can claim unlawful termination if the employer has terminated his or her contract without a reason or has not followed the rules established by the law. Claims for unlawful termination can be heard either by the courts or by the labor-dispute body.

An employee has the right to claim compensation for unlawful termination and/or to continue the employment relationship. If the court or the labor-dispute resolution body finds that a dismissal was unlawful, the employment contract is deemed not to have been terminated. However, on the petition of either of the parties, the court or labor-dispute resolution body can decide that the employment terminated as of the date of the unlawful termination, and instead order that compensation of up to three months’ average salary be paid. Should the employee be pregnant, an employee representative or entitled to take maternity leave, the compensation can be up to six months’ average salary. The courts and labor-dispute resolution body can award additional amounts, taking the circumstances of the dispute into account.

In rare cases, where the parties decide to continue the employment relationship following unlawful termination of the contract, the employer must pay the employee his or her average salary for the period between the unlawful termination and the reinstatement of the employee, during which they were absent from work.

Employees can challenge the grounds of termination with the labor-dispute committee or at court within 30 days of receiving notice of termination.

If an employee has terminated his or her employment without giving the requisite notice, the employer has the right to a reasonable amount of compensation from the employee.

Redundancy payments

An employee dismissed by reason of redundancy will be entitled to a severance payment on termination. The level of the payment is one month’s average salary. Depending on the employee’s length of service, the Unemployment Insurance Fund may pay additional compensation. For example, if the length of service is more than five years and less than 10 years an additional payment of one month’s average salary will be paid. If the
length of service is more than 10 years an additional two months’ salary will be paid. The payments are calculated using the last six months’ average earnings.

**Discrimination**

Generally, claims for compensation related to discrimination are rare, and in the past cases have resulted in only small awards of compensation. However, all employees have the right to claim discrimination and there is no minimum service requirement.

**GROUP TERMINATIONS**

**Redundancies**

A collective dismissal occurs where a certain number of employees (ranging from five to 30, depending on the number of employees in the company) are dismissed within a 30-day period for reasons unrelated to the conduct or capabilities of the employees. In the event of a collective dismissal, the employer must comply with its information and consultation obligations, which includes informing the relevant authorities.

Prior to a collective dismissal, an employer must inform the employees of the proposed dismissals and the reasons for them. In addition, the employer must consult with the employees’ representatives with the aim of reaching an agreement regarding the possibility of avoiding or reducing the number of redundancies, possible measures to alleviate the consequences of the terminations and ways of supporting the dismissed employees in their search for work (e.g., by providing training). During the consultation process, the employees’ representatives have the right to meet with the employer and to submit their representations within a period of 15 days after the receipt of the employer's consultation notice.

**Business transfer**

The reorganization, or change in the ownership, of a business does not terminate employment nor does it serve as grounds for termination. In those circumstances, employees have the right (and an obligation) to continue working for the new business formed as a result. Before the transfer, the parties must also comply with information and consultation obligations in respect of the transfer and the potential impact it will have on employees.
FINLAND: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements and professional recruitment agencies. Direct contacts and solicitation are also sometimes used to recruit skilled individuals.

Pre-employment references and background checks

Pre-employment references are common. Psychological testing is often used in the recruitment process for senior positions. Criminal background checks are not normally required or available, except for high-security positions or positions involving child care. In addition, a specific security clearance may be required for certain positions where the public interest is being served. Medical references are generally only required for top executive positions.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers a successful candidate, on the basis of sex, age, health, national or ethnic origin, sexual orientation, language, religion, belief, family relationships, trade union activities, or political activities or on any other related ground.

Itemized pay slips

Employers must give their employees itemized pay statements specifying salary, details of how that is calculated, and the amount and purpose of any deductions.

Health and safety

Employers are obliged to safeguard the health and safety of their employees. The obligations are extensive. They include the duty to carry out a risk assessment, prepare a written employee protection action plan and obtain a statutory accident insurance policy. Fees related to statutory accident insurance policies are determined based on the salaries paid by employers. The range of fees in 2014 was between 0.1 percent and 7 percent of salaries, dependent on the nature of the employer’s business. The average fee in 2013 was one percent of salaries.

Written contract of employment

There is no requirement that a contract of employment or contract for services be in writing. However, by no later than the end of the first salary payment term (regularly one month or two weeks), an employer is obliged to give the employee a written statement setting out certain specified terms. The statement must include the employer’s domicile, the commencement date of employment, the duration of a fixed-term employment and the reason the employment is fixed-term, the probationary period (if any), place of work, main duties, any applicable collective bargaining agreement, salary and payment terms, normal working hours, holidays and notice of termination.

Offer letters are not commonly used. Instead, the employer and employee customarily enter into a written employment contract directly based on negotiations carried out between them. It is also common for a more senior employee to be given a service agreement which has more detailed provisions.

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly in the employment contract or collective bargaining agreements, employment legislation governs the terms of employment. These include, amongst other things, provisions relating to the mutual loyalty obligation, the obligation of equal treatment and rules regarding safety at work. Generally, the parties can deviate from these rules only where it is of benefit to the employee.

Company rules

Save for any action plan related to health and safety, there is no requirement in Finland to have company rules, but these are common.

Data protection

An employer has duties under the data protection regulations in respect of the personal data and sensitive personal data of its current and former applicants, employees, contractors, consultants and agency staff. These duties mean an employer must fairly and lawfully process data; process them only for limited purposes; and ensure data are adequate, relevant and not excessive, accurate and up-to-date, not kept for longer than necessary, processed in line with the data subject’s rights, kept secure and not
transferred to other countries that do not have adequate protection.

**STATUS**

An employer can employ employees on a full-time or part-time basis under a contract of employment for an indefinite duration or for a fixed term (provided it has a justification for doing so). The possibility of using self-employed employees is limited, but temporary staffing has become more common.

**Employees**

An employment relationship gives the employer a greater ability both during and after employment to protect company confidential information, and intellectual property, and to prevent the former employee setting up in competition or poaching other staff. An employee has a statutory obligation not to, during employment, compete or take any preparatory actions to compete with his or her employer. In addition, an employee can be subject to a post-termination non-competition restriction. For regular employees this may apply for up to six months (or up to 12 months with reasonable compensation). For those holding managerial positions, no time limits apply but the period must not be unreasonable. The use of trade secrets is prohibited for up to two years after termination of employment under the criminal law.

**Independent contractors or consultants**

There are certain legal and administrative advantages of using self-employed persons. For example, if the engagement of a contractor or consultant is governed by the terms of the services or consultancy agreement, then that individual has few statutory protections or rights and his or her remuneration will generally be paid gross without deduction of social security charges. On the other hand, VAT is payable on the remuneration. These types of arrangements may be challenged by the Finnish tax authority or an employee aiming to benefit from the employment protections applicable to regular employees.

**Agency workers**

If the business has short-term demands or needs to cover absences, it can use temporary workers from an employment agency. These workers generally remain the employees of the agency, to whom a fee is paid for providing the manpower plus any applicable VAT. At present, the Co-operation Act is applicable to companies with at least 20 employees, and states that principles regarding the use of a temporary agency workforce have to be handled in the co-operation procedure.

**PRACTICALITIES**

**Restrictions on overseas individuals working in Finland**

A Finnish business must ensure that its staff has permission to work in Finland. Those who do not need permission to work in Finland are nationals of the European Union and the European Economic Area, and Swiss citizens. Other individuals need permission to work in Finland.

It is an offense to employ someone who is not entitled or permitted to work, and committing the offense can lead to fines or criminal sanctions. To avoid liability, the employer must check that the employee has a residence permit.

**Tax and social security contributions**

If a Finnish organization has employees in Finland, then it is responsible for making the income tax deductions and social security contributions that need to be paid on each employee's salary and paying them over to the respective authorities.

The social security payments are payable to the respective authorities on a monthly basis during the month immediately following the salary payment month.

**Taxation of individuals working in Finland**

Persons resident in Finland are taxed on their worldwide income. Residents are taxed according to progressive tax rates for national tax purposes and flat rates for municipal tax (including church tax and social security).

A non-resident person, e.g., a person who occasionally works in Finland, is taxed on Finnish-source income only. However, tax treaties may provide that, under certain conditions, even this income will not be taxed in Finland. Non-residents are taxed at flat rates in accordance with the Non-residents’ Tax Act.

An individual is deemed to be a resident of Finland if he or she has his or her permanent home in Finland, or if he or she stays in Finland for a continuous period of more than six months. The stay in Finland may be
regarded as continuous despite a temporary absence from the country. However, a Finnish citizen is still considered resident in Finland for three full calendar years after leaving the country, unless he or she can produce evidence that he or she has severed all ties with Finland.
THE EMPLOYMENT CONTRACT
Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th>Probationary Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probationary periods are common. They may last for a maximum period of four months, or six months where the employer provides work-related training to the employee which lasts for a continuous period of more than four months. If a fixed-term employment lasts less than eight months, the period may not exceed more than half of the contract term.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no statutory minimum wage but collective bargaining agreements (CBAs) often set this out.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Pay Benefits</th>
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</thead>
<tbody>
<tr>
<td>Fringe benefits are not a legal requirement, but they are common and may include:</td>
</tr>
<tr>
<td>- Lunch benefit</td>
</tr>
<tr>
<td>- Mobile phone</td>
</tr>
<tr>
<td>- Company cars</td>
</tr>
<tr>
<td>- Private health care</td>
</tr>
<tr>
<td>- Housing benefits (less common)</td>
</tr>
<tr>
<td>- Permanent health insurance (less common)</td>
</tr>
<tr>
<td>- Pension contributions (common for senior management)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hours of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is a 40-hour maximum regular working week; however, the parties can contractually agree an average 40-hour working week calculated over a maximum 52-week period. Generally, there is a daily rest entitlement of 11 hours and a weekly rest entitlement of 35 hours (without breaks). Those working in specific business areas have additional rest entitlements. Separate rules regarding working hours may also be set by applicable CBAs.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Holiday Entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees are entitled to a minimum of five weeks (30 days) of paid annual leave accrued on a monthly basis, i.e., normally 2.5 days per month. Saturday is considered a working day for the purposes of calculating used holiday. The number of public holidays varies from year to year; there were 10 in 2013.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Default Normal Retirement Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>The current retirement age is between 63 and 68; the actual retirement date in this range may be decided by the employee.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sick Pay Entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers must pay full pay to employees absent due to sickness for a minimum of nine days. However, this period is typically increased to several months, depending on years of service, under CBAs. A state subsidy applies after nine days of absence (which is paid to the employer for the period the employer pays sick pay).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate of Tax Payable by Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is a sliding scale of tax up to approximately 50 percent.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rates of Social Security Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers’ social security contributions are on average 2.14 percent (2014 rate) and pension contributions are on average 17.75 percent. Employees’ social security contributions are 2.14 percent and pension contributions are between 5.55 and 7.05 percent (depending on age).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Maternity Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>An employee is entitled to 105 working days (four months) of maternity leave if she has participated in the social security system for a minimum of 180 days.</td>
</tr>
</tbody>
</table>

Maternity allowance is paid through the social security system (although CBAs may obligate the employer to pay wages during leave, in which case the allowance is paid to the employer). For the first 56 days maternity allowance is 90 percent of the mother’s annual income up to €55,498 and 32.5 percent of the annual income exceeding €55,498. Maternity allowance after the first 56 working days is 70 percent of the employee’s annual income up to €36,071; 40 percent of the employee’s annual income between €36,072 and €55,498; and 25 percent of the annual income exceeding €55,498. |
Paternity Benefits

The father is entitled to paternity leave of up to 54 days. Up to 18 days of paternity leave can be taken right after the baby is born and at the same time as the mother is on a period of maternity or parental leave. Otherwise, the paternity leave can be kept for use until after maternity and parental leave have been used up. Paternity allowance is also paid through the social security system. It is paid at the same rate as the rate of maternity allowance that applies after the first 56 days of maternity leave.

Parental Benefits

Parents may take 158 working days (six months) of parental leave. This can be shared between the mother and the father. Parental allowance is paid through the social security system. It is paid after the first 30 working days of leave at the same rate as the rate of maternity allowance that applies after the first 56 days of maternity leave. Where a CBA obligates the employer to pay wages during parental leave, the allowance is paid to the employer instead.

Flexible Working

Employers and employees can agree flexible working arrangements.

Equal Opportunities

Employees are protected against discrimination on the grounds of sex, age, ethnic or national origin, nationality, language, religion, belief, opinion, state of health, disability, sexual orientation or other personal characteristics. Work related discrimination can also be a criminal offense, resulting in a fine or imprisonment of up to six months, and compensation being payable to the employee.

Protected Employees

Protected employees include employee representatives, pregnant women, those on maternity, paternity or parental leave and those on military or civil service.

Minimum Notice Period

CBAs usually set out the applicable minimum notice period, and those provisions (if they exist) are often mandatory. Otherwise the minimum notice period can be set out in the employment contract under which the parties are free to agree the minimum notice period, provided that the notice required from the employee is no longer than the notice required from the employer.

If there is no CBA and the employment contract refers to the Employment Contracts Act or contains no provisions relating to notice, the minimum periods of notice to be provided by employers are 14 days for employees with less than one year’s service, one month for employees with more than one and less than four years’ service, two months for employees with more than four and less than eight years’ service, four months for employees with more than eight and less than 12 years’ service, and six months for employees with more than 12 years’ service. In these circumstances, the minimum periods of notice to be provided by employees are 14 days for less than five years’ service and one month for employees with more than five years’ service.

Collective Agreements

Any applicable CBA must be referred to in the employment contract. CBAs are applicable to both the public and private sector. They override the terms of an employment contract in relation to any provisions which are less favorable to the employee, unless the term in question is based on the possibility of agreeing differently according to the CBA.

Disciplinary Rules

There are no statutory disciplinary rules. However, an employee who has neglected their duties or committed a breach of their employment contract is to be warned and given a chance to amend their conduct before being issued with notice of termination.

Grievances

There are no statutory grievance procedures.
FINLAND: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal
If an issue cannot be resolved informally and an employer is contemplating the dismissal of an employee, it must follow an appropriate fair procedure before deciding to dismiss. In cases of misconduct or poor performance, the employer must comply with the Employment Contracts Act. This will usually include giving the employee a warning, and providing the employee with a reasonable time period in which to rectify the situation. Employees also have a statutory right to be accompanied at any formal dismissal meeting.

Failure to follow the Employment Contracts Act may result in an unfair dismissal and give the employee the right to compensation corresponding to his or her salary for between 3 and 24 months. This compensation is increased to a maximum of 30 months’ pay where the employee is a shop steward elected on the basis of a collective agreement, or an elected representative.

Grievances
There are no statutory grievance procedures.

Consultation with employees
Prior to making the decision to dismiss an employee by reason of redundancy, employers employing at least 20 employees must inform and consult with the employees or employee representatives. This duty to consult also applies where employers propose other changes to their business operations which could impact employees. In certain circumstances, it may also be necessary to inform and consult the European Works Council, if established.

INDIVIDUAL TERMINATIONS
If an employee is dismissed, he or she will generally have no claim against the business, as long as the employer has observed the terms of the contract (including in respect of applicable notice periods) and the employer has proper, and weighty, grounds for dismissal and has followed a fair procedure. It is not unusual for the employer to release an employee from his or her obligation to work during the notice period.

Contractual claims
Finnish employment law does not recognize a difference between wrongful and unfair dismissal (see below).

If an employer is in breach of the terms and conditions of the employment contract, an employee may bring a claim against the employer and claim compensation for damage suffered. There is no limit on the amount of damages.

If an employer is in breach of the terms and conditions of an applicable collective bargaining agreement, it may be ordered to pay compensatory amounts of up to € 29,500.

Statutory claims
Any employee may be entitled to bring a statutory claim for unfair dismissal if his or her employment is terminated without proper and weighty reasons, or his or her employer fails to follow the correct procedure. To defend a claim of unfair dismissal, an employer must be able to prove that proper and weighty reasons for the dismissal exist.

Certain dismissals will be automatically deemed unfair, unless the employer is able to prove that it has other proper and weighty reasons for the dismissal. This includes dismissals relating to pregnancy, temporary illness or disability, participation in industrial action organized by a trade union, political, religious or other opinions, or asserting a statutory right.

An employee who alleges that he or she has been unfairly dismissed must generally bring a claim at the local district court within two years of the date of termination.

If a complaint for unfair dismissal succeeds, the court may order the employer to pay compensation of between three and 24 months’ salary, and in the case of an unfair dismissal of an employee representative, of up to 30 months’ salary. The level of compensation is determined by the court taking into account all circumstances related to the matter. In the case of unjustified dismissal based on production-related or economical grounds, the minimum limit of three months is not applicable.

Redundancy payments
An employee dismissed by reason of redundancy is not entitled to any additional severance payment. The employee is entitled

36
to his or her normal salary and accrued holidays during the notice period, as normal. However, some Finnish employers offer enhanced redundancy or severance payments above that required by law.

**Discrimination**

It is unlawful to discriminate on the grounds of sex, age, ethnic or national origin, nationality, language, religion, belief, opinion, state of health, disability, sexual orientation, family relationships, trade union activities, political activities or other personal characteristics. A discrimination claim can be brought by an employee in the district court of the employer’s domicile. A claimant does not need to have had a period of continuous service in order to bring such a claim. Depending on the type of discrimination, compensation of up to €17,800 can be awarded.

**GROUP TERMINATIONS**

**Redundancies**

Redundancy dismissals are likely to result from a large-scale reorganization or closure of a business (or part of a business). Where there are at least 20 employees regularly employed by the employer, the Act on Co-operation within Undertakings shall apply, regardless of the number of employees to be made redundant. This Act imposes information and consultation obligations on the employer.

If the proposal is to dismiss fewer than 10 employees, the employer will have a duty to carry out a collective consultation process at least 14 days before the first dismissal is due to take place. Where 10 or more redundancies are proposed, the consultation must begin at least six weeks before the first dismissal takes place.

The employer will also have an obligation to notify the local Employment and Economic Development Offices of the proposed redundancies at the same time as the employer invites the employee representatives to the consultation process. Invitation to the consultation process must be delivered to the employees or their representatives no later than five days prior to the consultation process commencing. The information and consultation process may also involve the election of employee representatives.

Failure to carry out adequate consultation may result in an award of compensation of up to €34,140 per affected employee.

**Business transfer**

If an asset sale or a change in service provider is a relevant transfer under the Employment Contracts Act, the contract of employment of any transferring employee does not come to an end. Instead, it transfers automatically by operation of law. The transferor (i.e., the seller or old service provider) and the transferee (i.e., the buyer or new service provider) must inform the representatives of affected employees (regardless of the number) of the time or intended time of transfer; the reasons for the transfer; the legal, economic and social consequences for the employees due to the transfer; and any planned measures regarding the employees.

A failure to carry out adequate consultation may result in an indemnity payment of up to €34,140 per affected employee being payable in cases where the employer’s decision has led to workforce reductions.

Any reduction of the work force made in connection with a relevant transfer must be handled in the same way as regular redundancies.
FRANCE: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements and professional recruitment agencies.

Pre-employment references and background checks

Employers can request background checks and references from applicants. However, they cannot require applicants to provide information in respect of their criminal records or medical records unless this is necessary to determine their ability to carry out the role. Psychological testing and handwriting samples are allowed.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of sex, nationality, ethnic or national origin, disability, lifestyle, sexual orientation, age, family status, pregnancy, trade union activities or membership, religion or belief, physical appearance, family name, or health condition.

Itemized pay slips

Employers must give their employees itemized pay statements, on a monthly basis, specifying gross and net salary, and the amount and purpose of any deductions and withholdings. The statement must also detail the name of the employer, the employee’s social security number, the date employment started, job title, the applicable collective bargaining agreement (if any), and the “coefficient” (a term relating to the level and grade) of the employee as per the collective bargaining agreement.

Health and safety

Employers are obliged to safeguard the health and safety of their employees on the company’s premises. In companies with more than 50 employees, a health and safety committee is set up. This is an employee representative body with responsibility for health and safety measures.

Written contract of employment

An employer must provide an employee with a written employment contract within two months of his or her start date. Where the employment is for a fixed-term, the employment contract must be signed by both parties within two days of commencement. Offer letters may also be issued before an employment contract. Typically, mid-level and senior-level employees sign an employment contract prior to commencing employment.

The contract must include the basic terms of employment, such as job description, title or position, compensation, working time, workplace, work schedule, notice period, and details of any applicable collective bargaining agreement. In principle, parties to an employment contract have a great deal of freedom as to its terms, which may include clauses specifying targets for compensation and provide for geographical mobility, non-compete covenants and clauses covering ownership of inventions and intellectual property rights.

Implied duties of the employer and the employee

In addition to the terms and conditions set out expressly in the contract of employment, certain additional terms are implied into every employment relationship. These include the following:

- Employers have a duty to provide a secure, safe and healthy environment for their employees;
- Employees have a duty of honesty and loyal service (e.g., an employee cannot compete with his or her employer while employed); and
- Both parties are bound by a mutual obligation of trust and confidence.

Terms may also be implied into the employment relationship as a result of the employer’s conduct over a period of time. For example, employees may become entitled to additional holiday to the number of days set out in the contract of employment or collective bargaining agreement where they have been afforded that additional entitlement over a certain period of time.

Company rules

Employers with 20 or more employees are obliged to have work rules in place. These govern certain matters exclusively, such as

**Data protection**

Employees must give their prior written consent to the collection of their personal data. They must be informed of the collection, storage and processing of their data, in particular, in respect of any monitoring that will take place; the purpose of such monitoring; the data collection methods used; the intended use of the data collected; recipients of the data; and terms and conditions for exercising their right to access, correct and remove that information.

Employers must also notify the French Data Protection Agency (CNIL) of the means they use to collect and process personal data. This notification can be made through the CNIL’s website.

**STATUS**

A French business can engage employees or self-employed independent contractors. Most employees are engaged on an indefinite-term contract which provides the highest level of protection for the employee. Fixed-term and temporary contracts can be used in only three situations: to cover a temporary absence, to assist with a temporary increase in business activity or to carry out seasonal work. Temporary employment cannot be used on a long-term basis to fill jobs that relate to the employer’s regular business. The engagement of self-employed individuals is strictly controlled and can be subject to challenge.

**Employees**

Employees are bound by a duty of loyalty which prevents an employee from competing with their employer during the period of employment. There is no need to include an express contractual term in respect of this in the employment contract. However, in order to restrict an employee from competing with their employer following termination, a non-competition restriction must be expressly agreed. This is subject to very restrictive conditions. For example, it must be limited in scope, time and geographical area, and it must provide financial compensation to the employee. In addition, although there is an implied duty that restricts an employee’s use of his or her employer’s trade secrets or confidential information post-termination, this is often set out expressly in the employment contract.

**Independent contractors or consultants**

There are significant legal and administrative advantages of using self-employed persons. In particular, the engaging entity is not obliged to pay social security contributions on behalf of a self-employed independent contractor (these being payable by the self-employed contractor directly). These relationships, however, are subject to strict scrutiny by the labor authorities and the courts. Where a self-employed person works for only one company, receives orders or instructions on a regular basis from the engaging entity, does not have complete autonomy over his or her working hours and customers, and receives the same compensation on a monthly basis, there is a significant risk that they will be deemed to be employees, despite the terms of any contract between the parties.

**Agency workers**

Only regulated temporary staffing agencies may assign their employees to third-party clients in exchange for a fee. The employees are employed by the agency, and are entitled to equal treatment in respect of certain employment and working conditions. For example, they must be paid the same remuneration as an employee of the end-user company with a similar level of experience would be paid for the same work.

**PRACTICALITIES**

**Restrictions on overseas individuals working in France**

A French employer must ensure that its employees have permission to work in France. Citizens of the European Union, nationals of the European Economic Area (other than citizens of Bulgaria and Romania) and Swiss citizens do not need to obtain permission to work. Permission to work is obtained pursuant to a specific procedure, and this can be time consuming.

Violation of the work permit rules can result in the employer being liable for a civil penalty of up to €15,000, as well as a criminal sanction punishable by up to five years of imprisonment. These sanctions are multiplied by the number of employees who are employed in breach of the work permit obligation.
Tax and social security contributions

Employers are responsible for paying both the employer’s and the employee’s social security contributions. Employees are responsible for paying their own income tax, and so this is not deducted from their gross salary at source by their employer.

Taxation of individuals working in France

Persons resident, or ordinarily resident, which are those who are in France for at least 183 days a year, even if staying in temporary accommodation such as a hotel, and those who are domiciled in France, are liable for French income tax on their worldwide income. Benefits in kind derived from employment are also subject to income tax. Those who are non-resident in France are liable for French income tax on their French-source income.
THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th>Probationary Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probationary (trial) periods are very common. They must be set out in the employment contract, unless the applicable collective bargaining agreement (“CBA”) contains specific provisions relating to them. They can last for a maximum period of two months for workers and four months for executives (“cadres”), renewable once, unless the applicable CBA provides otherwise.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum Wage</th>
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</thead>
<tbody>
<tr>
<td>National minimum wage since January 2014 is €9.53 per hour or the minimum set out in an applicable CBA, whichever is higher.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Pay Benefits</th>
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</thead>
<tbody>
<tr>
<td>Employees benefit from the French social security system, which provides protections in respect of health, family benefits and retirement. Most employers also provide supplemental benefits for health and retirement, in each case involving payments by the employee and the employer to state-supervised health and retirement funds (“mutuelles”).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hours of Work</th>
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</thead>
<tbody>
<tr>
<td>There is a 48-hour maximum working week, and a 42-hour average maximum working week calculated over a 12-week period. There is a daily rest entitlement of 11 hours, but with the possibility of reducing this to no fewer than nine hours (subject to conditions). There is a weekly rest entitlement of 24 hours. Generally, overtime is payable for hours worked over 35 hours per week.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Holiday Entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees are entitled to up to five weeks of paid annual leave. The number of public holidays varies each year but is usually between eight and 11 days.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Default Normal Retirement Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>The compulsory retirement age is 70. However, if the employee wishes to retire, he or she can currently receive full pension from the age of 62, provided he or she has worked the requisite number of years.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Sick Pay Entitlement</th>
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</thead>
<tbody>
<tr>
<td>During sick leave, employees are entitled to claim benefits paid via the social security system known as “indemnités journalières” (daily allowances), but these are far less than the earnings lost as a result of sickness absence. CBAs often stipulate that the employer must continue paying all or part of an employee’s pay for the duration of a certain period of absence.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate of Tax Payable by Employee</th>
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</thead>
<tbody>
<tr>
<td>There is a sliding scale of income tax payable up to 40 percent.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Rates of Social Security Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers’ contribution is between 40 and 45 percent of their employees’ gross remuneration. Employees’ contribution to social security is approximately 25 percent of gross remuneration.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Maternity Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pregnant employees are entitled to 16 weeks’ maternity leave for the birth of their first and second child, and to 26 weeks’ maternity leave for the birth of their third child and any further children. In the case of twins, maternity leave is extended to 34 weeks and for triplets or increased multiple births to 46 weeks. During maternity leave, the employer pays a portion of the employee’s salary as set out in the applicable CBA and French law. Maternity pay is based on the employee’s salary, minus daily allowances paid by social security and normal deductions for social security contributions.</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Paternity Benefits</th>
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</thead>
<tbody>
<tr>
<td>Biological fathers may take paternity leave of 11 consecutive days (or 18 consecutive days in the case of multiple births) within four months of the birth of their child. Employees are entitled to receive daily allowances from the social security organization for the entire period of paternity leave. The contract of employment is suspended during paternity leave, and the employer does not have to pay salary during this period, although some do.</td>
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<tr>
<th>Flexible Working</th>
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</table>
| Employees are entitled to request to work part-time on giving six months’ notice. Employers may refuse the request, but must have valid grounds for doing so (e.g., inconvenience to the company). Flexibility may also be
imposed by the labor authorities for employees with serious medical conditions.

**Equal Opportunities**

Employees are protected against discrimination on the grounds of sex, nationality, ethnic or national origin, disability, lifestyle, sexual orientation, age, family status, pregnancy, trade union activities or membership, religion or belief, physical appearance, family name, health condition and place of residence.

**Protected Employees**

Protected employees include employees' representatives on the Works Council ("comité d'entreprise"), and on the health and safety committee, staff delegates ("délégués du personnel"), and trade union members. The employment contracts of these employees cannot be terminated without the labor administration’s prior written authorization.

**Minimum Notice Period**

The appropriate notice period to be given is normally set out in the applicable CBA. Where there are no notice provisions in the CBA or the employment agreement, the minimum period of notice to be provided by the employer is one month for employees with between six months' and two years' service, and two months for employees with more than two years' service.

**Collective Agreements**

Most employment relationships in the private sector are governed by an industry specific CBA. The name of the CBA must be referenced in the employment contract and on the employee’s payslips.

**Disciplinary Rules**

Employers with 20 or more employees must have internal rules of procedure, including in respect of disciplinary rules. These rules must be displayed on the employer’s premises. It is not compulsory, and is not generally recommended to include disciplinary rules in the employment contract.

**Grievances**

An employer’s internal rules of procedure can set out grievance procedures, but this is not a legal requirement.
FRANCE: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal
Disciplinary actions can take several forms, ranging from a warning to a temporary disciplinary layoff. In such cases, employers must comply with any company internal rules ("règlement intérieur") in place and, as the case may be, the provisions of any applicable collective bargaining agreement.

If an employer wishes to dismiss an employee, it must invite the employee to a pre-dismissal meeting prior to sending a dismissal letter. Dismissal procedures vary, depending on the reason for dismissal (e.g., economic, disciplinary, or poor performance), and are very strict.

Special rules apply in relation to the dismissal of employee representatives, who cannot be dismissed without the labor inspector’s prior written approval.

Grievances
Employees can bring claims in respect of a breach of French labor law both during and after the termination of the employment relationship.

Consultation with employees
In France, employees are represented by at least one of three separate elected bodies, depending on the size of the workforce:

- Companies with more than 10 employees: employee delegates;
- Companies with more than 50 employees: Works Council; and/or
- Companies with more than 50 employees: a health and safety committee.

Employee representatives play an important role in French businesses. In particular, the Works Council is informed and consulted on all matters relating to the organization and the management of the company that may impact on employment. Consultation is required when the company is to be sold or merged, or when a subsidiary is acquired or transferred. In addition, where an employer with 50 or more employees intends to collectively dismiss employees for economic reasons, it must consult the Works Council on the dismissal process. It is not necessary for employers to obtain the Works Council’s approval, but the Works Council members must be given the opportunity to provide their non-binding opinion.

Criminal sanctions may be imposed on employers who fail to consult the Works Council, including a fine of €3,750 and/or a term of imprisonment of up to one year.

INDIVIDUAL TERMINATIONS
Employers may only terminate the employment of an employee if it has “just or good cause” or a similar reasonable and objective basis, either of which must be set out in the French Labour Code or case law.

All employees are entitled to receive notice of termination (other than those dismissed for gross fault or gross misconduct). The relevant period of notice will be that set out in the employee's employment contract, the applicable collective agreement or the Labour Code, whichever is longest. Notice periods are typically between one and three months. An employer can require employees to work their notice period, place them on garden leave (i.e., require the employee to stay away from work but remain employed) or pay in lieu of notice.

All employees are also entitled to a payment in lieu of accrued but untaken vacation (calculated to the end of their notice period, whether worked or not).

Employees with at least one year of service (at the date of notice of termination) qualify for a severance indemnity. The level of indemnity payable is that set out in the Labour Code or the applicable bargaining agreement, whichever is more favorable to the employee. Under the Labour Code, employees are entitled to at least one-fifth of a month's salary per year of service. Those employees with over ten years' service are entitled to an additional payment of two-fifteenths of a month’s salary per year of service. Severance payment calculations in collective bargaining agreements are usually more generous.

Pregnant employees have special protection against dismissal, which means that they cannot be dismissed during their maternity leave. In addition, a specific dismissal procedure applies to the dismissal of protected employees, e.g., members of the employee representative body and unions.
Contractual claims

If an employer is in breach of its obligations under an employment contract or an applicable collective bargaining agreement, employees can claim wrongful dismissal on the grounds of constructive unfair termination. Where the breach amounts to a breach of contract, the employee is entitled to resign in response, without working notice, and bring a claim before the court.

If the court upholds the claim, the termination of employment is held to be a wrongful dismissal. In such a case, the employer will be ordered to pay the employee a severance indemnity, notice pay and damages for the dismissal. There is no limit to the amount of damages that can be awarded; however, the Labour Code provides that the minimum amount is six months' pay.

If the employee is unsuccessful, the termination of his or her employment is deemed to be a voluntary resignation and, in such a case, the employee is not entitled to any damages.

Statutory claims

An employee with two or more years' service working in a company of more than 10 employees is entitled to damages equal to six months' salary where he or she is able to show that his or her dismissal was without grounds.

In addition, where the employer fails to follow a proper dismissal procedure, the employee can claim a one-month indemnity payment.

Redundancy payments

An employee dismissed by reason of redundancy is not entitled to any additional severance payments. Normal entitlements apply, e.g., severance indemnity, notice pay and holiday pay.

However, in the case of collective redundancies, employees are often entitled to additional payments or benefits, such as a training indemnity, a moving indemnity or outplacement assistance. Any such additional entitlements would be negotiated in the collective redundancy process.

Discrimination

It is unlawful for employers to discriminate on the basis of sex, nationality, ethnic or national origin, disability, lifestyle, sexual orientation, age, family status, pregnancy, trade union activities or membership, religion or belief, physical appearance, family name or health condition. A claimant does not need to have had a period of continuous service in order to bring such a claim. The level of damages awarded is based on the prejudice suffered by the employee, and is, therefore, specific to each case.

GROUP TERMINATIONS

Redundancies

A layoff (i.e., economic dismissal) is a dismissal for a reason (or reasons) unconnected with the employee, and which results in the elimination or transformation of the job or a substantial modification of the employment contract. In a genuine layoff situation, the roles made redundant are no longer required, and, therefore, the employer is not permitted to replace the employees who have been dismissed.

Before dismissing employees on economic grounds, the employer must attempt to find alternative positions within the group (whether in France or abroad) that match the employees' skills and abilities (even if the role is at a lower grade and/or remuneration package, provided that the level remains reasonable).

Employers with a workforce of 50 or more employees who plan to terminate 10 or more employees for economic reasons during a 30-day period have two options: they can negotiate an agreement with the trade union, or prepare a job-saving plan on a unilateral basis.

In either case, the labor authority must approve the collective consultation procedure and the measures proposed to ensure that they are consistent with the economic means of the company (and its group). Where the employer has prepared the job-saving plan unilaterally, the control is more stringent than if the unions were involved.

The labor authority (DIRECCTE) must provide its decision within 15 days of the company's and the union's agreement being submitted, or within 21 days of the company's unilateral plan being submitted. Should the labor authority refuse to approve this, the employer must amend the plan and present a revised version to the employee representative bodies, followed by the labor authority. If the employer does not comply with this, employees can challenge their termination
before the administrative court and, if successful, will be reinstated to their positions (i.e., their termination will not be valid).

Any recourse against the decision rendered by the administration must be brought within two months before the administrative court. The court is required to render its decision within a three-month time limit.

Employers contemplating collective layoffs are also required to consult the Works Council on two different issues: (i) the economic reasons for the contemplated reorganization, and (ii) the terminations themselves, including ways in which they may be avoided and ways in which the impact on employees could be reduced. The exception to this is where the company has already negotiated an agreement with the trade unions on these points. In that case, a draft of that agreement must instead be submitted to the Works Council for its opinion. Following receipt of that opinion and completion of the consultation, the agreement can be sent to the labor authority.

When negotiating an agreement with the unions, the main steps of the consultation process, which involves at least two meetings, are as follows:

i. In anticipation of the first meeting with the Works Council, the employer informs the Works Council members that it will negotiate a draft agreement on the social measures with the trade union, and that a copy of that document will be delivered to them as soon as it is finalized. A notice of meeting must also be sent to the Works Council members, together with any relevant information on the proposed terminations, e.g., the reasons for the terminations, the number of employees in the company, the projected number of terminations and affected categories of employment, the proposed selection criteria, and the provisional timeline of dismissals. The Works Council members should also be informed of the social measures being offered by the employer in order to prevent unemployment, e.g., reimbursement for travel expenses to interviews, reimbursement of expenses for training courses, provision of outplacement services, or paying any shortfall in salary for a specified period of time should the employee be unable to find a job at the same or a higher salary.

ii. In companies with at least 1,000 employees, terminated employees must be offered reclassification leave of up to nine months during their notice period in order to enable them to receive training and outplacement assistance while continuing to be paid.

iii. Employers with more than 50 employees are required to contribute to the reindustrialization of the geographic area affected by promoting job creation. Those with more than 1,000 employees have to contribute up to four times the minimum monthly salary guaranteed by law per employment terminated.

iv. During the first meeting with the Works Council, the Works Council is asked to study the economic rationale for the contemplated restructuring project. The Works Council may present alternative proposals to the project. In this context, the Works Council may decide that it needs the assistance of an accounting expert (at the employer’s expense) to challenge the economic rationale presented by the company. The labor authority must be informed as soon as possible of this appointment. The appointment of an expert by the Works Council is purely optional and there is no way for the employer to challenge this decision. The Works Council is also informed on the draft agreement to be negotiated with the unions.

v. During the second meeting, the employer is required to consult the Works Council on the draft agreement negotiated with the unions. The Works Council is requested to render an opinion (whether positive or not) on the contemplated agreement, which is not binding, toward the employer. If the Works Council decides to get the assistance of an expert, the latter may ask for additional information within 10 days of his appointment. The employer is to answer such requests within 8 days. The expert’s report will then be rendered 15 days before the maximum time limit for the information and consultation process with the Works Council.

vi. The Works Council is expected to give its opinion within:

- Two months of the first meeting if the company has fewer than 100 employees;
- Three months of the first meeting if the company has more than 100 employees but fewer than 250; or
- Four months of the first meeting if the company has more than 250 employees.
vii. Companies with more than 1,000 employees in Europe who are contemplating a mass layoff and the subsequent closing down of a site must use their best efforts to find a buyer. The company must also inform the Works Council of such efforts at the beginning of the information and consultation procedure in relation to the proposed closure and redundancies.

Failure to comply with the collective termination procedure risks claims by employees for damages in respect of any harm caused. More particularly, an employee terminated under a social plan that is cancelled in court may either get damages of at least 12 months’ salary or be reinstated to his or her previous position.

In addition, criminal sanctions may be imposed upon an employer who fails to comply with various aspects of the procedure (a fine of €3,750 and/or a term of imprisonment for up to one year) for obstructing the proper functioning of the Works Council.

**Business transfer**

In the event of a sale, merger, change of business or incorporation of an undertaking, all employment contracts in force on the date of the change will pass on to the new employer. This may also apply when there is a change of service provider, i.e., employees of the former service provider are deemed transferred to the new service provider, but this is not automatic. The three entities (the former and new service providers, as well as the company changing service provider) may be required to consult with their respective Works Councils.
GERMANY: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements or professional recruitment agencies. In addition, recently job fairs have also become a popular method of recruitment.

Pre-employment references and background checks

Reference letters from former employers are often requested and expected as part of the recruitment process. Employers are obliged to provide their former employees, on request, with a reference letter ("Arbeitszeugnis") which must contain an assessment of the applicant's performance and skills. Medical references or examinations, criminal record checks, credit checks and psychological testing may only be requested if they are necessary to assess the candidate’s ability to carry out the role. Information regarding prospective employees should be obtained from the candidates themselves. Obtaining information from other sources (e.g., social media) is viewed critically and will most likely be restricted by the legislature in the future.

Selection of employees

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of race, ethnic origin, gender, religion, world view, disability, age or sexual orientation.

Itemized pay slips

Employers must give their employees itemized pay statements specifying gross and net salary, and the amount and purpose of any deductions. Employers are required by law to provide their employees with this statement only once and then subsequently only if the relevant factors change. However, it is common practice to provide this on a monthly basis.

Health and safety

Employers are obliged to safeguard the health and safety of their employees to the best of their ability. A number of general obligations exist. For example, employers must provide a non-smoking work environment and regular occupational health checks to any employee who requests it. Industry-specific obligations also exist. In addition, employers are required to join statutory accident insurance schemes.

Written contract of employment

There is no requirement that a contract of employment be in writing, although most employees are issued with a written contract. However, no later than one month after the commencement of an employee’s employment, an employer is obliged to provide the employee with a written summary statement containing information about the key terms and conditions of employment, such as a salary and remuneration, working time, vacation entitlement, duties, term of employment and notice periods. Such a written summary is not required if these details have been set out in a written employment contract.

Implied duties of the employer and the employee

In addition to the terms and conditions set out expressly in the contract of employment, German employment law implies certain additional duties in every employment relationship. These include the following:

- Employers have a duty to provide employees with work and to protect and safeguard the employees' rights and property from damage, to the extent possible; and
- Employers have a duty not to compete against their employer while employed and to keep confidential any company information or trade secrets. In some cases, this duty may even prohibit an employee from whistleblowing.

The German courts are also very willing to imply a common corporate practice into the employment relationship where it has been repeatedly practiced. For example, an employee may become entitled to a bonus on the basis that it has been repeatedly paid in the past despite there being no specific bonus clause in the contract.

Company rules

There is no requirement in Germany to have company rules. However, in recent years, they have become increasingly common, especially in larger organizations. Depending on the matters covered by the rules, they may be subject to approval by the Works Council (if established). This would be the case, for
example, where the rules are to be used as a framework for possible disciplinary action.

**Data protection**

German data protection law limits an employer’s ability to collect, store, process and use personal data of employees and applicants. Personal data may only be processed if the employer has a reasonable justification which outweighs the employee’s right to privacy. Although an employer may try to justify data processing by obtaining the employees’ consent, this is not always the best approach. The German Data Protection Authorities often consider this consent to be invalid as the employee is not in a position to freely give his or her consent.

Failure to comply with data protection regulations can lead to administrative fines and, in some cases, constitute a criminal offense. It can also lead to poor public relations.

**STATUS**

In Germany, a business has a range of options regarding how to staff its business. Employees may be hired either as full or part-time employees, for an indefinite duration or, subject to certain conditions, on a fixed-term basis. It is also possible, in certain circumstances, to engage independent contractors, consultants or self-employed persons or to use temporary employees from employment agencies. The status of the individual dictates the level of statutory protections he or she is entitled to receive and his or her rights.

**Employees**

Only employees benefit from statutory employment law protection such as protection against dismissal. In addition, employees are entitled to participate in the social insurance schemes which require mandatory (and considerable) contributions from the employer.

Hiring an employee can also be advantageous to the employer. Employees are precluded from engaging in any additional work that may interfere with the performance of their job during the term of employment. An employee is also restricted from competing with his or her employer. An employer has a greater ability to exploit inventions and other intellectual property created by employees as opposed to independent contractors or consultants, and to insist on the transfer of rights to such intellectual property.

**Independent contractors, consultants and self-employed workers**

It is not uncommon to have certain tasks carried out by independent contractors, consultants or self-employed workers. This is often preferred because most of the statutory employee protections do not apply and social security contributions need not be paid. However, it is essential that the relationship in practice is one of self-employment and that the self-employed contractor or consultant is not personally dependent upon the employer (which could lead to their classification as an employee). Deliberately classifying an individual as a self-employed contractor when he or she is in fact, an employee can result in the employer’s having retroactive liability for social security contributions and/or income tax payments for a period of up to 10 years. It may also constitute a criminal offense. As a result, self-employed contractor arrangements are subject to a high level of scrutiny.

**Agency workers**

The use of temporary agency workers, more commonly referred to as “loaned employees” in Germany, has become more common in recent years. This type of arrangement allows an employer more flexibility in respect of the size of its workforce, in particular, because the workforce can be increased to meet a demand and then reduced without the need to observe dismissal protection regulations.

Loaned employees may only be hired from licensed employment agencies and, as a general rule, may only be used on a temporary basis. An employer may not use loaned employees to fill permanent positions for which it has a clear and objective long-term demand. Generally, loaned employees have the right to working conditions that are equal to those of permanent employees. Most importantly, they must be granted equal pay. Exceptions frequently apply however, if a collective bargaining agreement regulates the employment relationship.

**PRACTICALITIES**

**Restrictions on overseas individuals working in Germany**

German nationals, nationals of the European Economic Area and Swiss nationals do not need permission to work in Germany. Other
individuals may only do so if they hold a residency permit that includes a working permit. Generally, work permits are only granted to individuals who have specific job offers and their prospective employer can demonstrate that no employee is available from the German labor market to fill the position. Highly skilled employees may be able to obtain permits without these additional requirements. Key or senior management employees may not require working permits either, if their employment in Germany is limited to three months within any 12-month period.

To ensure they do not employ individuals who do not have the right to work in Germany, employers must carry out identity checks on their employees. Employing someone who is not entitled or permitted to work is an administrative offense that can result in a fine of up to €500,000. Depending on the circumstances, it may also constitute a criminal offense.

Tax and social security contributions
An employer must calculate its employees’ social security contributions and deduct that amount from the employees’ salary. Together with the employer’s contributions, the employer must pay this amount to the competent social security authorities. An employer is also obliged to calculate and withhold income tax deductions from an employee’s salary and forward that amount to the tax authorities on behalf of the employee.

Failure to comply with these requirements can result in the employer being held liable for payments due from the employee, with a limited ability to recover that amount from the employee directly.

Taxation of individuals working in Germany
Employees who are permanently or ordinarily resident in Germany are subject to German tax on their worldwide income. Employees who are not permanently or ordinarily resident in Germany are only taxed on income arising from their employment in Germany. Germany has entered into double-taxation treaties with many countries. These treaties provide that Germany will abstain from taxing the employee’s income if (i) the employee’s presence in Germany does not exceed 183 days each tax year; (ii) the remuneration is paid by an employer who is not resident in Germany; and (iii) the remuneration is not borne by a permanent German establishment of the employer.
THE EMPLOYMENT CONTRACT
Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th>Probationary Period</th>
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<tr>
<td>Probationary periods are common. During the probationary period, the notice period is reduced to two weeks. The probationary period may not last longer than six months.</td>
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<tr>
<th>Minimum Wage</th>
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<tr>
<td>There is currently no universal minimum wage in Germany; however, minimum wage rules apply in certain industries. It is expected that a universal minimum wage of €8.50 per hour will be implemented with effect from January 1, 2015. Under the new rules (as anticipated), it will be possible for the parties to agree to wages lower than the universal minimum under a collective bargaining agreement, but only until the end of 2017. Certain other exceptions may be applied, e.g., in respect of students or pensioners.</td>
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<tr>
<th>Non-Pay Benefits</th>
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<tr>
<td>Fringe benefits are not generally a legal requirement, but they are quite common (depending on the industry/sector and the employee’s qualifications/level of training) and may include:</td>
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<td>- Occupational pension schemes</td>
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<td>- Additional insurance coverage</td>
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<tr>
<td>- Death-in-service benefits</td>
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<tr>
<td>- Company cars</td>
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<tr>
<td>- Stock options</td>
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<td>- Bonus payments</td>
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<tr>
<th>Hours of Work</th>
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<tr>
<td>There is a 48-hour maximum working week. There is also an eight-hour maximum working day, which may be extended to a maximum of 10 hours per day provided the daily average does not exceed eight hours calculated over a six-month period. Subject to certain exceptions, employees are prohibited from working on public holidays (typically between nine and 13 per year, depending on where the business is based) and on Sundays. There is a daily rest entitlement of 11 hours. If employees work more than six hours per day, they are entitled to a minimum break of 30 minutes. Those working more than nine hours per day are entitled to a minimum break of 45 minutes. Special rules apply for key managerial staff and certain other employees.</td>
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<tr>
<th>Holiday Entitlement</th>
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<tr>
<td>Employees are entitled to a minimum of four weeks of holiday per year. However, it is common practice to grant longer periods of holiday entitlement, typically between five and six weeks per year.</td>
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<tr>
<th>Default Normal Retirement Age</th>
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<td>The normal retirement age is 67 (recently increased from 65 years of age), with special rules applying to certain groups of employees, such as those with disabilities. Employment contracts will only terminate on the employee’s reaching this age if the retirement age has been expressly set out in the contract (which is common).</td>
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<tr>
<th>Sick Pay Entitlement</th>
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<tr>
<td>Generally, employees are entitled to full pay from their employer during a period of up to six weeks’ sickness absence. Employees who are mandatorily insured by state health insurance will then receive sick pay for up to 78 weeks of absence.</td>
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<tr>
<th>Rate of Tax Payable by Employee</th>
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<tr>
<td>There is a sliding scale of income tax which ranges from zero percent (on annual income of less than €8,354) and 45 percent (on annual income greater than €250,731). The German income tax is a progressive tax, which means that the tax rate continuously increases with taxable income. In addition, there is a solidarity charge (&quot;Solidaritätszuschlag&quot;) of 5.5 percent on the tax levied. Members of the Lutheran and Catholic churches must also pay additional church tax (&quot;Kirchensteuer&quot;), which will be paid to the church the employee belongs to.</td>
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<tr>
<th>Rates of Social Security Payments</th>
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<tr>
<td>Social security contributions are calculated as a percentage of gross monthly salary (up to a capped amount, depending on the type of insurance and place of work). The current rates (2014) are as follows:</td>
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<td>- Health insurance: 15.5 percent (7.3 percent paid by employer and 8.2 percent paid by employee);</td>
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<td>- Nursing care insurance: 2.05 percent (1.025 percent paid by both employer and employee);</td>
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<td>- Pension insurance: 18.9 percent (9.45 percent paid by both employer and employee);</td>
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<tr>
<td>- Unemployment insurance: 3 percent (1.5 percent paid by both employer and employee); and</td>
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<tr>
<td>- Statutory accident insurance: payable by the employer at a rate dependent on the type of work and</td>
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</table>
Those earning more than €53,550 per year may opt out of statutory health insurance contributions and insure themselves privately. In this case, the employer must contribute to the employee’s insurance premiums (capped at the hypothetical contribution to the statutory health care scheme).

**Maternity Benefits**

An expectant mother must take maternity leave during the six weeks prior to the expected date of birth, unless she expressly agrees otherwise. The eight weeks following the birth is a compulsory period of leave (“Mutterschutz”), (i.e., she cannot agree to work even if she wants to). During these periods of leave, the employee receives maternity pay out of the statutory health insurance scheme.

**Paternity Benefits**

There is no equivalent right to leave for fathers. However, male employees may unilaterally place themselves on parental leave under the same terms as those for female employees outlined below.

**Parental Benefits**

After maternity leave, an employee can unilaterally place herself on parental leave (“Elternzeit”), during which she will be released from her work obligations. The maximum duration of parental leave is three years starting with the birth of the child; of which up to 12 months may be transferred to a later period up until the child’s eighth birthday. During parental leave, the employer is not obliged to pay the employee; the employee, however, may receive parental pay (“Elterngeld”) from the state. During parental leave, the employee may also demand to work part time (for up to 30 hours per week) on his or her return to work. This request may only be refused if there are operational grounds for doing so.

**Flexible Working**

Employees with at least six months’ service can request to work reduced hours, provided that their employer employs more than 15 employees. The employee must make a request regarding the number of hours he or she would like to work, and the work pattern (shifts) desired, to the employer. The employer can refuse such a request but only if it has compelling business grounds for doing so.

**Equal Opportunities**

Employees are protected against discrimination on the grounds of race, ethnic background, gender, religion, worldview, disability, age or sexual orientation. In addition, employers must at all times observe the equality principle (“arbeitsrechtlicher Gleichbehandlungsgrundsatz”) which obliges them to, as far as possible, treat all employees equally, unless it can cite a reasonable justification for unequal treatment.

**Protected Employees**

Protected employees include members of certain employee groups, such as Works Council members or members of youth and trainee groups, employees working as health and safety officers, and employees working as data protection officers. In addition, the dismissal of a disabled employee is only effective if it is approved by the competent office for the integration of disabled people (“Integrationsamt”).

**Minimum Notice Period**

The statutory minimum notice period is four weeks’ notice from the 15th or the end of the month. The minimum notice period for the employer increases over time to a maximum of seven months once the employee has over 20 years’ service. Typically, longer periods of notice are set out in the employment contract. In that case, the notice period required from the employee must not be longer than the period required from the employer. Longer or shorter notice periods are also regularly agreed upon in collective bargaining agreements.

**Collective Agreements**

Both collective bargaining agreements (with trade unions) and shop agreements (with the Works Council, if established) are very common in Germany in both the public and private sectors.

Neither the collective bargaining agreement nor the shop agreement needs to be referred to in the employment contract. However, it is common practice to do so.

**Disciplinary Rules**

There are no statutory rules relating to disciplinary procedures. However, company procedures on this topic are common. If such rules and procedures are to be implemented, the Works Council’s approval (if established) is required. Notwithstanding this, if an employer wants to dismiss an employee for disciplinary reasons, it must issue a written warning beforehand.

**Grievances**

There are no statutory rules on how an employer should address grievances of individual employees. However, the employer may be held in breach of its implied contractual duties (i.e., the duty to care for the employee) under the
employment contract if it fails to address legitimate grievances. Dismissing an employee because he or she filed a grievance would, in any case, be deemed invalid. If a Works Council has been established, the employee may file a grievance with the Works Council, which might then take up the issue with the employer.
GERMANY: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

Employers are generally required to give an employee a prior written warning before dismissing him or her for a disciplinary reason (an “Abmahnung”). However, no prior warning is required if the issue is so serious that the employee does not deserve a second chance. This is regularly found to be the case if the employee could have been expected to know that his or her misbehavior would under no circumstances be deemed acceptable by an objective bystander.

In principle, the same applies if the employee is underperforming. Employers have to give a warning, establish a plan, and allow the employee an opportunity to improve his or her performance prior to issuing a notice of termination.

Grievances

There are no detailed laws on how employers must address employee grievances. A dismissal of an employee based solely on the fact that he or she filed a grievance, however, would be invalid.

Consultation with employees

Where a Works Council is established, employers are required to inform the Works Council of each individual proposed termination of employment in advance. Employers must provide details of the background and the grounds for the proposed dismissal. The Works Council must be given one week to comment, although its approval is not necessary for the dismissal to be effective. Failure to comply with this requirement results in the dismissal being invalid.

Consultation with the employee prior to dismissing him or her is not required except where the dismissal is based solely on a strong, reasonable suspicion that there has been a severe breach of contract, and the suspicion alone leads to the employment relationship becoming unbearable to the employer (e.g., suspicion of a criminal offense). In that case, the employee must be provided with a fair chance to put forward his or her version of events, prior to being dismissed.

INDIVIDUAL TERMINATIONS

Employers with more than 10 employees may only dismiss employees in accordance with the Protection Against Dismissal Act (“Kündigungsschutzgesetz” or “KSchG”). This means that the dismissal has to be justified on personal grounds, misbehavior or operational grounds.

A dismissal can be justified on personal grounds if the employee is no longer able or qualified to carry out the role that he or she was hired to do. For example, where an employee whose job involves driving loses his or her driving license or, more generally, where the employee is unable to work due to severe long-term illness.

A dismissal for misbehavior can be justified if the employee breached his or her contractual duties in a significant way. As a general rule, employees will need to be given written warning indicating that they will be dismissed if their behavior continues before they can be dismissed on this basis. Only in cases of gross misconduct may the employer summarily dismiss the employee without prior warning.

A dismissal for operational grounds can be justified if it can be demonstrated that the employee’s job has become redundant. The employees to be dismissed as redundant must be selected on the basis of social criteria, namely length of service, age, maintenance obligations towards immediate family members and disability, as these factors are deemed to have an effect on the employee’s ability to find new employment. A dismissal for operational grounds will be unjustified if the employee, instead of being dismissed, could have been employed in a role/function appropriate to his or her qualifications and capabilities within the employer’s business.

Where the KSchG does not apply (i.e., for employers with fewer than 10 employees), the employer is not required to justify the dismissal, other than to show that it is not arbitrary or unjustly discriminatory.

Statutory claims

If an employer dismisses an employee without proper justification, the employee may, within three weeks of receiving notice of termination, bring a claim before the competent labor court. If the employee is successful in his or her claim, the court will declare the notice of dismissal invalid and the employee will be reinstated. If the three-week period expires
without a claim being brought, the notice of dismissal is considered to be valid, regardless of whether it was justified or not.

Under normal circumstances, reinstatement is the only remedy a dismissed employee can seek. The labor courts will not normally award damages for breach of contract by the employer simply because it has given an unjustified notice of dismissal. However, as the contract will be deemed to have continued, the employee will be entitled to claim any back pay that has accrued pending the court proceedings. As court proceedings can take a considerable amount of time, the back pay can be for substantial amounts.

**Redundancy payments**

There is no statutory right to redundancy or severance pay (other than in respect of pay for the notice period). However, in large-scale redundancies, the Works Council (if established) may file a claim requiring the employer to enter into an agreement implementing a severance scheme in a social plan (“Sozialplan”).

In addition, it is common practice for employers to contractually agree on individual redundancy payments with employees in order to mitigate the risk of lengthy court proceedings. Such settlement payments are usually calculated by taking into account the employee’s length of service and gross monthly pay and are typically calculated at one month’s salary per year of service. Depending on the circumstances, however, a settlement may require considerably higher payments.

**Discrimination**

It is unlawful to discriminate against employees on the grounds of race, ethnic background, gender, religion, world view, disability, age or sexual orientation in relation to dismissal. A claimant does not need to have had a certain minimum period of continuous service in order to bring such a claim. Further, a dismissal based on discrimination is one of the rare cases in which the employee may, in addition to being reinstated, also claim statutory, monetary compensation for “non-material” damages.

**GROUP TERMINATIONS**

**Redundancies**

As with all dismissals for operational reasons, a social selection procedure will need to be carried out where an employer contemplates a collective dismissal, except where the entire business or branch of the business is being closed down completely and all comparable employees are to be dismissed at the same time.

A large-scale business reorganization which results in the dismissal of employees will also require substantial involvement of the Works Council (if established).

In businesses with more than 20 employees, the Works Council has a co-determination right if a significant number of those employees will be negatively affected by a restructuring measure. The Works Council may demand that the employer enter into consultation regarding the restructuring measure, and the employer must, in good faith, try to reach an agreement with the Works Council with a view to minimizing the impact.

Depending on how large the business is and how many employees are affected by the proposed restructuring or proposed dismissals, the Works Council may also be able to force the employer into paying monetary compensation to affected employees under a social plan (“Sozialplan”). Typically, the level of compensation agreed under a social plan is calculated by taking into account the employee’s length of service and the age of the employee. The social plan also commonly includes other benefits, e.g., outplacement advice.

If the employer fails to enter into consultation or to complete consultation in good faith, the Works Council may seek injunctive relief, prohibiting the employer from implementing any dismissals until the negotiation process has ended.

There is no fixed timeline or limit on the duration of the negotiations with the Works Council. In practice, it is common to allow for at least six months, as, depending on the circumstances, either side may choose to involve the conciliatory board (“Einigungsstelle”), an ad-hoc arbitration body consisting of an equal number of representatives of both employer and employees and an impartial chairperson. The conciliatory board may determine the content of the social plan on a binding basis, should an agreement not be reached through negotiations.
In addition, the employer will usually have to inform the competent employment agency prior to issuing notices of termination. Where this is necessary, any notice of termination given before this notice is filed will be deemed invalid. Irrespective of the above-mentioned obligation to enter into negotiations, the employer may also have an obligation to inform an established Works Council if its plans may lead to mass dismissals.

**Business transfer**

If a business, or parts thereof, is transferred from one owner to another, while the business maintains its “identity” (which is determined by applying several secondary criteria, e.g., transfer of the main assets, transfer of a relevant subsection of the employees, etc.), this may be deemed a “transfer of operations” pursuant to section 613a of the German Civil Code (“Bürgerliches Gesetzbuch” or BGB).

In the event of such a transfer of operations, the new owner will automatically enter into any employment relationships that have been in effect with the old owner. The contractual duties and rights will generally transfer “as is”; i.e., any rights the employee may derive from collective bargaining or shop agreements will transfer as well. The transfer also applies to all accrued claims from the prior employment arrangement, including vested pension claims. However, the former owner also remains liable for all claims accrued prior to the transfer or relating to parts thereof, provided that they are either due at the transfer or become due within one year of the transfer.

Any notice of termination given solely because of the transfer of operations will be held invalid. However, dismissing employees on other grounds remains possible, even though these grounds may be indirectly related to the transfer; e.g., if the new owner takes over the business with the intent to restructure it and employees become redundant due to the restructuring.

The affected employees must be informed in writing about the “transfer of operations.” The information must include the timing of the transfer, its economic and legal reasons, its social, economic and legal effects and any planned measures with regard to the transferred employees. Affected employees also have the right to object to the transfer of their employment relationship. If an employee objects, his or her employment relationship will remain unchanged, i.e., he or she will continue to be employed at the old owner’s business (where he or she can, however, most likely be dismissed for operational reasons, as the business he or she was employed in has been transferred).

The objection can be made within one month of receipt of the written information. Incomplete or incorrect information nullifies the one month time limit for the objection; this may lead to an almost unlimited right to object to the transfer until the information is correctly given.
IRELAND: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements and professional recruitment agencies.

Pre-employment references and background checks

Most employers make employment conditional on the receipt of two satisfactory references. Medical examinations and psychological testing may form part of the recruitment process, as well as verification of entitlement to work in Ireland. In order to carry out a criminal background check, employers can require the applicant to obtain a certificate from An Garda Síochána (the Irish police service) verifying that he or she does not have a criminal conviction.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate on the basis of gender, civil status, family status, sexual orientation, religion, age, disability, race (including color, nationality and ethnic or national origin) or membership of the Traveller Community.

Itemized pay slips

Employers must give their employees itemized pay statements specifying gross salary, and the amount and purpose of any deductions.

Health and safety

Employers are obliged to safeguard, as far as is reasonably practicable, the health and safety of their employees, visitors to their premises and the public. The obligations are extensive. They include the duty to carry out a risk assessment; prepare a written safety statement; consult with employees on health, safety and welfare issues; and to report accidents. While there is no legal obligation to obtain employers’ liability insurance, almost all employers will do so.

Written contract of employment

There is no requirement that a contract of employment or contract for services be in writing. However, no later than two months after the beginning of an employee’s employment, an employer is obliged to give the employee a written statement setting out certain specified terms. The statement must include details such as entitlements to pay, hours, holidays, sick pay and notice of termination. The employer is also required, within 28 days of entering into the contract of employment, to inform an employee of the procedure which will be followed if the employee is going to be dismissed. Typically, an Irish employer will send the employee an offer letter and follow up with a contract of employment. It is also common for a more senior employee to be given a service agreement which has more detailed provisions.

Implied duties of the employer and the employee

In addition to the terms and conditions set out expressly in the contract of employment, common law also implies certain additional terms into every employment relationship. These include the following:

- Employees have a duty to be ready and willing to work, to use reasonable care and skill, and to obey lawful and reasonable instructions;
- Both parties are bound by a mutual obligation of trust and confidence. For an employee, this means that he or she cannot set up in direct competition with his or her employer, solicit customers while employed, or use or disclose his or her employer’s, or his or her employer’s clients’, confidential information or trade secrets; and
- Employers have a duty to pay the employee and provide work, and to take care of the employee’s health and safety.

In addition, certain terms are implied by statute, or by custom and practice.

Company rules

Employers in Ireland should put in place grievance and disciplinary procedures and anti-bullying and harassment procedures.

Data protection

An employer has duties under the Data Protection Acts 1988 and 2003 in respect of the personal data and sensitive personal data of its current and former applicants, employees, contractors, consultants and agency staff. These duties mean an employer
must obtain and process any such data fairly; only keep data for one or more specified and lawful purposes; use and disclose data only in ways compatible with these purposes; keep data safe and secure; keep data accurate, complete and up to date; ensure data are adequate, relevant and not excessive; retain data for no longer than is necessary; and provide a copy of the employee's personal data if the employee requests it. There are also restrictions on the transfer of personal data from Ireland to jurisdictions outside the European Economic Area (EEA) that do not ensure an adequate level of protection unless the transfer meets a number of conditions.

STATUS

A key consideration for any business setting up in Ireland is how to staff its operation. In Ireland, a business has many options in respect of the status of the individual. It can employ employees under a contract of employment, or engage the self-employed, such as independent contractors or consultants, or use agency workers. The status of the individual dictates the level of statutory protections he or she is entitled to receive, and his or her rights.

Employees

An employment relationship gives the employer a greater ability both during and after the employment to protect the company’s confidential information and intellectual property, and to prevent the former employee from setting up in competition or poaching other staff.

Independent contractors or consultants

There are significant legal and administrative advantages of using self-employed persons. For example, the engagement of contractors or consultants is governed by the terms of the services or consultancy agreement; he or she has few statutory protections or rights; his or her remuneration will be paid gross without deduction of tax; and there is no liability on the engaging party to pay social insurance contributions. As a result, these types of arrangements are often scrutinized by the Revenue Commissioners, and can be subject to challenge in any of the employment tribunals, as well as the civil courts.

Agency workers

If the business has short-term demands or needs to cover absences, it can use temporary workers from an employment agency. The use of agency workers does not relieve employers of all obligations which they would normally have towards employees. The Protection of Employees (Temporary Agency Work) Act 2012 provides that all temporary agency workers covered by the Act have the right to the same basic employment conditions they would have if they had been directly employed by the hirer under a contract of employment.

PRACTICALITIES

Restrictions on overseas individuals working in Ireland

Any EEA or Swiss national may work in Ireland without the need to first obtain an employment permit. There are four types of employment permits: work permits, Green Card permits, spousal/dependent work permits and intra-company transfer permits, the choice of which will largely depend on the individual's proposed salary.

An Irish employer must ensure its staff has permission to work in Ireland, or it could be liable to civil and criminal sanctions. The relevant legislation provides for fines of up to €250,000 or 10 years' imprisonment for employers who employ non-EEA nationals without employment permits. To avoid liability, the employer must ascertain that the individual is authorized to work in Ireland before the individual commences employment. This includes the employer requesting verification of certain original documents and retaining copies of same.

Tax and social security contributions

If the organization has employees in Ireland, then it is responsible for calculating the income tax deductions and social insurance contributions that need to be withheld from each employee’s wages or salary. Income tax is accounted for via the Pay As You Earn system (PAYE). The highest rate of income tax is currently 41 percent (with a basic rate of 20 percent). A universal social charge (USC) of two percent also applies on income up to €10,036, four percent on the next €5,980, and seven percent on the balance. USC is levied at ten percent on certain non-PAYE income in excess of €100,000 per annum.

Social insurance contributions known as Pay Related Social Insurance (PRSI) are generally collected from employees at a rate of four percent (employees are exempt from PRSI on earnings of £352 or less per week). In addition, employers are also liable for
employers’ PRSI at a rate of 10.75 percent (or 8.5 percent where weekly earnings are €356 or less). An employer’s PRSI contributions cannot be deducted from the employee’s salary and are an employer’s cost.

In general, payments of PAYE, PRSI and USC are paid over by an employer to the Collector-General on a monthly basis or, where an employer’s total PAYE, PRSI and USC payments are less than a specified annual amount, on a quarterly basis.

**Taxation of individuals working in Ireland**

The tax treatment of individuals working in Ireland depends on whether they are resident, ordinarily resident or domiciled in Ireland. Individuals working for an overseas company who are sent to Ireland for the purpose of working in its Irish business operations will, in broad terms, only be resident in Ireland if their actual residence in Ireland in any tax year is 183 days or more. In respect of employment income, employees engaged under Irish contracts of employment or foreign contracts of employment where the duties of the employment are exercised in Ireland are liable for Irish tax on their employment income. There are exemptions available where employees are posted to Ireland on short-term assignments (subject to certain conditions).

Individuals working in Ireland under non-Irish contracts of employment are regarded as being in insurable employment and, consequently, are liable for PRSI contributions on employment income. However, individuals who are nationals of another EU Member State or certain countries with which Ireland has bilateral agreements (including the United States) may be exempted from PRSI for up to five years if they obtain a certificate of coverage from the social insurance authorities in their home country.
THE EMPLOYMENT CONTRACT
Overview of key terms and legal requirements:

**Probationary Period**
Probationary periods are quite common. They do not have a maximum length, but they typically last three to six months.

**Minimum Wage**
National minimum wage is €8.65 per hour for employees over 18 years of age; €6.06 per hour for employees under 18; and for employees who enter employment for the first time after reaching the age of 18 and trainees is €6.92 per hour for the first year and €7.79 per hour for the second year.

**Non-pay Benefits**
Fringe benefits are not a legal requirement, but they are common and may include:
- Sick pay
- Private health care
- Permanent health insurance
- Death in service benefit
- Company cars
- Pension contributions
- Bonuses
- Share options

**Hours of Work**
There is a 48-hour maximum working week, generally averaged over a four-month period. Employees in positions in which they are able to determine their own hours (usually only very senior positions) are exempted. There is a daily rest entitlement of 11 hours, and a weekly rest entitlement of 24 hours.

**Holiday Entitlement**
Generally, employees are entitled to a minimum of four weeks’ paid annual leave, in addition to nine public holidays per year.

**Default Normal Retirement Age**
There is no compulsory retirement age, but it is common for employers to specify a retirement age of 65 years.

**Sick Pay Entitlement**
There is no requirement for employers to pay company sick pay, although many do so either on a discretionary or contractual basis. Under social welfare legislation, employees are entitled to an illness benefit from the state, the level of which depends on the employee's average weekly earnings. For those earning less than €150 per week, the illness benefit is €84.50 per week; for those earning €150 to €219.99, the illness benefit is €121.40; for those earning between €220 to €299.99, the illness benefit is €147.30; and for those earning more than €300, the illness benefit is €188. There is no payment during the first three days of illness.

**Rate of Tax Payable by Employee**
The highest rate of income tax is currently 41 percent (with a basic rate of 20 percent) together with a universal social charge on a sliding scale of two percent, four percent, seven percent or 10 percent, depending on the level of income.

**Rates of Social Security Payments**
Social security contributions are payable on earnings at a maximum rate of 10.75 percent on earnings by employers and a maximum of four percent by employees.

**Maternity Benefits**
There is 26 weeks' basic entitlement to maternity leave for all employees, with no service conditions. There is no obligation on an employer to pay employees on maternity leave, but employees may be entitled to state social welfare payments of €230 per week. Employees are entitled to an additional 16 weeks of unpaid maternity leave, which carries no entitlement to social welfare payments.

**Paternity Benefits**
Irish employers are not obliged to grant male employees special paternity leave (either paid or unpaid) following
the birth of their child, although some do so.

**Parental Benefits**
Employees may be entitled to parental leave of up to 18 weeks in respect of children up to eight years of age (subject to service conditions). This leave is unpaid.

**Flexible Working**
Employees have the right to make a request to work flexibly. Employers are under no obligation to agree to such a request, although in certain circumstances it may be deemed discriminatory not to do so.

**Equal Opportunities**
Employees are protected against discrimination on the grounds of sex, civil status, family status, sexual orientation, religious belief, age, disability, race (which includes color, nationality and ethnic and national origin) and membership in the Traveller Community.

**Protected Employees**
Protected employees include trade union members (in certain circumstances); pregnant or breast-feeding women; those on maternity, adoptive, carer’s, parental or force majeure leave; those working part-time or on a fixed-term contract; those acting as a party or a witness in legal proceedings against an employer; and those dismissed in connection with the exercise of a statutory right.

**Minimum Notice Period**
Minimum periods of notice to be provided by an employer are one week’s notice for employees with more than 13 weeks and less than two years’ service; two weeks’ notice for employees with more than two years’ and less than five years’ service; four weeks’ notice for employees with more than five years’ and less than 10 years’ service; six weeks’ notice for employees with more than 10 but less than 15 years’ service; and eight weeks’ notice for employees with 15 or more years’ service. Individual contracts can provide for longer periods of notice.

**Collective Agreements**
Any applicable collective agreements must be referred to in the employment contract. Collective agreements are generally limited to public-sector or former public-sector businesses, or those that recognize a trade union.

**Disciplinary Rules**
The employee must be told of the procedure which will be followed if the employee is going to be dismissed. There is a Code of Conduct on disciplinary procedures, which should be followed by employers.

**Grievances**
An employee must be told with whom to seek redress of any grievance relating to his or her employment and the procedure he or she must follow. There is a Code of Conduct on grievance procedures, which should be followed by employers.
IRELAND: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

If an issue cannot be resolved informally and an employer is considering taking disciplinary action or dismissing an employee, an employer must use fair procedures before imposing sanctions or deciding to dismiss. Employers should comply with the Code of Practice on Grievance and Disciplinary Procedures, which is based on the established principles of natural justice and the constitutional right to fair procedures. These require the employee to be given a fair opportunity to respond to any allegation against him or her, and to a fair and impartial hearing, before any decision to dismiss is taken.

An employee would usually be given oral, written or final written warnings before being dismissed, except in cases involving serious misconduct. The disciplinary procedure will usually include informing the employee of the reason for the potential action, holding a meeting before a decision is reached and offering the employee the right to appeal. Employees also have a right to be accompanied at any formal disciplinary, dismissal or appeal meeting.

Grievances

The Code of Practice on Grievance and Disciplinary Procedures applies to most employee grievances. An employer is required to fairly examine employee grievances and process them thoroughly. Where an employer does not fairly and comprehensively deal with a grievance, depending on the nature or seriousness of the grievance, there is a risk of a claim for constructive unfair dismissal.

Consultation with employees

Where an employer is considering dismissals, consultation with local representatives (whether trade unions or otherwise) may be required by the employer’s collective agreement with a trade union or other written agreement. Consultation obligations can also arise in the transfer of undertakings, collective redundancy situations, or alternatively, where employees are covered by a local or European Works Council.

INDIVIDUAL TERMINATIONS

Under common law, an employer can terminate the contract of employment without cause once the proper notice to terminate is given in accordance with the contract. In addition, employees have a statutory protection against unfair dismissal under the Unfair Dismissals Acts, 1977–2007 (the “Acts”). Under the Acts, an employer cannot lawfully dismiss an employee unless substantial grounds exist to justify the termination of the contract of employment, and fair procedures have been followed. Subject to certain exceptions, employees must have at least 12 months’ continuous service to qualify for protection under the Acts.

The employer must show that the dismissal resulted wholly or mainly from one or more of the following grounds: the capability, competence or qualifications of the employee to do the work concerned; the conduct of the employee; the redundancy of the employee; or the employee being prohibited by law from working or continuing to work, e.g., not holding a valid work permit where required.

Other than in respect of pay and benefits during the notice period, there are no entitlements on termination. However, in the event the dismissal is due to redundancy, the employee may be entitled to a statutory redundancy payment, depending on his or her continuous service.

It is common for an employer to reserve, by contract, the right to pay in lieu of the employee’s notice period.

Contractual claims

A wrongful dismissal claim is a contract based claim. It takes place where an employer terminates the employment of its employee in breach of its contractual obligations. An employer may only terminate the contract without giving proper notice where it has a contractual entitlement to do so, or if the employee commits gross misconduct.

An employee may bring a claim of constructive dismissal, which is a form of wrongful dismissal, if the employer has committed a repudiatory breach of contract that the employee does not accept. A unilateral change to terms and conditions, particularly relating to pay, will usually amount to a repudiatory breach of contract. If the employer commits a breach, the employee is entitled to resign in response; he or she does not have to work out
his or her notice period. In addition, he or she may also be able to bring a constructive unfair dismissal claim, which is a statutory claim.

Claims for wrongful dismissal are brought in the civil courts. There is no maximum level of damages that can be awarded. However, the award of damages is usually limited to the loss of salary and benefits the employee would have received had the employer lawfully terminated the contract by giving the appropriate notice.

**Statutory claims**

Any employee may be entitled to bring a statutory claim for unfair dismissal if his or her employment is terminated without a potentially fair reason, his or her employer fails to follow the correct process, or on the expiry and non-renewal of a fixed-term contract, provided that he or she has had one year’s continuous employment and has not reached his or her normal retirement age. To defend a claim of unfair dismissal, an employer must be able to prove that the reason for the dismissal was one of the six prescribed potentially fair reasons or that it had another substantial ground for the dismissal, and that the employer acted reasonably in all the circumstances of the case.

Certain dismissals will be automatically unfair. These include dismissals relating to pregnancy, religious or political opinions, trade union membership, race, age, sexual orientation, asserting a statutory right, or where an employee is involved in criminal or civil proceedings against the employer. In the case of trade union membership, pregnancy-related matters and exercising certain statutory rights, there is no qualifying period for bringing an unfair dismissal claim.

An employee must initiate proceedings within six months of the dismissal before a Rights Commissioner or the Employment Appeals Tribunal. If a complaint for unfair dismissal succeeds, the Rights Commissioner or the Employment Appeals Tribunal may make an award of up to two years’ remuneration. In the alternative, it may make an order for reinstatement or re-engagement. In addition, special awards apply in the case of an exceptional collective redundancy.

**Redundancy payments**

The dismissal of an employee by reason of redundancy is one of the prescribed potentially fair reasons for dismissal. An employee’s dismissal is due to redundancy where it is wholly or mainly because of his or her employer ceasing or intending to cease carrying on a business, either altogether or simply at the place where the employee works. It may also be due to a reduction or an expected reduction in the employer’s requirements for employees to do work of a particular kind.

An employee dismissed by reason of redundancy who has two complete years of continuous employment with his or her employer will be entitled to a statutory redundancy payment. A claim for such a payment must generally be brought before a Rights Commissioner or the Employment Appeals Tribunal within six months of the date of dismissal. The level of statutory redundancy payment is calculated as two weeks’ normal remuneration for each year of continuous and reckonable service, plus one week’s normal weekly remuneration (commonly referred to as the “bonus week”). The statutory redundancy payment is subject to a ceiling of €600 per week. Where reckonable service is not an exact number of years, the excess days must be credited as a portion of the year.

Employees do not have an immediate right to a statutory redundancy payment where they are laid off. However, after four weeks or more of layoff, employees can declare themselves redundant and claim statutory redundancy pay.

A statutory redundancy payment can be paid free of deductions for income tax and social insurance contributions. Any entitlement to a statutory redundancy payment is in addition to an employee’s contractual and/or statutory right to notice of termination or a payment in lieu of notice. Some Irish employers also offer enhanced redundancy or severance payments which exceed the statutory redundancy payment.

**Discrimination**

It is unlawful to discriminate on the grounds of sex, civil status, family status, sexual orientation, religious belief, age, disability, race (which includes color, nationality and ethnic and national origin) and membership in the Traveller Community. Any dismissal by reason of one or more of these grounds will be a discriminatory dismissal. There is no minimum service requirement in order to bring a claim of discriminatory dismissal and, depending on the circumstances, an employee
may be in a position to bring claims for unfair dismissal and discriminatory dismissal, but may not recover compensation for both. An employee who brings a claim of discriminatory dismissal may be awarded damages of up to a maximum of two years’ gross remuneration, except in the case of a gender-based claim, when the award of damages is unlimited. Claims can be brought by employees and partners who are all covered by the equality legislation.

GROUP TERMINATIONS

Redundancies

The laws that apply in these circumstances do not distinguish between a single person being dismissed or two or more, unless the dismissals constitute a collective redundancy. A collective redundancy means dismissals which are effected, for reasons unconnected with the individual employee, over any period of 30 consecutive days where the number of such dismissals is at least five in an establishment normally employing more than 20 and fewer than 50 employees; at least 10 in an establishment normally employing at least 50 but fewer than 100 employees; at least 10 percent of the number of employees in an establishment normally employing at least 100 but fewer than 300 employees; or at least 30 in an establishment normally employing 300 or more employees.

Where an employer proposed to implement collective redundancies, it must first enter into consultation with employee representatives, with a view to reaching an agreement on whether the redundancies can be avoided or reduced, and regarding the basis on which particular employees will be made redundant. Such consultation must commence at least 30 days before the first notice of dismissal is given. The Minister for Jobs, Enterprise and Innovation must also be notified in writing. In some exceptional cases, employees or employers may refer a proposed collective redundancy to a government appointed Redundancy Panel for an opinion and possible Labour Court hearing on whether the circumstances constitute what are known as an exceptional collective redundancy (which is essentially where the employer seeks to replace employees with lower-paid workers).

Failure to comply with the appropriate notification and consultation obligations may result in a claim against an employer by any one or all of the employees. Where those claims are successful, a Rights Commissioner can award up to four weeks’ gross remuneration per employee. Employers may also be at risk of a potential fine of €5,000 on summary conviction, or on conviction on indictment to a fine not exceeding €250,000.

Business transfer

In Ireland, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 apply to any transfer of an undertaking or business (or parts thereof) from one employer (transferor) to another employer (transferee), as a result of a legal transfer or merger. Both the transferor and transferee are obliged to inform the representatives of their respective employees affected by the transfer of the date or proposed date of the transfer; the reason for the transfer; the legal, social and economic implications of the transfer for the employees; and any measures envisaged in relation to the employees. This information must be given to the employees’ representatives no later than 30 days before the transfer is carried out or, if not reasonably practicable, in good time before the transfer. In the event that an employer contravenes the Regulations, either an employee or his or her representatives can bring a complaint to a Rights Commissioner. Where a claim is successful, the employer may be required to comply with the Regulations and take a specified course of action or be required to compensate the employee in an amount not exceeding four weeks’ gross remuneration in the case of a breach of the consultation and notification obligations or compensation not exceeding two years’ remuneration in the case of contravention of any other provisions of the Regulations. The Regulations can apply where there is a change in service provider. However, that will be dependent on establishing that there has been a transfer of an economic entity which retains its identity post-transfer.
ITALY: HIRING

RECRUITMENT PRACTICE AND PROCESS
Most employers recruit externally by advertisements and professional recruitment agencies.

Pre-employment references and background checks
Certain medical background checks can be carried out pre-employment where they are relevant to the duties to be carried out by the individual. Likewise, criminal record checks can be carried out pre-employment where those checks are justified by the nature of the duties to be assigned to the employee.

Selection of workers
An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate on the basis of sex, race, nationality, ethnic or national origin, disability, age, sexual orientation, religion or belief, or trade union activities or membership. Exceptions to this apply which allow employers to discriminate on the basis of religion, personal belief, disability, age or sexual orientation where, in light of the specific nature of the work to be carried out, those characteristics are an essential requirement.

Itemized payslips
Employers must give their employees itemized pay statements specifying the employee’s name, level, the period to which the remuneration relates, gross salary and the amount and purpose of any deductions. Employers are not required by law to provide such statements to executive directors (“Dirigenti”); however, it is common practice to do so.

Health and safety
Employers are obliged to safeguard the health and safety of their employees and visitors to their premises. In particular, they must take into account the specific activities and experience of their employees, and the technology used, and implement all measures which are necessary in order to safeguard the physical and mental health of their employees. Employers must also carry out a risk assessment and prepare a report on that assessment. Civil and criminal sanctions apply to breaches of health and safety law.

Written contracts of employment
There is no requirement that a contract of employment be in writing. However, where the contract is not in writing, difficulties can arise where the parties disagree on the terms of the oral contract. If no written employment contract exists, the burden of proof regarding the contents of the agreement is on the employer. It is quite common for an employer to send the employee a letter containing a job offer that, once signed, becomes the employment contract.

Implied duties of the employer and the employee
In addition to the terms and conditions set out expressly in the contract of employment, Italian law also implies certain additional terms into every employment relationship. These include the following:

- Employees have a duty to be ready and available to work at the employer’s request, to use reasonable care and skill and to comply with lawful and reasonable instructions;
- Both parties are bound by a mutual obligation of loyalty and good faith. For an employee, this means that he or she cannot set up a business in direct competition with his or her employer, solicit customers while employed or use or disclose his or her employer’s or its clients’ confidential information or trade secrets; and
- Employers have a duty to pay the employee, provide him or her with work, and to take care of the employee’s health and safety.

Company rules
Save for any rules relating to health and safety, there is no requirement in Italy to have company rules, but these are quite common.

Data protection
An employer has duties under data protection law in respect of the personal data and sensitive personal data of its employees. This means that data must be adequately controlled and secured in order to prevent their destruction, loss or unauthorized access. They must also be processed in a manner consistent with the purposes for which the data were
collected. The data must be processed lawfully and fairly; collected and recorded for specific, explicit and legitimate purposes be accurate and, when necessary, kept up to date, relevant, complete and not excessive in relation to the purpose for which they are collected or subsequently processed, and kept for no longer than necessary for the purpose for which the data were collected or subsequently processed.

**STATUS**

In Italy, there are various types of relationships which an organization can enter into with its workers. For example, there are employment contracts, self-employment agreements, work-on-project agreements and staff-leasing contracts. Which one is appropriate will depend on the type of work to be carried out and the way in which that work is to be done. Each type of contract gives the individual a different level of protection and rights.

**Employment contracts**

An employment relationship gives the employer a greater ability, both during and after the employment, to protect the company's confidential information and intellectual property, and to prevent the former employee from carrying out competitive activities.

Employees are, however, protected. Extensive statutory labor laws aimed at protecting employees (executives, middle managers, white-collar and blue-collar workers) exist. This, along with National Collective Bargaining Agreements (NCBAs), regulate essential aspects of the relationship. These provide employees with specific rights and protections, including in relation to maternity/paternity leave, sick leave, notice periods, disciplinary procedures and dismissal.

**Self-employment contracts**

A self-employed worker undertakes to perform work or services personally but exercises more control of his or her activities than would exist in an employment relationship. This, along with the requirement that the person must be professionally competent, is the main distinction between an employee and a self-employed worker. A self-employed engagement is typical for intellectual professionals. Unlike an employee, a self-employed worker is directly responsible for deducting tax from his or her gross compensation, as well as for the payment of social contributions.

Despite the terms of any contract between the parties and despite the individual having a VAT number in respect of his or her services, a self-employed contractor will, subject to limited exceptions, be deemed to be an employee if two of the following three requirements are met:

(i) the activity is carried out by the professional, for only one organization, for at least eight months over a period of two years;

(ii) if the salary for the activity carried out, if charged to two or more organizations who are connected, represents more than 80 percent of the salary received during two years; or

(iii) if the professional has a fixed personal work station or office at the organization's premises (i.e., a work station that is regularly assigned to that person, even if not on an exclusive basis).

If that is found to be the case, the individual would be entitled to the protections afforded to other employees and the employer could be held liable for the difference in any salary payable, as well as unpaid social security contributions.

**Work-on-project contracts**

The work-on-project contract is a form of self-employed relationship which is regulated by law. It can be used only in relation to the completion of a specific project, which is well identified and connected to a specific end result. The worker in question must actively take part in achieving that result through his or her performance. The project cannot simply be described with a generic reference to the employer's activity and consist of entirely operational duties. Certain terms must be contained in the contract, including a project description, end result to be achieved and any relevant deadlines. As with other forms of self-employment contracts, work on project contracts are subject to scrutiny and challenge in cases where in practice the individual is working as an employee.

**Agency workers: staff-leasing contracts**

Employers may also staff their business operations by using staff-leasing contracts. Under these arrangements, the employee is engaged by an agency which then assigns the employee to its end user clients. There is no
direct employment relationship between the user and the employee.

Staff-leasing can be used in a variety of circumstances and workplaces. However, they cannot be used to replace employees on strike or replace employees where collective dismissals have taken place in the previous six months. An agency must have authorization to enter into staff leasing contracts from the Ministry of Employment and Social Affairs before doing so. A company that leases staff without such authorization carries out an irregular staff-leasing ("somministrazione irregolare"), triggering (i) the right of the leased employees to file claims to be recognized as employees of the user; and (ii) a fine of €50 per employee for each day he or she had been working for the user.

PRACTICALITIES

Restrictions on overseas individuals working in Italy

Employers must ensure that their personnel have permission to work in Italy. Failure to do so risks civil and criminal sanctions. To avoid liability, the employer must carry out certain identity checks before the individual starts work. Nationals of European Union (EU) member states are entitled to stay and work in Italy for a period of up to three months without any permit provided they hold an identity document which is valid abroad. If they wish to stay in Italy for a longer period, they must apply for registration from the Register Office ("anagrafe") of the town council ("comune") where they live in order to receive a registration receipt. Non-EU member state nationals require a work permit ("nulla osta") and a residence permit ("permesso di soggiorno") to work in Italy. The number of permits granted to this group is limited, except in relation to certain categories of jobs, e.g., university professors, translators, maritime workers and sports people working for Italian sports companies.

Tax and social security contributions

An employer must withhold social security contributions and taxes related to the employment income paid to its employees, including in respect of benefits-in-kind. The details of these withholdings must be set out in the employee’s monthly pay slip. The withholdings are to be remitted to the Italian National Social Security Body (INPS) by the 16th day of the month following the month in which the salary was paid. Income tax rates range from 23 to 43 percent. In addition, a regional tax (ranging from approximately 0.9 to 1.4 percent) and a municipal tax (ranging from approximately 0.8 percent) apply.

Taxation of individuals working in Italy

Italian residents are subject to tax on their worldwide income, whereas non-residents are taxable only on their Italian-source income. Employment income is deemed Italian-source where the employment activity is exercised in Italy. An individual is regarded as an Italian resident for tax purposes if at least one of the following conditions is met for a majority of the tax period (i.e., calendar year): (i) he or she is recorded in the register of the resident population; (ii) he or she has his or her residence in Italy for civil law purposes (for this purpose, “residence” is defined as the place in which the person has his or her habitual abode); and/or (iii) he or she has his or her domicile in Italy for civil law purposes. For this purpose, “domicile” is defined as the place in which a person has established the center of his or her business and vital interests.

If (at least) one of the three conditions is fulfilled, the individual is deemed to be a resident of Italy for the entire tax period. There is no split-year concept for residence purposes under Italian law. Accordingly, such an individual is subject to a worldwide income tax liability in Italy, although double taxation can be avoided by means of a foreign tax credit. Dual-residence issues are solved by means of Double Tax Treaties, if any.
# EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

## Probationary Period

Probationary periods are common. They must be agreed in writing between the parties. The maximum length of the probationary period is: (i) three months for white-collar employees who do not have director-level responsibilities; or (ii) six months for all other employees.

## Minimum Wage

Minimum wage is set by NCBAs for each business sector. The NCBA for the commercial sector sets the minimum wage at €17,108 (€54,460 for executives) per annum; the NCBA for the industrial sector sets the minimum wage at €15,680.99 (€61,000 for executives) per annum. Often employees are paid higher levels of salary than the minimum set out in the applicable NCBA (the monthly amount exceeding the minimum salary is called the superminimo).

## Benefits-in-Kind

Depending on the level of autonomy and responsibility of the employee, the employer may decide to grant benefits-in-kind, such as:

- Private health care
- Health insurance
- Company car
- PC and mobile phone
- Pension plans
- Share options
- Hours of work

There is a 48-hour average maximum working week (including overtime). This is generally calculated over a four-month period but may be increased to six months by an applicable NCBA or, in light of the company's objective, technical or organizational reasons, to 12 months. There is a daily rest entitlement of 11 hours, and a weekly rest entitlement of 24 hours.

Only in exceptional circumstances, or on an occasional basis, can an employer request that an employee work beyond his or her normal working hours. Overtime is normally regulated by an applicable NCBA. If there is none, overtime of up to 250 hours per year is permitted.

Restrictions on working hours do not apply to certain categories of employees such as those whose working time is determined by the employees themselves, executives, managers or employees who have any form of independent decision-making powers within the company’s structure, and employees working at home ("lavoro a domicilio").

## Holiday Entitlement

Employees are entitled to a minimum of four weeks of annual leave. Two of those weeks can be taken as one consecutive period; the remaining two weeks must be used within 18 months of the end of the accrual year. In addition, employees are entitled to a minimum of 11 public holidays per year. Minimum holiday entitlement may be increased by applicable NCBAs.

## Default Normal Retirement Age

There is no compulsory retirement age. Generally, an employee will cease to work when he or she becomes entitled to "old age retirement" ("pensione di vecchiaia"). Currently, an employee will become entitled to old age retirement between the age of 63 years and nine months, and 66 years and three months (depending on employment status and gender), provided they have paid social security contributions for 20 years.

## Sick Pay Entitlement

Generally, white-collar employees are entitled to full pay for up to three months of sickness absences, or up to six months if the employee has more than 10 years' service. Blue-collar workers are entitled to full pay for the period set out in the relevant NCBA. Statutory sick pay may also be payable by the INPS for up to 180 days per year.

## Rate of Tax Payable by Employees

There is a sliding scale of tax ranging from approximately 23 to 43 percent.
### Rates of Social Security Payments
Generally, employers' social security contributions are **23.81 percent** of gross salary. Employees' contributions are **9.19 percent**.

### Maternity Benefits
The period of two months before the birth and three months after the birth is compulsory maternity leave. Subject to the employee providing medical certificates, she may request flexibility with this period so that she can take one month before the birth and four months after the birth. During compulsory maternity leave, the INPS pays **80 percent** of the employee's average daily remuneration.

### Paternity Benefits
Fathers, in substitution for the mother, may enjoy maternity leave where (i) the mother has died or is seriously ill; (ii) the mother has abandoned the child; or (iii) the father has full custody of the child. The father may also enjoy discretionary parental leave as set out below.

### Parental Benefits
An employee may ask for discretionary parental leave. For each child in his or her first eight years, the period of discretionary parental leave may not generally exceed 10 months. During discretionary parental leave, the INPS pays **30 percent** of the employee's average daily remuneration for up to a maximum period of six months.

### Flexible Working
Employers and employees can agree flexible working arrangements.

### Equal Opportunities
Employees are protected against discrimination on the grounds of race, religion, belief, sex, sexual orientation, pregnancy, disability, age, membership in a trade union or political orientation.

### Minimum Notice Period
Notice periods are normally set out in the applicable NCBA. Absent this, the notice period for blue-collar employees is determined according to custom and fairness, and the notice period for white-collar employees ranges from a minimum of 15 days to a maximum of four months.

### Collective Agreements
Any applicable NCBA may be referred to in the employment contract or may apply **de facto** (e.g., if the employer constantly applies a specific NCBA despite it not being referred to). It is common practice to apply the NCBA related to the market sector in which the employees work. When the employer chooses to apply an NCBA, most of the terms and conditions of employment are mandatorily governed by its terms.

Where the employer chooses not to apply any NCBA, the employment contract must include terms relating to all aspects of the relationship and, in these circumstances, each clause should be specifically agreed with the employee.

### Disciplinary Rules
Employers can impose disciplinary sanctions on employees. Conduct offenses which may result in such sanctions are usually addressed in the NCBA. The disciplinary code relating to a) sanctions, b) the offenses for which each of these sanctions may be applied and c) the procedures for appealing against them must be communicated to employees by being posted in a place accessible to all. Employers may not apply any disciplinary measure without first informing the employee of the grounds for it and allowing the employee to respond to the allegations. Employees may be assisted in this by a union representative.

### Grievances
There are no statutory grievance procedures; however, these may be set out in internal company policies.
ITALY: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal
In cases of misconduct, employers must comply with a statutory disciplinary procedure. This involves, in particular, the employer notifying the employee in writing of the issue and including a detailed description of the alleged misconduct. The employee normally has five days (but the applicable NCBA may set out a longer term) following the delivery of the notice to put forward a defense either orally, in writing, or with the assistance of a trade union representative. After completion of the procedure, the employer, depending on the seriousness of the misconduct, must immediately react (the applicable NCBA may provide for a specific deadline for doing so), and issue a disciplinary sanction proportionate to the misconduct (i.e., a verbal warning, fine, suspension from work, dismissal for just cause or for a subjective justifying reason).

Grievances
There are no specific laws governing how employers must handle employee grievances. However, employers can set out a procedure that employees must follow in order to raise a complaint in a company collective agreement or company policy.

Consultation with employees
Employers are required to consult with and inform the relevant trade unions in certain circumstances, including where there is a transfer of a business, large-scale redundancy situations, collective transfers of employees (if required by the applicable NCBA), and in respect of changes to company collective agreements.

INDIVIDUAL TERMINATIONS
Employers can terminate employment with notice if it can show that it has a justified subjective reason (“giustificato motivo soggettivo”), e.g., where the employee is in serious breach of contract or guilty of misconduct, or a justified objective reason (“giustificato motivo oggettivo”), e.g., where the reason concerns the activity or organization of the employee’s work or economic reasons. Employers can also terminate employment without notice where it has just cause (“giusta causa”) to do so. The notice of dismissal must be in writing and contain the specific reasons for the dismissal.

If the dismissal is for an objective reason, including a dismissal on economic grounds, an employer with more than 15 employees in a single work unit or at municipal level, or more than 60 employees at national level, must attempt a settlement procedure with the Local Labour Office ("Direzione Territoriale del Lavoro" or DTL) before issuing notice of dismissal. Failure to do so results in the termination being ineffective. The procedure includes the employer filing a request for mediation with the DTL and sending a copy to the employee. The filing must state the intention to dismiss, the reasons behind the dismissals, along with any possible measures supporting the outplacement of employees concerned. A meeting between the parties and the Provincial Dispute Resolution Committee is held within seven days and, during a period of up to 20 days, the parties and the Committee examine alternatives to dismissal. If the meeting is not held within the seven day period or the mediation fails, the employer can issue notice of dismissal. Any notice of dismissal issued at the end of the procedure is effective from the day the employee was informed that the procedure would take place.

On termination, all employees are entitled to severance pay (TFR), payment in lieu of accrued but untaken holiday and payment in lieu of notice (if that period is not worked by the employee).

Different rules apply in relation to executives (see further below).

Statutory claims
Where a dismissal is found to be unfair, i.e., the court finds that the employer has no grounds for the dismissal, the remedies awarded depend on the size of the company and the type of breach. In business units with up to 15 employees, the employer will be required to either reinstate the employee or, if the employer prefers, to pay the employee an indemnity ranging from two and a half to six months’ salary.

In business units with more than 15 employees or companies employing more than 60 employees in Italy, the following applies:

If the dismissal is (a) discriminatory, (b) issued in breach of the prohibition of dismissal due to marriage, taking maternity, paternity or parental leave, (c) for an unlawful reason, (d)
declared ineffective because they were notified orally, it will be void. The employee is entitled to (i) reinstatement or, at their request, to an indemnity payment equal to 15 months’ overall remuneration instead, plus (ii) damages equal to wages lost from the day of the dismissal up to the day of the actual reinstatement (deducted by any amount the employee received in respect of other work during that period); but in any event not lower than five months’ overall remuneration. These rules apply to both employees and executives.

In cases where the employer has purported to dismiss an employee on subjective or objective grounds, but is unable to show that those grounds were the reason for the dismissal or that that reason justified dismissal, the employee will be entitled to reinstatement and compensation of up to 12 months’ overall remuneration in damages, or an indemnity payment of between 12 and 24 months’ salary, depending on the circumstances. Where the court finds the dismissal to be ineffective due to faults in the dismissal procedure, the employee is entitled to an indemnity payment of between six and 12 months’ salary.

**Executives**

Where an executive is unlawfully dismissed, the employer could be ordered to pay a supplementary indemnity set out by the applicable NCBA. The supplementary indemnity is calculated on the basis of the monthly salary of the affected employee.

By way of example, the NCBA for Commercial Executives sets out a supplementary indemnity of up to 18 months’ salary (with further amounts being payable if the executive is from 50 to 64 years old).

The supplementary indemnity is not subject to social security contributions or TFR calculation. For the time being, the supplementary indemnity is set between the minimum and the maximum range by labor courts, depending on various factors and circumstances, such as the duration of the whole employment relationship, the alleged reasons for dismissal, if any, and the parties’ behavior. However, please note that executives are very rarely awarded the maximum amount of the supplementary indemnity.

**GROUP TERMINATIONS**

**Redundancies**

A collective redundancy occurs when a company employing more than 15 employees dismisses more than four employees in the same province within a period of 120 days due to economic reasons (i.e., a reorganization of the business). The employees to be made redundant within a collective redundancy cannot be selected by the employer at its own discretion, but must be chosen on the basis of specific selection criteria, which may be agreed upon between the employer, the Works Council and the trade unions. Should no such agreement be reached, the criteria set forth by law will apply and, in that case, the following criteria will be used: last-in, first-out; family members; organizational and technical needs.

Before implementing a collective redundancy, employers must comply with a statutory procedure, which is structured in two phases and may last up to a maximum of 75 days. To start the first phase of the statutory procedure, the employer must send a communication to the Works Council and trade unions providing the following information: (i) the reason for the proposed dismissals; (ii) the number of employees to be dismissed; (iii) the positions and professional profiles of the entire workforce, including those of the employees who are to be made redundant; (iv) the timeframe for the collective redundancy; and (v) any proposal or measure to reduce the possible social consequences of the redundancies. A copy of this communication must also be sent to the Employment Office.

Simultaneously, the employer is obliged to make an advance payment to the INPS for each employee to be made redundant, and who, subsequent to the collective redundancy, might be entitled to a mobility indemnity (“indennità di mobilità”).

The Works Council and trade unions may, within seven days of receipt of the letter, request a meeting to discuss the possibility of avoiding or reducing the planned redundancies. One of the main purposes of such a meeting is to identify the selection criteria.
This first phase must be completed within 45 days. If no agreement is reached, a second phase must take place over the subsequent 30 days. This phase is conducted before the Local Labour Office, or before the Ministry of Employment and Social Affairs if the procedure involves employees employed in more than one province.

If this second phase also proves to be inconclusive, or if in the meantime an agreement with the trade unions is reached, the employer may give written notice of dismissal to the employees concerned, in compliance with the usual notice periods.

Neither the Works Council nor the trade unions can veto or reverse the decision to implement a collective redundancy, provided that the statutory procedure has been properly carried out.

Failure to find an agreement with the trade unions triggers payment to the social security authorities of a sum equivalent to six times the redundancy monthly salary of the affected employee. Such amount is reduced to half if an agreement with the trade unions is reached.

In the event of a breach and/or omission of the statutory procedure, each and all subsequent dismissals may be challenged. In that case, employees can be entitled to reinstatement (including back pay), reinstatement plus damages of up to 12 months’ salary, or damages of between 12 and 24 months’ salary, depending on the nature of the breach.

Generally, a collective redundancy involves mandatory payments to the INPS for each employee made redundant who will be entitled to an indemnity payment, as well as mandatory severance payments due upon any termination (i.e., the TFR; payment in lieu of accrued but untaken holidays; payment in lieu of notice; accrued installments of supplementary monthly salaries). In addition, non-mandatory costs may be incurred, such as incentive payments, if a voluntary leave plan is entered into.

**Business transfer**

The transfer of an undertaking (or part of one) is regulated by law.

If the transfer of an undertaking (or a part of undertaking) involves more than 15 employees, the employer has to comply with a statutory information and consultation procedure. Under this, the transferor and transferee must, at least 25 days before the transfer, provide certain information to the Works Council and to trade unions that have executed the collective bargaining agreements applied in the undertaking (or, should there not be any Works Council, to the major national trade unions). This information includes the date or the projected date of the transfer; the reasons for the transfer; the legal, economic and social implications of the transfer for the employees; and the measures set out for the employees. This information must be provided in good faith, i.e., it must be true and sufficiently complete to allow the trade union to evaluate the transaction.

The trade union representatives then have seven days to request a meeting with the transferor and transferee and, in practice, this request is always filed. A meeting must take place within seven days of the request. There is no obligation to reach an agreement with, or to obtain approval from, the trade unions; if the parties do not reach an agreement, the procedure shall be considered terminated after 10 days.

Failure to comply with this obligation risks legal action in respect of anti-trade union behavior. This could allow the trade unions to seek a preliminary injunction against the employers to immediately cease their non-compliance and to provide the requested information. The injunction may not be revoked prior to the final decision of the case by the court. An appeal against the court injunction may be filed within 15 days of the date of notification of the injunction to the parties. If, despite such injunction, the parties do not abide by the court order, they may be held criminally liable, punishable by up to three months in prison or a fine of up to €206.
LATVIA: HIRING

RECRUITMENT PRACTICE AND PROCESS
Most employers recruit externally by advertisements, recommendations and professional recruitment agencies. Employers with large numbers of employees may also advertise internally within the company.

Pre-employment references and background checks
Employers may ask for pre-employment references that might be associated with the work to be performed and this often happens in practice. However, background checks can only be carried out with the consent of the prospective employee (other than in very limited circumstances). Employers may ask a prospective candidate to undergo a medical examination in order to assess whether their health status would allow him or her to perform specific work.

Selection of employees or workers
An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate on the basis of gender, race, color, age, disability, religion, political or any other beliefs, national or social origin, sexual orientation, and property and family status.

Itemized pay slips
Employers must give employees itemized pay statements specifying gross salary, hours worked, taxes paid and any deductions made. Employers must explain such calculations if requested by an employee.

Health and safety
Employers are obliged to safeguard the health and safety of their employees. The obligations are extensive. They include a duty to carry out a risk assessment and take steps to mitigate any risks identified, prepare a written health and safety policy, and investigate and report accidents to the appropriate state institutions.

Written contract of employment
An employment contract setting out all terms and conditions of employment must be entered into in writing and must include several mandatory clauses such as those relating to commencement date, place of work, amount of remuneration, vacation entitlement, termination rules, working time, and any applicable collective agreements.

This must be done before the employee actually commences work for the employer. Offer letters are not very common, though some employers do use them. Junior and senior employees are treated in the same way in respect of employment contracts.

Implied duties of the employer and the employee
In addition to terms and conditions set out expressly in the contract of employment, the law also implies certain additional terms into every employment relationship; these include an employee's duty to use reasonable care in the course of employment and to keep confidential his or her employer's confidential information or trade secrets.

Company rules
Employers with 10 or more employees must have work procedure rules in place within two months of the employer being established.

Data protection
An employer is obliged to ensure the safety of the data of its employees and staff. Employers must process the data fairly and lawfully; process only for limited purposes; and ensure data are adequate, relevant, not excessive, accurate, up to date, not kept for longer than necessary, processed in line with the data subject’s rights, kept secure and not transferred to other countries or third persons that do not have adequate protection and valid legal grounds.

STATUS
Depending on the needs of the employer and the requirements of the work to be done, an employer can hire employees (either for indefinite or fixed periods of time) or enter into a service agreement with a self-employed person. The status of the individual dictates the level of statutory protections he or she is entitled to receive, and his or her rights. Where there is a dispute as to whether an individual is engaged as an employee or a self-employed person, the Latvian state authorities and courts look at the practical arrangements between the parties rather than the form of the legal relationship or contract (i.e., the substance over form rule).
Employees

An employment relationship gives the employer a greater ability both during and after the employment to protect company confidential information and intellectual property, and to prevent the former employee from setting up in competition.

Independent contractors or consultants

Independent contractors and consultants are subject to the same rate of personal income tax as is payable by employees. However, they can benefit from lower levels of social security contributions. Independent contractors and consultants are subject to bookkeeping and monthly and annual reporting requirements. These individuals also have to register with the Latvian taxation authorities as independent contractors.

Agency workers

Legislation regarding the use of temporary agency workers is now in force. As a result, agency workers are to be provided with safe working conditions and be informed of vacancies at the end user (i.e., the client business in which the agency worker is placed). A provider of work placement services (i.e., a company hiring out its personnel) is required to ensure the following protections to its employees:

- The employee must have the same working conditions and be subject to the same employment provisions (e.g., in relation to working time, rest time and remuneration) that would apply if the employee was engaged directly by the end user to carry out the same work; and
- Between placements, irrespective of the agreed working time, the employee must be paid remuneration not less than the statutory minimum monthly salary in proportion to the time between placements.

PRACTICALITIES

Restrictions on overseas individuals working in Latvia

Overseas individuals, other than citizens of the European Union, the European Economic Area or Switzerland, must have a work permit to work in Latvia. If the employee fails to have a work permit, the employer can be administratively fined; the amount of fine depends on the number of persons illegally employed. In the case of repeated violations, the employer can also be liable for criminal sanctions.

Tax and social security contributions

An employer must register each of its employees with the local taxation authority. The employer will be assigned a date (usually the 10th, 15th or 20th day of the following month) as the date by which it must pay the employer and employee social security contributions in respect of the previous month’s salary. This is also the date by which the employer must file a report detailing the amount of personal income tax (PAYE) and social security contributions payable and paid by the employer with respect to its employees.

Latvian salaries are normally paid to the employee’s bank account. PAYE must be withheld and remitted by the employer to the taxation authorities on the same day as the salary is paid. This also applies where the salary is paid in cash.

Taxation of individuals working in Latvia

Persons resident, ordinarily resident and domiciled in Latvia are liable for Latvian income tax on their worldwide income, and Latvian capital gains tax on their worldwide capital gains. Benefits-in-kind derived from employment are likely to be subject to income tax. Individuals working for an overseas company who are sent to Latvia for the purpose of working in its Latvian business operations will, in broad terms, only be resident in Latvia if their actual residence in Latvia in any tax year is 183 days or more.

A non-Latvian tax resident will also be subject to Latvian tax on employment income, including income earned from paid employment performed in Latvia for an employer who is not a resident of Latvia or who does not have a permanent establishment in Latvia, or for work which has been performed outside Latvia for an employer registered in Latvia.

A non-Latvian tax resident will also be subject to Latvian tax on income from the performance of duties in a council or board of directors of a company or a co-operative company registered in Latvia, irrespective of whether the income is received from the company or co-operative company registered in Latvia, or from another capital company or co-operative company that is not a resident of Latvia.
Latvia. This income also includes expenses paid in respect of work travel and official travel that exceed statutory limits. Both of the above are, however, subject to applicable double-tax treaties.
## THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th><strong>Probationary Period</strong></th>
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<tr>
<td>Probationary periods are common. The maximum length is three months.</td>
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<tr>
<th><strong>Minimum Wage</strong></th>
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<tr>
<td>The minimum salary in Latvia from January 1, 2014, is €320 per month.</td>
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<tr>
<th><strong>Non-pay Benefits</strong></th>
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<tr>
<td>Fringe benefits are not a legal requirement, but they are common and may include:</td>
<td></td>
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<tr>
<td>- Private health care</td>
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<td>- Mobile phone expenses</td>
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<tr>
<td>- Company cars</td>
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<td>- Pension contributions</td>
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<td>- Bonuses</td>
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<td>- Share options</td>
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<tr>
<th><strong>Hours of Work</strong></th>
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<tr>
<td>The normal working week is 40 hours. The normal working day is eight hours. If the employee is engaged in high-risk activities, these maximums are reduced to 35 hours and seven hours, respectively. There is a daily rest entitlement of 12 hours, and a weekly rest entitlement of 42 continuous hours. Special rules on working hours and daily rest apply to underage employees.</td>
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<tr>
<th><strong>Holiday Entitlement</strong></th>
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<tr>
<td>Employees are entitled to a minimum of four calendar weeks of paid annual leave. In addition, there are 14 public holidays per year (however, some of them fall on a Sunday).</td>
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<tr>
<th><strong>Default Normal Retirement Age</strong></th>
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<tr>
<td>There is no compulsory age at which employees must retire and retirement cannot be used as a reason for terminating the employment relationship. From January 1, 2014 until January 1, 2025, the normal retirement age will be gradually increased from 62 to 63 years.</td>
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<tr>
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<tr>
<td>Employers must pay employees 75 percent of average earnings for the second and third day of sickness absence and 80 percent from the fourth to the tenth day. From the 11th day of absence, employees may receive payments from the state social insurance agency.</td>
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<th><strong>Rate of Tax Payable by Employee</strong></th>
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<td>The current tax rate is 24 percent.</td>
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<tr>
<th><strong>Rates of Social Security Payments</strong></th>
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<tr>
<td>Employers’ social insurance contributions are 23.59 percent of gross pay. Employees’ contributions are 10.5 percent.</td>
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<tr>
<th><strong>Maternity Benefits</strong></th>
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<tr>
<td>Employees are granted maternity leave of 112 calendar days – 56 days before the birth and 56 days after the birth. In the case of difficult or multiple births, or if expectant mothers start regular medical treatment from the 12th week of pregnancy, paid maternity leave is prolonged to 126 calendar days. Maternity leave is paid by the state at a rate close to the employee’s previous salary if it does not exceed a certain limit.</td>
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<tr>
<th><strong>Paternity Benefits</strong></th>
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<tr>
<td>Paternity leave can be taken for up to 10 calendar days, and can be taken at any time within the two months following the birth of the child. In some circumstances (such as death of the mother, or diagnosed depression of the mother) the father or another person who is in fact taking care of the baby may also request a part of the maternity leave. Paternity leave is paid by the state.</td>
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<tr>
<th><strong>Parental Benefits</strong></th>
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<tr>
<td>Employees are granted parental leave for up to 18 months. Parental leave is paid by the state until the child reaches the age of one at a rate close to the employee’s previous salary if it does not exceed a certain limit. After the child</td>
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has turned one, the amount of the benefit significantly decreases.

**Flexible Working**
Pregnant women and young mothers who are breastfeeding are entitled to request flexible working hours.

**Equal Opportunities**
Employees are protected against discrimination on the grounds of sex, race, color, nationality, ethnic or national origin, age, disability, religion, political or any other belief, national or social origin, sexual orientation, property, and family status.

**Protected Employees**
Protected employees include trade union members, disabled persons, pregnant women, mothers who are breastfeeding, employees on maternity, paternity or adoption leave, under aged employees, and those for whom adverse consequences were created because they exercised their statutory right.

**Minimum Notice Period**
The minimum notice period to be provided by the employer is one month, unless the employment contract or collective bargaining agreement provides for a longer period. Where the employment contract is terminated due to the employee’s breach, the statutory notice period is either 10 days or, in certain circumstances, the contract can be terminated with immediate effect.

**Collective Agreements**
In practice, collective agreements are generally limited to public-sector and former public-sector businesses.

**Disciplinary Rules**
Employers may give a written warning or reprimand to an employee for violation of specified working procedures or breach of the employment contract. Generally, a warning or reprimand may be issued no later than one month after the date of detecting the violation or breach. Only one warning or reprimand may be issued for each violation. These are statutory rules and do not have to be set out in the contract.

**Grievances**
An employee may exercise his or her statutory right to raise a complaint about his or her treatment at any time during the course of his or her employment. Employee representatives also have the right to submit a complaint on an employee’s behalf. Responses to complaints are to be provided without delay, and in any event, no later than seven days of receipt. These are statutory rules and do not have to be set out in the contract.
LATVIA: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

If an employer intends to give a written warning or reprimand to the employee or to terminate the employee’s employment, it must first inform the employee in writing of the reason for the potential action and ask the employee to provide a written explanation. Employers must consider the explanation given and the facts and circumstances in general, along with any consequences of the employee’s breach or misconduct, the employee’s previous work and his or her personality. Generally, employers must give notice of termination to an employee no later than one month from the date of detecting the violation. Therefore, employers must also consider when the breach or misconduct occurred and whether too much time has passed for disciplinary action to be taken.

Grievances

An employee may exercise his or her statutory right to raise a complaint about his or her treatment at any time during the course of his or her employment. Employee representatives also have the right to submit a complaint on an employee’s behalf. Responses to complaints are to be provided without delay, and in any event, no later than seven days of receipt. In addition, it is possible for the employer and the employee representatives to create a special labor-dispute resolution body within the company; however, in practice this option is seldom used.

Consultation with employees

The trade union and employee-authorized representatives have to be consulted before the employer takes any decision that may affect employees. This includes, in particular, decisions which could substantially affect remuneration, working conditions and employment within the company, such as large-scale redundancies or the transfer of a business.

If an employer intends to terminate an employment contract of an employee who is a member of a trade union, the prior written consent of that trade union must be obtained.

INDIVIDUAL TERMINATIONS

An employer may not terminate an employee’s employment unless one or more of the statutory grounds for termination of employment are satisfied. The employer may give a termination notice to an employee only for reasons related to the conduct or abilities of the employee, or as a result of economic, organizational or technological measures taken in the company. The termination notice must contain a detailed explanation of the reasons for terminating the employment relationship.

An employee is entitled to a severance payment if the employment relationship is terminated for one of the following reasons:

- The employee has given notice of termination for a good cause (i.e., a reason based on morality and fairness that means the continuation of the employment relationship is not possible); or
- The employer has given notice of termination because the employee is not competent to perform the contracted work; the employee is unable to perform the contracted work due to his or her state of health (and such state is certified with a doctor’s opinion); or the employer has reduced the workforce, or is in liquidation.

Unless a collective agreement or employment contract provides for higher severance payments, the level of severance payable is between one and four months’ average earnings, depending on the employee’s length of service. Monthly average earnings are calculated taking into account the total amount of work remuneration (i.e., salary, various supplements and bonuses) paid during the last six months. It is not common to have workplace agreements which offer enhanced severance payments.

Claims

(Please note that Latvian law does not recognize the differences between “contractual claim” and “statutory claim,” at least in relation to the termination of employment.)

The employee may challenge, in court, the termination of employment as being null and void within one month of receiving the termination notice. The employer is required to show that the termination is factually justified and that it has been conducted in
accordance with the law. If the court finds in favor of the employee, the employee will be reinstated (at the employee's request), and the employee will be entitled to back pay for the period between dismissal and reinstatement.

The employer is prohibited from terminating employment due to business reasons if the employee is a disabled person, a pregnant woman, a woman who has given birth within the last year, and a woman who is breastfeeding during the whole period of breastfeeding. The employment of these employees however, can still be terminated if the employee is in serious breach of the employment contract.

**Redundancy payments**

Apart from the severance payment mentioned above, there is no additional redundancy payment due where employment is terminated by reason of redundancy.

**Discrimination**

It is unlawful to discriminate on the grounds of sex, race, color, nationality, ethnic or national origin, age, disability, religion, political or any other belief, sexual orientation, gender reassignment, marital status, or trade union activities/membership in relation to the taking of disciplinary action or dismissal. A discrimination claim can be brought in court. The compensation for damages may be unlimited; however, in practice, the amount of compensation awarded usually does not exceed approximately €1,430.

**GROUP TERMINATIONS**

**Redundancies**

A dismissal is deemed to be a collective redundancy when the number of employees to be made redundant during a 30-day period constitutes five people or more, depending on the number of employees in the undertaking.

An employer is obliged to inform the employee representatives about the planned redundancies in good time, and submit a written notification stating the reasons for the collective redundancy, the number of employees to be made redundant (including the occupation and qualifications of such employees), the number of employees normally employed in the undertaking, the time period within which the employer plans to pursue the redundancy and the severance pay calculation. The employer is then obliged to engage in a consultation procedure with the employee representatives.

Employers have to notify the state employment agency and the local government in the territory in which the undertaking is located. The notification has to be provided no later than 45 days in advance of the collective redundancy.

**Business transfer**

In the case of a business transfer, the rights and obligations arising from the employment contract are transferred to the acquiring undertaking. It is unlawful to terminate an employment contract due to the transfer of an undertaking. Employees have the right and an obligation to continue working at the business formed as a result of the business transfer.
LITHUANIA: HIRING

RECRUITMENT PRACTICE AND PROCESS

Recruitment services are provided by the State Labour Exchange Office free of charge, or by private recruitment service providers. Employers also recruit by advertisements, recruitment agencies and personal contacts. It is also common to recruit students in universities. Headhunting from competitors is prohibited where the purpose is unfair commercial practice.

Pre-employment references and background checks

Most employers carry out background checks as part of the recruitment process. Criminal record certificates can be granted only directly to the employee. However, the employer is specifically entitled to check the employee’s identity documents, social security certificates and qualification diplomas, as well as to send the employee to a medical exam in certain circumstances.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of sex, sexual orientation, race, nationality, language, ethnic origin, social status, religion, family status, age, beliefs, membership in political parties and public organizations, or any other circumstances that are not related to the candidate’s working skills.

Itemized pay slips

Employers must give their employees itemized pay statements, on a monthly basis, specifying gross and net salary, the amount and purpose of any deductions and details of overtime. At the time of writing the Lithuanian Parliament is considering legislative amendments that may cancel this requirement unless there is a special request by the employee.

Health and safety

Employers are obliged to safeguard the health and safety of their employees, visitors to their premises and the public. The obligations are extensive.

They include mandatory medical exams for employees working in certain industries, environments and positions. Employees must be individually informed about the health and safety rules and requirements that apply at the workplace. This should be evidenced in writing and signed by the employee before the start of their employment.

The employer must also appoint a specialist (employee) to be responsible for health and safety, or enter into a contract with a licensed health and safety company for this purpose.

Written contract of employment

Contracts of employment must be entered into in writing. There is a model form, approved by the government, which employers are bound to follow. The employer has an obligation to give the employee an employment contract to sign before starting employment. This should include terms and conditions relating to employment such as position, work place, salary, working time and vacation. Offer letters are not common. Senior positions may be subject to more detailed employment contracts than those used for junior positions.

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly in the contract of employment the law also implies certain additional terms into every employment relationship. These include the following:

- Employees have a duty to work fairly and honestly, to follow work discipline, to execute orders made by their employer accurately and on time and to protect their employer's property; and
- Employers have a duty to organize work appropriately, to comply with health and safety and other laws, and to take care of the needs of their employees.

Company rules

A number of issues must be regulated by internal work rules. Such rules are also used to regulate the working environment and conditions and are common in Lithuania.

Data protection

An employer has duties in respect of processing personal data. Personal data must be processed and stored safely only to the extent necessary for the management of
employment relations. Employees must be informed of the processing of their data. Sensitive personal data may be processed only with the employee’s consent, or where such processing is allowed by law.

**STATUS**

Where the individual will be supervised by the engaging entity and be subject to internal company rules, their engagement will be one of employment and must therefore be regulated by a written employment contract. Alternatively, individuals in Lithuania can be engaged as independent contracts under service agreements.

**Employees**

An employment relationship gives the employer a greater ability, both during and after the employment, to protect company confidential information and intellectual property (if these obligations are included in the appropriate documents). It also prevents the former employee setting up in competition or poaching other staff (if a special agreement on post-employment non-compete obligations is signed and the appropriate monetary compensation is paid by the employer).

**Independent contractors or consultants**

Independent contractors are sometimes used in Lithuania. They allow the employer to avoid cumbersome employment termination procedures and other protections and benefits afforded to employees. There may also be a cost benefit because no social insurance contributions are payable by the engaging entity in respect of an independent contractor. However, these arrangements may be scrutinized by the authorities and so the contract entered into between the parties must reflect the practical arrangements.

**Agency workers**

Agency workers have a special status in Lithuania. Agency workers cannot be discriminated against in comparison to employees engaged directly by the end user client of the agency in terms of work remuneration and work environment. The end user client of the agency is responsible for the health and safety of any agency worker it uses. The end user client and the agency must enter into a written agency-services contract.

**PRACTICALITIES**

**Restrictions on overseas individuals working in Lithuania**

An employer who wants to employ an individual who is not a citizen of the European Economic Area to work in Lithuania has to ensure the individual obtains a work permit and a residence permit before he or she arrives in the country. Those holding a permanent residence permit do not require a work permit. A work permit can only be obtained if there is a shortage of employees with a particular qualification in Lithuania. In other cases, working without a work permit is considered illegal and employers could face administrative liabilities in respect of each illegal employee.

**Tax and social security contributions**

If an organization has employees in Lithuania, it is responsible for deducting the applicable income tax and social security contributions from each employee’s wages. All employers have an obligation to register with the territorial tax inspectors and register their employees with a State Social Insurance Board before the start of employment.

**Taxation of individuals working in Lithuania**

There is no difference between a Lithuanian national and an overseas employee legally working in Lithuania with regard to his or her obligations to pay (and to have paid by his or her employer) taxes to the Lithuanian government, with certain limited exceptions.
THE EMPLOYMENT CONTRACT
Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th>Probationary Period</th>
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<tr>
<td>Probationary periods are common. The maximum length is three months.</td>
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<tr>
<th>Minimum Wage</th>
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<tr>
<td>National minimum wage is Lt6.06 (approximately €1.75) per hour and Lt1,000 (approximately €289.60) per month.</td>
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<tr>
<th>Non-pay Benefits</th>
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<tr>
<td>Fringe benefits are not a legal requirement, but may include:</td>
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<td>• Private health insurance</td>
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<td>• Car benefit</td>
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<td>• Mobile phone</td>
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<td>• Sport compensation</td>
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<tr>
<th>Hours of Work</th>
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<td>A regular week must not exceed 40 hours per week and eight hours per day. Overtime can extend this to a maximum of 48 hours per week and 12 hours per day. There is a daily rest entitlement of 11 hours, and a weekly rest entitlement of 35 hours (which should be provided in two consecutive days).</td>
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<tr>
<th>Holiday Entitlement</th>
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<td>Employees are entitled to a minimum of 28 days of paid annual leave and (usually) 14 public holidays per year. Employees under 18 years of age, single parents of children under 14 or disabled children under 18, and disabled employees are entitled to a minimum of 35 calendar days of paid annual leave. Additional periods of leave apply to specific industries, e.g., aviation and health care. Employees are entitled to take annual leave after six months of employment.</td>
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<tr>
<th>Default Normal Retirement Age</th>
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<tr>
<td>There is no age at which an employer can compulsorily retire an employee; it is an employee’s choice whether to retire or not. The current retirement age for men is 62 years and eight months, and for women is 60 years and four months.</td>
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<tr>
<th>Sick Pay Entitlement</th>
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<tr>
<td>Sick pay is payable to employees who have been covered by social insurance for at least three months during the last 12 months, or at least six months during the last 24 months, save for limited exceptions. The employer must pay between 80 and 100 percent of the employee’s average salary during the first two calendar days of sickness absence. During the third to the seventh day of absence the state pays the employee 40 percent of salary from the social insurance fund. From the eighth day of sickness absence, the state pays the employee 80 percent of salary.</td>
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<tr>
<th>Rates of Tax Payable by Employee</th>
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<tbody>
<tr>
<td>Income tax is payable at the rate of 15 percent.</td>
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<tr>
<th>Rates of Social Security Payments</th>
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<tr>
<td>Employers’ social security contributions are 31 percent of gross salary. Employees’ contributions are three percent. In addition, employees must contribute six percent of gross salary to the mandatory health insurance scheme.</td>
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<tr>
<th>Maternity Benefits</th>
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<tr>
<td>Employees receive 70 days’ maternity leave before birth and 56 days’ leave after (if the birth is complicated, it is 70 days). Maternity leave is paid by the state if the minimum period of social insurance coverage has been met (as a general rule, 12 months of insurance coverage during the last 24 months). The compensation is 100 percent of the previous salary, subject to a statutory cap.</td>
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<tr>
<th>Paternity Benefits</th>
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<tr>
<td>Paternity leave runs from the day the child is born until he or she is one month old. Paternity pay is 100 percent of the salary for the duration of leave, subject to a statutory cap. Paternity leave is compensated by the state if the minimum period of social insurance coverage has been met (as a general rule, 12 months of insurance coverage during the last 24 months).</td>
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<tr>
<th>Parental Benefits</th>
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Each parent is equally entitled to take child care leave until the child is three years old. Only one parent can take it at a time; however, the leave can be taken in parts (in turns). The leave is compensated by the state for the first two years of a child’s life if the minimum period of social insurance coverage has been met (as a general rule, 12 months of insurance coverage during the last 24 months). The amount of compensation depends on if the leave is taken for only a child’s first year or for his or her first two years. In the former case, 100 percent of salary is compensated, subject to a statutory cap. In the latter case, 70 percent of the salary is compensated for the first year and 40 percent of the salary is compensated for the second year, subject to a statutory cap.

Flexible Working

Certain categories of employees are entitled to a part-time arrangement at their request, including pregnant women or women who have taken a period of maternity leave, disabled employees, and single parents.

Equal Opportunities

Employees are protected against discrimination on the basis of sex, sexual orientation, race, nationality, language, ethnic origin, social status, religion, family status, age, beliefs, membership in political parties or public organizations, or any other circumstances not related to the individual’s working skills.

Protected Employees

Protected employees include trade union officials, trade union members, pregnant women, those on maternity, paternity or adoption leave, working students and pupils, juvenile employees, donors, those on business trips, those on strike, those on fixed-term contracts, those who are ill or were injured at work, disabled employees, employees with small children, and single parents.

Minimum Notice Period

An employer can terminate an employment contract without any fault on the employee’s part only after he or she notifies the employee in writing and confirms it with the signature of the employee. Such notification must be presented two months before the dismissal. If the employee has less than five years until his or her retirement age, or if he or she is younger than 18, disabled or has children who are younger than 14, the minimum notice term is four months.

Collective Agreements

Any applicable collective agreements must be referred to in the employment contract. Generally, collective agreements are not common in Lithuania, although they do exist in both the private and the public sector.

Disciplinary Rules

Disciplinary rules are regulated in detail by the Labour Code. Amongst other things, an employer must make a written request to an employee to give an explanation of his or her misconduct, and set a reasonable deadline for such explanation. The disciplinary action must only be taken after considering the employee’s explanation, or the deadline has passed. The disciplinary measure must be applied by a written order, presented to the employee and confirmed by the employee’s signature. The action must be taken no later than one month from the time the misconduct became known to the employer and no later than six months from the date the misconduct took place.

Grievances

The employee can appeal the employer’s actions to the Labour Disputes Commission in the State Labour Inspectorate. Some employees’ claims (including claims of unlawful employment termination) are heard only by the courts.
LITHUANIA: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

Employers strictly follow the rules relating to disciplinary actions that are set out in the Labour Code. An employee may only be dismissed for a disciplinary reason where he or she is guilty of repeated misconduct (which has resulted in a warning being issued) in the past 12 months, or where he or she is guilty of gross misconduct (a list of conduct which would amount to gross misconduct is set out in the Labour Code).

Before taking any disciplinary action, the employer must request in writing an explanation of the alleged misconduct, and set a reasonable deadline for such explanation. Only once the explanation has been considered, or the deadline passed without any response from the employee, can the employer decide what sanction to impose (if any). The sanction must be applied by a written order, presented to the employee and confirmed by the employee’s signature. The action must be taken no later than one month from the time the employer became aware of the misconduct, and no later than six months from the date the misconduct took place.

Grievances

Individual labor disputes are examined by a Labour Dispute Commission or the courts. Labour Dispute Commissions are administered by the State Labour Inspectorate and consist of a representative of the State Labour Inspectorate, a representative of the trade unions and a representative of the employers’ organizations. An employee may bring the matter before a Labour Dispute Commission within three months of the date when he or she learned, or should have learned, about the violation of his or her rights. The employer or employee may file an action before the court within one month if he or she is not satisfied with the decision of the Labour Dispute Commission.

Claims of unlawful employment termination and some other types of claims are filed in the courts directly. The dismissal can be disputed within the period of one month. If the court finds the dismissal to be unlawful, the employee may be awarded average work remuneration for the whole period between dismissal and the effective decision of the court (the balance between the previous salary and the current salary is awarded if the employee has already found another job). Additionally, the employee may be reinstated at the previous job, if the court considers it reasonable.

Consultation with employees

At least once a year, employers should inform and consult with employee representatives about: their present and future activities; the financial position of the company; and the condition of employment relationships in the company.

Employers must also consult with employee representatives (or employees directly if the employee representatives are absent) before any large-scale redundancies. The aim of such consultation is to avoid dismissals, if possible, or reduce the impact of the dismissals on employees. The duty to consult also arises where employers intend to reorganize or restructure the business, or propose certain other changes in the company, such as changes to health and safety policies.

INDIVIDUAL TERMINATIONS

Mutual termination agreements are considered the best way to dismiss employees as they help to mitigate the risk of claims of unlawful termination. The termination agreement must be initiated by a written proposal, and must include detailed terms and conditions agreed upon by the parties.

Where a termination agreement is not used, the employer bears the burden of proof in the event of a dispute.

Contractual claims

Claims based on employment contracts are more protected than commercial claims. If the salary is not duly paid in the course of employment, an employee is entitled to a penalty payment of 0.07 percent for every day of delay. If the employer fails to properly settle with the employee upon termination of employment, the employer is bound to pay the employee’s average salary for every day of delay. Average salary would also be payable in respect of the period between dismissal and the court decision deeming that dismissal to be unlawful.

Statutory claims

An employee can challenge the grounds of, and the procedure relating to, termination. No
eligibility criteria apply. If the court finds the termination to be unlawful, the employee may be reinstated and paid the average salary for the whole period between dismissal and the reinstatement, or the court may terminate the contract by its decision and award the employee the average salary for the period before the effective decision (the balance between the previous salary and current salary will be awarded, if the employee has found another job). The employee is also entitled to compensation for non-pecuniary damage.

Dismissal of a pregnant woman is forbidden, save for very specific exceptions. Employees with children under three years old cannot be dismissed without fault.

Dismissal for the following reasons will be unlawful: membership in a trade union; performance of employee representatives’ functions; attendance in a case against the employer or having filed a grievance; and discriminatory reasons. An employer cannot dismiss an employee if he or she is on vacation, sickness or similar leave.

**Redundancy payments**

In the case of a dismissal without fault, or liquidation of the employer, the employee is entitled to statutory severance pay, which depends on the employee’s length of service and may vary from one month’s average salary to six months’ average salary.

**Discrimination**

It is unlawful to discriminate on the grounds of sex, sexual orientation, race, nationality, language, ethnic origin, social status, religion, family status, age, beliefs, membership in political parties or public organizations, or any other circumstances that are not related to the individual’s working skills. A discrimination claim can be brought in court. Compensation for such claims may be unlimited.

Termination on the grounds of age, participation in a trade union, etc., is explicitly forbidden. However, discrimination claims are not common in practice.

**GROUP TERMINATIONS**

**Redundancies**

A termination is considered to be a collective termination where, within a 30-day period, 10 or more employees are dismissed from a company with between 20 and 99 employees; 10 percent or more employees are dismissed from a company with between 100 and 299 employees; or 30 or more employees are dismissed from a company with 300 or more employees.

Employers have to consult with the employee representatives and send information in writing to the territorial labor exchange office before presenting dismissal notices in respect of collective dismissals.

**Business transfer**

The dismissal of employees or detrimental changes to employment conditions due to any kind of business transfer is forbidden. The transferee is under an obligation to take on all employment contracts and other employment conditions of the transferor. The employees affected by the transfer have to be notified about the terms and conditions of the transfer in writing at least 10 working days before the transfer.
NETHERLANDS: HIRING

RECRUITMENT PRACTICE AND PROCESS

Employers recruit both internally and externally depending on their size and operational management.

Pre-employment references and background checks

Pre-employment references and personal references are often requested. Employers can also investigate the applicant’s educational background or other information related to the job vacancy with the applicant’s prior consent. Medical history checks, criminal record checks, psychological testing and assessments may form part of the recruitment process.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of religion, personal beliefs, political affinity, race, sex, nationality, age, sexual orientation or marital status.

Itemized pay slips

Employers must give their employees itemized pay statements specifying gross and net salary, the amount and purpose of any deductions, the statutory minimum wage, the duration of employment, the relevant working hours, holiday allowance and the name of both the employer and employee.

Health and safety

Employers are obliged to take measures to safeguard the health and safety of their employees. They include ensuring employees' health and safety is protected in respect of the layout and maintenance of the workplace, the materials to be used and instructions given to the employees. Employers may be held liable for any damages suffered by an employee; however, there is no obligation to obtain liability insurance.

Written contract of employment

Contracts of employment are not required to be in any particular form, and may be entered into orally or in writing. However, within one month of an employee’s start date, the employer is obliged to provide the employee with a written statement regarding the relevant specified terms of his or her employment, such as job description, salary and duration of the contract. Typically, the parties enter into an employment contract. It is not common to use offer letters.

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly, certain additional terms are implied into every employment relationship. These include the following:

- Employers have a duty to pay the employee;
- Employees have a duty to perform the work, and not appoint another person in his or her place without his or her employer’s consent; and
- Employers are entitled to give employees instructions and employees have a duty to obey those instructions.

Company rules

There is no requirement in the Netherlands to have company rules.

Data protection

An employer has duties under the Dutch Data Protection Act. These duties mean an employer must process data in a proper and careful manner, and in accordance with the law. An employer may only collect personal data for a specified, explicit and legitimate purpose. The processing of personal data must be for a certain purpose, and data must be adequate, relevant, accurate and not excessive.

STATUS

Organizations in the Netherlands can employ employees on a full or part-time basis under a contract of employment for a definite or a fixed-term period. They can also engage self-employed persons or other workers under a contract for services ("overeenkomst van opdracht"). The status of the individual dictates the level of protection that he or she receives.

Employees

In an employment relationship, non-compete and confidentiality obligations are common.
Independent contractors or consultants

The use of self-employed independent contractors ("zelfstandigen") is particularly common in some sectors such as consulting, construction and health care. The engagement of a self-employed person is governed by the terms of a contract for services ("overeenkomst van opdracht"). The temporary hiring of a self-employed person has a few advantages for the employer. The employer does not have to make deductions of tax at source, there is no need to pay a 13th month salary or vacation days, and statutory employment law protections such as those regarding dismissal are not applicable. These arrangements are often scrutinized by the tax authorities and, as such, an employer should ensure that it is not obliged to withhold income tax or social security premiums.

Agency workers

Agency workers are commonly used. The relationship between the employment agency and the agency worker is governed by the terms of a temporary employment contract and a specific collective bargaining agreement. Once on assignment at the agency’s client, an agency worker is entitled to a salary equal to the salary of those who are permanently employed with the agency’s client in the same job.

PRACTICALITIES

Restrictions on overseas individuals working in the Netherlands

Individuals who are not nations of the European Union (EU), the European Economic Area (EEA) or Switzerland require a residence permit if they intend to stay in the Netherlands for longer than three months. In addition, most require a work permit. Work permits are not required for nationals of EU and EEA countries, with the exception of Swiss nationals. Bulgarians and Romanians (although EU members) and all other nationalities require a work permit. Before hiring an overseas individual, the employer must try to recruit an individual from the Netherlands and the EU and EEA countries. From January 1, 2014, new rules apply regarding work permits for overseas individuals working in the Netherlands. Most importantly, a work permit is now only valid for one year.

An important special procedure applies in the case of highly skilled migrants, referred to as “kennismigranten.” The main requirement is that the gross monthly salary of the employee in question be at least €4,048 gross or €2,968 gross if the employee is under the age of 30. Furthermore, the relevant employer must be registered with the Dutch Immigration and Naturalisation Service (IND) as a recognized sponsor. In order for an employer to become a recognized sponsor, it must submit an application and, if accepted, pay a €5,065 registration fee (payable only once). The recognized employer can then apply to the IND for a single permit enabling the employee to reside and work in the Netherlands. Once the permit is granted, no further permit is required. In principle, this procedure is far less time-consuming than the standard one for obtaining residence and work permits.

Employing an individual who does not have the right to work in the Netherlands can result in a fine for companies of €8,000 for each illegally employed foreigner. For private individuals and one-person businesses, the fine is €4,000 for each illegally employed foreigner. For those found to be employing illegal workers again within two years, the fine is increased by 50 percent.

Tax and social security contributions

Any person receiving income from employment in the Netherlands must pay payroll tax on this income. Payroll tax is an advance levy for personal income tax and is withheld by the individual's employer, who must deduct the payroll tax due from the employee’s gross salary. The payroll tax amount is composed of two parts: wage withholding tax ("loonbelasting") and social security premiums.

Generally, employers must periodically file electronic payroll tax returns and pay the payroll tax to the Dutch tax authorities at the same time and in the same frequency as the salaries are paid.

Taxation of individuals working in the Netherlands

In the Netherlands, resident and non-resident taxpayers are distinguished from one another. Persons resident, ordinarily resident and domiciled in the Netherlands are liable for income tax on their worldwide income. An employee who does not live in the Netherlands can still be liable for Dutch income tax if he or she is working in the Netherlands, or if he or she earns an income in or from the Netherlands. The Dutch Income Tax Act
describes the types of income involved and how the income tax owed is determined. If an individual receives one or more of these types of income, he or she will be regarded as a non-resident taxpayer and will have to pay income tax on his or her Dutch income. If an employee is living in an EU country or in another country with which the Netherlands has entered into a tax treaty, he or she has the right to opt for resident taxpayer status, which means that the income tax will be calculated on the basis of his or her total worldwide income.
THE EMPLOYMENT CONTRACT
Overview of key terms and legal requirements:

**Probationary Period**
Probationary (trial) periods are quite common. They must be agreed in writing. If the contract is for an indefinite period or is for a fixed term of more than two years, the maximum length is two months. If the contract is for a fixed term of less than two years, the maximum length is one month.

**Minimum Wage**
National minimum wage is currently €1,485.60 per month. Only employees aged 23 years or older are entitled to the minimum wage.

**Non-Pay Benefits**
Fringe benefits are not a legal requirement, but they are common and may include:
- Company cars
- Bonuses
- Share options
- Pension contributions
- Sabbatical
- Savings schemes
- Travel season tickets
- Company fitness schemes

**Hours of Work**
There is a 60-hour maximum working week and 12-hour maximum working day (for employees aged 18 and over); however, employees are not permitted to work these weekly maximum amounts each week. There is a daily rest entitlement of 11 hours. An employee is not allowed to work more than 10 hours per night shift.

**Holiday Entitlement**
Employees are entitled to a minimum of 20 days’ annual leave. An employee’s request to take a holiday can only be refused if there are serious reasons on the part of the employer.

**Default Normal Retirement Age**
There is no compulsory retirement age. However, the current age at which an individual can receive the old-age pension is 65 (which is to be increased in stages up to 67 in 2021).

**Sick Pay Entitlement**
Employers must pay an employee on sickness absence at least 70 percent of his or her salary during the first 52 weeks of his or her illness up to a maximum of €197 per day, which is approximately €4,284.75 per month (i.e., up to approximately €3,008 per month is payable). The amount paid must be at least equal to the minimum wage. Generally, employers pay more than this minimum amount and pay either 70 or 100 percent of the entire salary. If the employee remains ill after the period of 52 weeks, the employer must continue to pay him or her 70 percent. During the second year, the requirement of being equal to the minimum wage does not apply.

**Rate of Tax Payable by Employee**
There is a sliding scale of tax payable up to a maximum of 52 percent. This is composed of two parts: income tax and social security premiums.

**Rates of Social Security Payments**
The Netherlands has a comprehensive social security system, consisting of a number of compulsory employee insurance schemes. The major premiums are those relating to the Work and Income Act (5.64 percent) and the Unemployment Act (1.75 percent). The employer must bear the cost of these premiums.

**Maternity Benefits**
Female employees have a right to maternity leave of at least 16 weeks. During this leave, they are entitled to be paid their current salary.

**Paternity Benefits**
A partner is entitled to two days of paid paternity leave within four weeks of the birth.
Flexible Working
Employees have the right to request flexible work arrangements after one year of employment. The request must be submitted in writing to the employer at least four months before the change taking effect. Employees may submit a request for flexible working arrangements once every two years. The employer may only refuse the request if it has an important reason to do so.

Equal Opportunities
Employees are protected against discrimination on the grounds of sex, race, religion or belief, ethnic or national origin, sexual orientation, marital status, political or philosophical views, working time, fixed-term contract status, disabilities and chronic disease, and age.

Protected Employees
Protected employees include sick people, pregnant women or those on maternity, paternity, adoption or educational leave, Works Council members, those who are affiliated with a trade union, those who must serve in the military and those who have lost their right to vote in elections.

Minimum Notice Period
The notice period to be observed by the employer must be at least twice as long as the period to be observed by the employee, unless otherwise agreed in a collective bargaining agreement. The statutory notice periods to be observed by an employer are one month for employees with less than five years’ service, two months for employees with more than five but less than 10 years’ service, three months for employees with more than 10 but less than 15 years’ service, and four months for employees with more than 15 years’ service.

The statutory notice period to be observed by an employee is one month. This period may be increased or decreased by means of a written agreement but cannot require the employee to give more than six months’ notice.

Collective Agreements
There is no need to refer to any applicable collective bargaining agreement in the employment contract. The provisions of any applicable collective bargaining agreement are mandatory and prevail over the terms of the employment contract. Collective agreements are common in the public sector, in former public-sector businesses, and for those private sector organizations that recognize a trade union.

Disciplinary Rules
There are no specific laws regulating disciplinary rules, except for the requirements of reasonableness and fairness, and good employment practices. However, the right to impose certain disciplinary sanctions, such as fines or pay cuts, must be set out in the employment contract.

Grievances
There are no specific laws regulating how an employer must respond to a grievance. However, employers must handle these in a reasonable and fair manner, and in accordance with good employment practices. Most collective agreements include a grievance policy and, where this is the case, this should be followed by the parties. Where there is none, an employer may choose to implement an internal grievance policy of its own. There is no need to set out any complaints procedure in the employment contract.
NETHERLANDS:
FIRING

Prior to Firing

Disciplinary action and dismissal
An employer can sanction an employee if the employee is in breach of the company rules. Sanctions may include a warning, a reprimand, a transfer to another place of work, or refusal to award a pay increase or promotion. The employee may also be suspended, but only in specific circumstances. During any period of suspension, the employee remains entitled to salary and benefits. Any sanction issued must be proportionate, i.e., it must be justified, taking into account the seriousness of the breach and determined against good employment practices.

Grievances
There are no specific laws regulating how an employer must respond to a grievance. However, employers must handle these in a reasonable and fair manner, and in accordance with good employment practices. Most collective agreements include a grievance policy and, where this is the case, this should be followed by the parties. Where there is none, an employer may choose to implement an internal grievance policy of its own.

Consultation with employees
Where an employer wishes to dismiss one employee, there is no requirement to consult with that employee prior to informing him or her of the dismissal. Generally, the reasons for the dismissal are communicated at the same time as the notice of termination itself. On the other hand, employers considering collective dismissals must consult the Works Council, if in place, in relation to its proposals. Where the dismissal of 20 or more employees in one district within a three-month period is contemplated, the employer must, in addition, notify the relevant trade unions and the Employee Insurance Agency (UWV) of the potential dismissals, the number of employees involved, the reason behind the dismissals, and the criteria used to select affected employees.

Individual Terminations
During the probationary (trial) period, employment can be terminated by either party at will; that is, with immediate effect. Following the probationary period, if the employer wishes to terminate employment, it must obtain permission from the work placement branch of the UWV. In the absence of such permission, any notice of termination issued will be voidable. Permission is not granted automatically; the UWV will only grant it if, in balancing the interests of the employer and the employee, it deems the proposed termination reasonable. Consequently, the employer must indicate the reason for termination and the employee may submit a response. If permission is granted, the employer must issue notice of termination for the requisite period.

Employees may also be summarily dismissed without notice where there is urgent cause such that the employer cannot in all reasonableness be expected to allow the contract to continue. For example, an urgent cause may exist if an employee is guilty of theft or embezzlement, or divulges confidential information. In practice, urgent cause for summary dismissal exists only rarely and it will depend on the specific circumstances of the case. If the employer hesitates or delays in effecting a summary dismissal, it will be void, regardless of whether or not it was justified in doing so.

Alternatively, both employers and employees may request that the court rescind an employment contract on the grounds of serious cause. A serious cause will be deemed to exist if either: (i) the circumstances are such that they would have amounted to an urgent cause for summary dismissal; or (ii) there is a change in circumstances of such a nature that the contract should in all reasonableness be terminated instantly or on short notice. The party against whom the request for rescission is directed, generally the employee, may submit a response. If the court finds that serious cause does indeed exist, it will rescind the contract. If rescission is granted on the basis of a serious cause due to a change in circumstances, the court may award one of the parties, generally the employee, compensation in an amount which it deems reasonable in the circumstances. The award will generally be calculated taking into account the employee’s age, length of service, and salary (including holiday allowance and other benefits, such as a bonus (13th month) payment, etc.), depending on the circumstances, such as the party at fault and to what extent.

Lastly, employment may be terminated by mutual consent, in which case no notice is required. However, case law has established
certain strict requirements in respect of this option. For example, in order for the termination to be valid, the employee's consent must have been given explicitly and unequivocally. The level of severance payments agreed in these circumstances is also normally calculated taking into account the employee's age, length of service, and salary (including holiday allowance and, depending on the circumstances, other benefits, such as a bonus (13th month) payment, etc.), as well as the party at fault and to what extent.

**Contractual claims**

Where the employer has ignored the applicable notice period or terminates employment without observing the contractual notice period, this will result in a wrongful dismissal. The employee may file a claim alleging that the termination was wrongful, and asking for compensation consisting of the amount that the employee would have earned if the termination had been effected in a lawful manner. In this kind of procedure, the actual damage suffered by the employee is generally irrelevant. However, the employee can also ask the court for full compensation, based on actual damage suffered.

**Statutory claims**

If an employment contract is terminated unilaterally by the employer, the employee may file a claim alleging that the termination was “obviously unreasonable,” even in cases where the employer has obtained permission from the UWV/Cantonal Court and observed the proper notice period. Termination will be deemed unreasonable if there is no reason, a mere pretext, or a false reason for termination, or if the hardship endured by the employee is disproportionate to the employer’s interests. In such an event, the employee may claim for reinstatement or compensation in an amount to be determined by the court. However, the amount of this compensation is usually calculated taking into account the employee’s age, length of service, and salary (including holiday allowance and other benefits, such as a bonus (13th month) payment, etc.), depending on the circumstances, such as the party at fault and to what extent.

**Redundancy payments**

No additional statutory payments apply on account of the dismissal being by reason of redundancy.

**Discrimination**

It is unlawful to discriminate on the grounds of sex, race, religion or belief, ethnic or national origin, sexual orientation, marital status, political or philosophical views, working time, (in)definite contract status, disabilities and chronic diseases or age in relation to the taking of disciplinary action or dismissal. The Netherlands Institute for Human Rights is authorized by law to monitor compliance with Dutch equal-treatment legislation. A claim can be brought by: (i) anyone who believes that disadvantageous discriminations were made against him or her; (ii) a natural person, a legal person or an authorized person who wishes to know if he or she has unlawfully discriminated; (iii) the person competent to make a decision in a dispute about whether a person has been discriminated against; 4) the Works Council; or 5) an association that looks after the interests of those protected by the equal treatment legislation.

The employee does not need to have been continuously employed for a certain period in order to bring a claim, and there are no limits on compensation awarded.

**Group Terminations**

**Redundancies**

Where an employer is contemplating a reorganization or restructure of the business, ceasing business activities or making considerable changes to the organization of the business, it is generally obliged to consult the Works Council in respect of that before reaching a decision in the matter.

In addition, if the employer is contemplating dismissing at least 20 employees in one district within a three-month period, it must notify the relevant trade unions and the UWV. It is also obliged to report the reasons for the dismissals and give relevant information such as the number of employees involved and the criteria used to select those employees.

**Business transfer**

On the transfer of a business or part of a business, as is often the case when there is a change of ownership of certain assets or an outsourcing of a company’s activities, the transferor’s rights against and obligations towards employees working in the business at the time of the transfer pass by operation of law to the transferee. As a result, the employees become the transferee’s employees.
at the time of the transfer; no agreement to that effect is required. Employees are protected against termination, and against changes to terms and conditions of employment, where those are a result of the transfer.

If the undertaking has a Works Council, the transferor is obliged to request the Works Council's advice with respect to the planned transfer. It must inform the Works Council of the specific date of the transfer; the reason for the transfer; the legal, economic and social consequences for employees; and the measures that will be taken on behalf of them.
SERBIA: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements and professional recruitment agencies.

Pre-employment references and background checks

Providing employers with pre-employment references is not mandatory in Serbia and it is not commonly required as a condition of employment. Medical history checks and criminal record checks may form part of the recruitment process in certain circumstances, mainly, where the check is required in order to determine the ability of the employee to perform the role.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of sex, race, color, nationality, ethnic or national origin, disability, pregnancy, state of health, age, sexual orientation, religion or belief, marital or family status, social status, property, trade union or political party activities or membership, or any other personal characteristic.

Itemized pay slips

Employers must give their employees itemized pay statements, on a monthly basis, specifying gross and net salary, and the amount and purpose of any deductions.

Health and safety

Employers are obliged to safeguard the health and safety of their employees, visitors to their premises and the public. The obligations include the duty to carry out a risk assessment, prepare a written health and safety policy and report accidents. Employers are obliged to contribute to the statutory accident insurance scheme that covers all employees.

Written contract of employment

Contracts of employment and contracts for services must be in writing. If an employer fails to sign any contract with the individual engaged, there is an assumption that the employment is for an indefinite duration. The employment contract must include details such as the employer’s name and head office address, the first and last name and address of the employee, the type and level of professional qualification of the employee, the type and description of jobs to be performed by the employee, the place of work, whether the employment is for a fixed term or an indefinite duration, and if for a fixed term, the duration of the contract, the start date, the working hours (full time, part time or reduced time), the amount of earnings and other benefits, the deadlines for the payment of earnings and other benefits the employee is entitled to, reference to any applicable collective agreement and/or current labor rulebook, and the duration of daily and weekly working hours.

Typically, only senior employees will be given an offer letter and an employment contract containing more detailed provisions than the mandatory provisions.

Implied duties of the employer and the employee

In addition to the terms and conditions set out expressly in the contract of employment, the law also implies certain additional terms in every employment relationship. These include the following:

- Employees have a duty to properly perform work, to use reasonable care and skill, and to obey lawful and reasonable instructions; and
- Employers have a duty to pay the employee, to provide work and to ensure the employee’s health and safety.

Company rules

Save for any health and safety requirements and internal policies regarding employees’ duties and the business’ organizational structure (which all employers who have more than five employees must have in place), there is no requirement in Serbia to have company rules, but these are common.

Data protection

An employer has duties under the Data Protection Act in respect of the personal data of its current and former applicants, employees and other staff. These duties mean employers must fairly and lawfully process data; process them only for limited purposes; and ensure they are adequate, relevant and not excessive, accurate, up to date, not kept for
longer than necessary, processed in line with the data subject’s rights, kept secure, and not transferred to other countries that do not have adequate protection.

STATUS

Businesses in Serbia have several choices with regard to staffing their operations, including the status of the individual. Businesses can employ employees under a contract of employment for an indefinite duration or fixed term, or engage independent contractors or consultants. The status of the individual dictates the level of statutory protections he or she is entitled to receive and his or her rights.

Employees

An employment relationship gives the employer the ability to protect company confidential information and intellectual property. Express non-competition and non-solicitation clauses must be agreed in order to prevent former employees setting up in competition or poaching other staff. Employees have higher levels of statutory protection than independent contractors.

Independent contractors or consultants

Using independent contractors or consultants is common, but it is only allowed for jobs that do not relate to the employer’s main business activities. The main advantage of using an independent contractor is that the terms of their engagement are governed by the terms of the services or consultancy agreement entered into and he or she has few statutory protections or rights. On the other hand, there are no significant administrative advantages. The engaging entity is still required to deduct tax and social security contributions from pay and to pay contributions almost at the same level as for employees. For this reason, these types of arrangements are often scrutinized by the labor inspection authorities but not often by the tax authorities.

Agency workers

There are no specific laws regulating the use of agency workers.

PRACTICALITIES

Restrictions on overseas individuals working in Serbia

Non-Serbian nationals need a residency permit and work permit. A work permit will only be granted if it can be demonstrated that no employee available in the Serbian labor market can fill the position. It is an offense to employ someone who is not entitled or permitted to work, and committing the offense can lead to a civil penalty of up to €10,000 per instance of illegal employment.

Tax and social security contributions

An employer must calculate and withhold the tax and social security contributions payable for each employee, and pay that amount together with the employer’s social security contributions to the tax authorities and the social security cashier.

Taxation of individuals working in Serbia

Employees permanently or ordinarily resident in Serbia (being those that remain for 183 or more days per year) are tax residents. Individuals resident in Serbia are liable for Serbian income tax on their worldwide income. Employees not permanently or ordinarily resident in Serbia are liable for Serbian income tax only on income arising out of their employment in Serbia. Most double-taxation treaties entered into by Serbia and other countries provide that an employee’s home jurisdiction can tax that employee if all of the following apply: (i) the employee’s presence in Serbia does not exceed 183 days per tax year; (ii) the employee’s remuneration is paid by an employer or on behalf of one employer who is not resident in Serbia; and (iii) the employee’s remuneration is not borne by a Serbian permanent establishment of the non-Serbian employer. If any of these conditions do not apply, income arising out of the employment in Serbia will be subject to Serbian income tax.
**THE EMPLOYMENT CONTRACT**
Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th><strong>Probationary Period</strong></th>
<th>Probationary periods are quite common. The maximum length is six months.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum Wage</strong></td>
<td>National minimum wage is currently 115 RSD (approximately €1 net per hour).</td>
</tr>
<tr>
<td><strong>Non-Pay Benefits</strong></td>
<td>Fringe benefits are not a legal requirement, but some are quite common and may include:</td>
</tr>
<tr>
<td></td>
<td>• Death in service benefit</td>
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<td></td>
<td>• Company cars</td>
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<td>• Bonuses</td>
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<td></td>
<td>• Share options</td>
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<td></td>
<td>• Private healthcare</td>
</tr>
<tr>
<td><strong>Hours of Work</strong></td>
<td>There is a 40-hour regular maximum working week. Occasional overtime work is permitted (within limits) and must be paid at a higher minimum amount which is prescribed by law. There is a daily rest entitlement of 12 hours, and a weekly rest entitlement of 24 hours. There is a daily break entitlement of 30 minutes for six to eight hours’ work; 15 minutes for four to six hours’ work; and 45 minutes for 10 hours’ work or more.</td>
</tr>
<tr>
<td><strong>Holiday Entitlement</strong></td>
<td>Employees are entitled to a minimum of 20 days of paid annual leave; however, 25 days are commonly granted.</td>
</tr>
<tr>
<td><strong>Default Normal Retirement Age</strong></td>
<td>Normal retirement age is 65 for men and 60 for women, unless the employer and the employee agree otherwise.</td>
</tr>
<tr>
<td><strong>Sick Pay Entitlement</strong></td>
<td>Where an employee is absent from work due to an illness or injury sustained outside of work, the employer must pay 65 percent of average earnings for the first 30 days of absence. Following that, the employee may be entitled to state-paid sick pay.</td>
</tr>
<tr>
<td></td>
<td>Where an employee is absent from work due to an illness or injury sustained at work, the employer must pay 100 percent of average earnings for the whole period of absence.</td>
</tr>
<tr>
<td><strong>Rate of Tax Payable by Employee</strong></td>
<td>There is a universal tax rate of 10 percent.</td>
</tr>
<tr>
<td><strong>Rates of Social Security Payments</strong></td>
<td>There are several social security schemes that the employer and employee must contribute to. These are as follows:</td>
</tr>
<tr>
<td></td>
<td>• Health insurance: 6.15 percent paid by each, the employer and employee;</td>
</tr>
<tr>
<td></td>
<td>• Pension and disability insurance: 11 percent paid by each, the employer and employee; and</td>
</tr>
<tr>
<td></td>
<td>• Unemployment insurance: 0.75 percent paid by each, the employer and employee.</td>
</tr>
<tr>
<td><strong>Maternity Benefits</strong></td>
<td>Maternity leave is 365 days for all employees, with no minimum service requirement. Maternity pay is payable at 100 percent of normal pay.</td>
</tr>
<tr>
<td><strong>Paternity Benefits</strong></td>
<td>There is no right to paternity leave. A father of a child may exercise the same right as the mother, in circumstances where the mother abandons the child, dies or is prevented from exercising her right to maternity leave due to other justified reasons (serving a prison term, serious illness, etc.). That right shall also be given to a father when the mother is not employed. The benefit is paid at 100 percent of normal pay.</td>
</tr>
<tr>
<td><strong>Flexible Working</strong></td>
<td>Employees have the right to make a request to work flexibly, but it is not common practice to do so.</td>
</tr>
<tr>
<td><strong>Equal Opportunity</strong></td>
<td></td>
</tr>
</tbody>
</table>
Employees are protected against discrimination on the grounds of sex, language, race, color, age, pregnancy, state of health, disability, ethnic origin, religion, marital status, family obligations, sexual orientation, political or other beliefs, social background, financial status, membership in political organizations or trade unions and any other personal characteristic.

**Protected Employees**

Protected employees include trade union officials, pregnant women, those on maternity or adoption leave, women, youth and disabled persons.

**Minimum Notice Period**

The minimum period of notice to be provided by employers ranges from one to three months, depending on the length of an employee’s service. The minimum period of notice to be provided by an employee is 15 days. The employment contract can provide for longer periods of notice from either party.

**Collective Agreements**

Any applicable collective agreement must be referred to in the employment contract. Collective agreements are mostly present in the public sector, former public-sector businesses or those organizations who recognize a trade union. There are also several industry-specific collective agreements that apply to all companies within those sectors.

**Disciplinary Rules**

There are no statutory rules regulating disciplinary procedures.

**Grievances**

There are no detailed laws regulating how an employer has to address grievances from individual employees.
SERBIA: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal
Before terminating an employment contract for reasons related to the behavior of an employee, the employer must warn the employee, in writing, of the reasons for terminating the employment contract, and provide him or her with at least five working days to respond. If an employee is underperforming, the employer must also give the employee a warning and establish a performance improvement plan prior to issuing a notice of termination. An employer may preliminarily suspend an employee from work; this can be used as a single disciplinary measure or as an action before dismissal.

Grievances
There are no detailed laws regulating how employers have to address grievances from individual employees.

Consultation with employees
Prior to making the decision to fire an employee for reasons related to the employee’s conduct or behavior, an employer will be required to inform and consult with the employee and a recognized trade union. There is also an obligation to consult with the National Employment Service and a recognized trade union in respect of large-scale redundancies.

INDIVIDUAL TERMINATIONS
If an employee is to be dismissed, an employer must be able to prove one of eight prescribed potentially fair reasons for dismissal.

Before terminating an employment contract for reasons related to the behavior of the employee, the employer needs to warn the employee, in writing, of the reasons for terminating the employment contract, and allow a period of at least five working days from issuing that notice to enable the employee to respond to the allegations.

Claims
There is no formal distinction between wrongful dismissal (contractual claim) and unfair dismissal (statutory claim). There is just one kind of inequitable dismissal, unlawful dismissal.

If the employer does not have fair grounds for dismissal or does not follow a fair dismissal procedure, the employee will be entitled to bring a claim at court within 90 days of dismissal. If the employee succeeds, the court may make an order to reinstate the employee or an award of compensation. The compensation is calculated as a maximum of 18 months’ salary factoring in the employee’s age, length of service and number of family members who are supported by the employee. Reinstatement is a basic right of an employee who is unlawfully dismissed. Only at his or her explicit request can reinstatement be replaced with compensation. In dealing with these matters, the courts generally prefer to protect employees rather than employers.

Redundancy payments
An employee dismissed by reason of redundancy is entitled to a severance payment. Severance has to be paid to an employee prior to the termination of his or her employment.

Severance cannot be lower than one third of monthly salary per year of total employment (that is, for each complete year of work as an employee during the employee’s entire career and not just at the current employer) for the first 10 years of employment; and one quarter of the employee’s monthly salary for each year of his or her career exceeding 10 years. Monthly earnings in the case of severance are calculated as the average monthly gross earnings of the employee paid for the three months preceding the payment of severance.

Some employers also offer enhanced redundancy payments or severance which exceed the statutory minimum.

Discrimination
It is unlawful to discriminate on the grounds of sex, language, race, color, age, pregnancy, state of health, disability, ethnic origin, religion, marital status, family obligations, sexual orientation, political or other beliefs, social background, financial status, membership in political organizations or trade unions, or any other personal characteristic. A discrimination claim can be brought by an employee or by an applicant for employment. A claimant does not need to have had a period of continuous service in order to bring such a claim. Compensation awarded is theoretically unlimited, however, high amounts of compensation are not common in practice.
GROUP TERMINATIONS

Redundancies

A special dismissal procedure applies where an employer with between 20 and 99 employees proposes to dismiss at least 10 employees, an employer with between 100 and 300 employees proposes to dismiss at least 10 percent of employees, or an employer with more than 300 employees proposes to dismiss at least 30 employees.

For these purposes, only those employed under indefinite term employment contracts are counted (i.e., not fixed-term employees), the dismissals must take place within a 30-day period, and the dismissals must be due to technological, economic or organizational changes to the business.

Where the procedure is triggered, the employer must take a number of pre-dismissal steps. First, it must develop a redundancy program in conjunction with the National Employment Service and any recognized trade unions. The redundancy program must (amongst other things) entitle redundant employees to severance payments.

An employer will also be required to develop a redundancy program after finding that it no longer has work for at least 20 employees within a 90-day period, due to technological, economic or organizational changes, regardless of the total number of employees with the employer.

Second, where the intention is to dismiss only part of the workforce (and not cease business operations altogether) the employer must carry out a selection process to determine which employees are to be dismissed as redundant.

Where employment is terminated by reason of redundancy, severance payments must always be paid before termination, regardless of whether there is an obligation to develop a redundancy program or not.

Business transfer

In the case of mergers and acquisitions, changes of employer and changes of ownership of employer, the employment contract does not terminate. Instead, the acquiring company that continues to exist is obliged to take on all employment contracts that were entered into by the company which ceased to exist. The new employer is obliged to adhere to the existing employment bylaws, or collective agreement for at least a period of one year from the date of the change of employer.

The current employer is also obliged to inform its employees of the transfer, the legal, economic and social consequences for the employees, as well as any planned measures proposed to reduce the impact on employees. Employees must be allowed five working days from receiving this information to provide feedback.

If an employee does not accept employment with his or her new employer, his or her current employer is entitled to terminate his or her employment contract. Additionally, at least 15 days prior to the date of transfer to the new employer, both the current and the future employer are obliged to inform the employees of the change.
RECRUITMENT PRACTICE AND PROCESS

Recruitment practices depend on the size and sector of the company. Smaller companies generally recruit by advertisements and, to a lesser extent, professional recruitment agencies. Larger companies are more likely to use professional recruitment agencies or career fairs. Professional and social networks such as LinkedIn and the Spanish-based platform Jobandtalent are also becoming common practice among employers.

Pre-employment references and background checks

The use of pre-employment references, in particular, reference letters from previous employers, is not common. Candidates' sensitive personal data can only be requested in exceptional cases for very specific jobs. For example, certain checks may be necessary for police or military positions. Likewise, candidates' medical data can only be requested if it is necessary to confirm their ability to perform the specific job, such as eyesight testing for pilots.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of sex, marital status, age, race, ethnic or racial origin, social status, religious or political beliefs, sexual orientation, trade union membership or language.

Itemized pay slips

Employers must give their employees itemized pay statements specifying the various salary items, and the amount and purpose of any applicable withholdings or deductions in accordance with the official form.

Health and safety

Employers are obliged to safeguard the health and safety of their employees. The obligations include the duty to carry out a risk assessment, prepare a health and safety plan and implement measures necessary to reduce or eliminate any risks identified (taking into account the possibility of an employee's reckless actions).

Written contracts of employment

Employment contracts may be entered into either verbally or in writing. However, there are certain employment contracts that must be executed in writing or follow a special format. These include training contracts, part-time contracts, fixed-term contracts, contracts for the performance of a specific task or service, permanent employment contracts to support entrepreneurs, for permanent and discontinuous employees, and contracts with employees hired in Spain for Spanish firms operating abroad. Should these contracts not be executed in writing, there will be a legal presumption that they are full-time permanent contracts.

If an employment relationship lasts more than four weeks and the parties have not entered into a written employment contract, the employer must inform the employee of the essential terms and conditions of his or her employment such as the duration of the employment relationship, the effective start date, the professional group in which the employee would be included, the salary, the holiday entitlement, and the applicable collective bargaining agreement.

The use of offer letters, followed by a written employment contract, is becoming increasingly common.

Implied duties of the employer and the employee

The terms and conditions set out expressly in the contract of employment and statutory employment law or collective bargaining agreement provisions govern the employment relationship.

Company rules

Company rules are becoming increasingly common, especially in medium to large sized companies and branches of multinational companies based in Spain. Company rules must comply with minimum protections set out in statute and applicable collective bargaining agreements.

Data protection

An employer is authorized to process and incorporate into its databases any data contained in its employees’ contracts, as well as any data generated as a consequence of the performance of their duties; but the data processing must always be for the purposes of executing, managing and monitoring the
employment relationship, and complying with the employer’s legal obligations and management decisions. Employees must be informed of the processing of their data. In addition, the processing of sensitive data (such as health related data or data concerning trade union affiliations) requires, as a general rule, the express consent of employees.

**STATUS**

Most individuals in Spain are engaged as permanent employees. Temporary contracts are permitted in certain circumstances (e.g., for a specific job or service, an interim position, training contracts or other situations expressly provided by law). Independent contractors or consultants are also used in Spain in respect of certain activities.

**Employees**

An employee is restricted from competing with his or her employer during the term of employment. Similarly, a non-competition obligation in respect of the period after termination may be agreed between the parties, although it must be financially compensated and must also comply with statutory time limits. An employee has a duty to keep confidential any relevant information obtained as a result of his or her employment. Intellectual property rights are normally assigned to the employer, except in very special cases where the contribution of the employee clearly exceeds the scope of the employment relationship.

**Independent contractors or consultants**

The use of independent contractors or consultants is quite common. However, these arrangements are often scrutinized and are subject to challenge where the relationship in practice is that of an employer/employee.

**Self-employed workers**

A Spanish business may enter into a contract for certain services with a self-employed worker ("autónomo"). In this case, a commercial relationship will be deemed to exist. The most characteristic feature of the commercial relationship is that the self-employed worker is free to organize and determine the way the services are provided, and he or she assumes the economic risk of the activity. Self-employed workers do not benefit from statutory employment law protections, and will be responsible for deducting tax and social security withholdings from their income.

In addition, there is a type of self-employed worker known as an economically dependent self-employed worker ("trabajador autónomo dependiente"), defined as a person who carries out a business or professional activity on a regular, personal, direct and predominant basis for a customer, and who is economically dependent on that customer, as he or she receives at least 75 percent of his or her total income from that customer. This category of self-employed worker has been created in order to provide this type of self-employed worker with more protection.

**Agency workers**

An employer that temporarily assigns its employees to third parties ("empresas de trabajo temporal") must have authorization from the labor authority to do so. Provided it does, the use of such employees is lawful and is widely used to cover short-term positions.

**PRACTICALITIES**

**Restrictions on overseas individuals working in Spain**

European Union (EU) citizens (and citizens from certain other countries with specific agreements with the EU) have no restrictions on working in Spain, other than those applicable to Spanish employees. Employees from non-EU countries need a work permit, which is usually granted initially for one year. The main difficulty in obtaining a work permit is that the National Public Employment Service ("Servicio Público de Empleo Estatal") must issue a certificate stating that there are no registered Spanish job seekers who could satisfactorily perform the same job when the employee applied for the permit. If the certificate states that there are, which now occurs very often, the work and residence permit will be automatically rejected. There are certain exceptions to this rule including in respect of senior executives and employees relocated within group companies.

**Tax and social security contributions**

Any Spanish resident receiving employment income is subject to Personal Income Tax (PIT), provided that his or her annual income exceeds €22,000. PIT rates for 2014 generally range from 24.75 percent to 52 percent (although tax rates may vary depending on the Autonomous Community in which the taxpayer resides) and are dependent on the employee's gross annual income and personal circumstances. An employer must withhold
the relevant percentage of PIT from each employee’s salary and pay that amount to the Spanish tax authorities.

Each employer will pay PIT to the Spanish tax authorities on a quarterly or monthly basis, depending on the employer's turnover. A quarterly or monthly tax form must also be completed and an annual summary of the total withholdings in each tax year submitted.

Employers and employees must contribute to the social security system on a monthly basis. An employer must also withhold each employee's contributions from monthly salaries in the same way as PIT. Social security contributions are payable within the calendar month following that in which the relevant wages are earned. Specific official forms must be completed and filed with the Social Security General Treasury.

**Taxation of individuals working in Spain**

Individuals resident in Spain are subject to PIT on their worldwide income and worldwide capital gains. Spanish residents working for a Spanish company who are transferred to other countries (for example, the UK) to deal with the Spanish company’s operations there will be deemed Spanish residents if they are in Spain for more than 183 days during a calendar year. In this case, these employees will have to submit their PIT returns in Spain, but they may benefit from a tax exemption (of up to €60,100) for income derived from work effectively carried out abroad, provided that certain requirements are met.
# THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th>Probationary Period</th>
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<tbody>
<tr>
<td>Probationary periods are common. They must be set out in writing. The maximum length is that set out in the applicable collective bargaining agreement (“CBA”). Absent any relevant provision in the CBA, the maximum length is six months for employees who are qualified as technicians and two months for all other employees. However, the length of the probationary period of permanent employment contracts to support entrepreneurs is one year.</td>
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<table>
<thead>
<tr>
<th>Minimum Wage</th>
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<tr>
<td>The national minimum wage in 2014 is €645.30 per month.</td>
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<tr>
<th>Non-pay Benefits</th>
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<tr>
<td>Fringe benefits are not a legal requirement, although CBAs or employment contracts may provide for them, including:</td>
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<tr>
<td>• Private health care</td>
</tr>
<tr>
<td>• Company cars</td>
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<tr>
<td>• Private pension contributions</td>
</tr>
</tbody>
</table>

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<tr>
<th>Hours of Work</th>
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<tr>
<td>The length of an employee’s working day is set out in the applicable CBA or in an employee’s employment contract. However, there is a 40-hour statutory maximum working week calculated on an annual basis, a daily maximum of nine hours, and a weekly rest entitlement of one and a half days.</td>
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<table>
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<tr>
<th>Holiday Entitlement</th>
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<tbody>
<tr>
<td>An employee’s holiday entitlement is usually set out in the applicable CBA or in the employee’s employment contract. However, employees are entitled to a minimum of 30 calendar days of annual leave per year.</td>
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<thead>
<tr>
<th>Default Normal Retirement Age</th>
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<tbody>
<tr>
<td>There is no compulsory retirement age, except in certain regulated jobs and professions. The normal retirement age will gradually increase in future years from 65 to 67 years of age with effect from January 1, 2027.</td>
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<tr>
<th>Sick Pay Entitlement</th>
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<tbody>
<tr>
<td>Employees on sick leave are entitled to receive pay of between 60 and 100 percent of a monthly amount from social security (referred to as the contribution base (“base de cotización”)). The percentage depends on whether the leave has been caused by a work-related or non-work-related accident or sickness. Some companies, either under the terms of their own policies or applicable CBAs, are obliged to supplement sick pay by up to 100 percent of the employee’s usual salary for a certain period.</td>
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</table>

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<tr>
<th>Rate of Tax Payable by Employee</th>
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<tbody>
<tr>
<td>There is a sliding scale of tax payable of up to 52 percent.</td>
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</tbody>
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<tr>
<th>Rates of Social Security Payments</th>
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<tbody>
<tr>
<td>Social security payments are payable by both the employer and the employee on salary falling between the minimum and maximum amounts set annually by the government (for 2014, a maximum of €3,597 and a minimum of €753 apply). Contributions to the social security system for 2014 are as follows:</td>
</tr>
<tr>
<td>• Common contingencies: 23.60 percent paid by the employer and 4.7 percent paid by employee;</td>
</tr>
<tr>
<td>• Unemployment: 5.5 to 7.7 percent paid by the employer and 1.55 to 1.6 percent paid by employee;</td>
</tr>
</tbody>
</table>
• Salary guarantee fund: 0.2 percent paid by the employer;
• Professional training: 0.6 percent paid by the employer and 0.1 percent paid by employee; and
• Work accident/work-related illness benefit: employers must contribute at a rate dependent on the type of work carried out.

Maternity Benefits
Employees are entitled to 16 weeks of paid maternity leave. In the event of multiple births, the 16-week leave period is increased by two weeks per child, starting with the second child. Six weeks of the 16-week period is designated as a compulsory period, which must be taken immediately after the birth.

Paternity Benefits
Employed fathers are entitled to 13 consecutive days of paid leave. However, a four-week leave period has been approved and is expected to apply from January 1, 2015.

Flexible Working
Employers and employees may agree to flexible working arrangements. Those with children under twelve years of age are entitled to reduce their working time by between one-eighth and one-half, with a proportional reduction of remuneration.

Equal Opportunities
Employees are protected against discrimination on the grounds of sex, marital status, age, race, ethnic or racial origin, social status, religious or political beliefs, sexual orientation, trade union membership, and language.

Protected Employees
Protected employees include employee representatives, trade union representatives, pregnant women, employees on maternity, paternity or adoption leave, and those dismissed for exercising a statutory right.

Minimum Notice Period
The period of notice required depends on the reason for dismissal. For example, no notice is required for disciplinary dismissals, whereas dismissals by reason of redundancy require the employer to give at least 15 days’ notice.

Fixed-term employment contracts usually require 15 days’ notice of termination from the employee.

Collective Agreements
The applicable CBA is an essential term of the employment relationship, and is usually referred to in the employment contract. If the agreement has not been referred to, employees are entitled to request a written reference to the applicable CBA. In Spain, CBAs exist for almost all work activities, at national, regional, provincial or company levels.

Disciplinary Rules
There are no statutory disciplinary rules or procedure. Ordinarily, however, these are set out in, and regulated by, the applicable CBA.

Grievances
There are no statutory rules or procedures that employees must follow when raising a complaint during their employment. It is common, however, for this to be governed by the company’s internal policies or an applicable CBA.
SPAIN: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

There are no statutory disciplinary rules or procedures (other than those relating to dismissal). Ordinarily, disciplinary issues are governed by the applicable CBA and, in most cases the CBA will set out the appropriate procedure to be followed.

Sanctions for serious or very serious disciplinary matters (including those that would justify dismissal) must be communicated to the employee in writing.

Grievances

There are no statutory rules or procedures that employees must follow when raising a complaint during their employment. It is common, however, for such rules and procedures to be governed by the company’s internal policies or an applicable CBA.

Consultation with employees

As a general rule, employers do not have to consult employees when carrying out a disciplinary action or dismissal. Special rules apply, however, where the employee in question is an employee representative; in that case a specific procedure must be followed under which the employee has a right to be heard. In addition, some CBAs provide for a similar procedure which is applicable to employees who are not employee representatives. Employee representatives, if any, are entitled to be informed of (but not consulted on) all sanctions the employer imposes on employees for very serious infractions or violations of employment rules.

INDIVIDUAL TERMINATIONS

An employer may terminate employment on objective grounds (“despido objetivo”) or disciplinary grounds (“despido disciplinario”).

Dismissal for objective reasons may be based on the employee's lack of capacity arising after the date of employment; failure to adapt to technical changes to the job; non-continuous justified absences during a certain period of time; or because of changes to the business' economic, technical, production or organizational requirements.

The dismissal procedure for objective based dismissals requires the employer to initiate the dismissal by giving the employee 15 calendar days’ notice. The dismissal letter setting out the notice must include a detailed explanation of the reasons for the dismissal. The offer of a severance payment, calculated as 20 days’ salary per year of service, up to a maximum value of 12 months’ salary, along with the means of payment (check, cash, etc.) must be offered to the employee together with the dismissal letter. If it is not, the dismissal may be considered unfair.

An employee can also be dismissed for disciplinary reasons as a result of a serious and willful breach of the employee's duties. A disciplinary dismissal may be justified where there are continuous unjustified absences from the workplace, or continued unjustified lateness; insubordination towards the employer or other employees; a breach of the covenant of good faith, or an abuse of trust in the performance of work duties; intentional poor performance; habitual drunkenness or drug addiction affecting work performance; or harassment towards the employer or towards other employees based on religion, age, etc.

In these circumstances, the employer must provide the employee with a written notice of the dismissal. This notice must clearly state the date on which the dismissal will become effective, and the reasons for the dismissal.

Claims

Dismissals in Spain may be fair (“procedente”), unfair (“improcedente”) or null and void (“nulo”).

A dismissed employee may, within 20 working days of being dismissed, claim that his or her dismissal is unfair or null before the Mediation, Arbitration and Conciliation Services (“MACS”). The MACS will hold a meeting with both parties in which they will try to reach a settlement. In the event that no agreement is reached, the employee can bring an action against the employer before the labor courts.

If the relevant labor court declares that the dismissal is unfair because the alleged grounds for dismissal have not been proven by the employer or they are insufficient, the employer must choose within five days (unless the employee is a legal representative) between either reinstating the employee into his or her prior position (and pay any salary accrued in the interim period); or paying the employee...
the statutory compensation for unfair dismissal, which amounts to 33 days' salary per year of employment, up to a maximum value of 24 months' salary. (For employees hired before February 2012, the statutory compensation corresponding to the years of service previous to that date is 45 days' salary per year of service, up to a total limit of 42 months' salary, although the 42 month limit will be less under certain circumstances.)

The labor courts may hold the dismissal to be null if: (a) the employer has breached the employee’s constitutional rights; (b) the dismissal is considered discriminatory; or (c) the dismissal affects individuals who have special protection (e.g., pregnant women, individuals on maternity or paternity leave, individuals on leave for childcare purposes, etc.). In these circumstances, reinstatement is mandatory and the employer must reinstate the employee to his or her prior position (and pay any salary accrued in the interim period).

**Redundancy payments**

If an employee is dismissed for objective reasons, he or she is entitled to receive a statutory severance payment amounting to 20 days’ salary per year of service, up to a maximum limit of 12 months’ salary.

If the grounds are not justified, the dismissal will be held to be unfair (and the employee may challenge it in the way set out above).

**Discrimination**

It is unlawful to discriminate against employees on the grounds of sex, marital status, age, race, ethnic or racial origin, social status, religious or political belief, sexual orientation, trade union membership, and language in relation to dismissal.

Where a dismissal is considered discriminatory, the labor court may hold the dismissal to be null. In that event, the dismissed employee is entitled to be reinstated to his or her prior position and to receive any salary accrued in the interim period.

**GROUP TERMINATIONS**

**Redundancies**

The reorganization or closure of a business could entitle an employer to dismiss one or more employees due to organizational needs if certain requirements are met. Dismissals based on these reasons may be subject to individual or collective dismissal procedures, depending on the number of employees to be dismissed within a 90-day period (or subsequent 90-day periods).

The procedure will be collective if an employer with fewer than 100 employees proposes to dismiss at least 10 employees; an employer with between 100 and 300 employees proposes to dismiss at least 10 percent of the workforce; an employer with 300 or more employees proposes to dismiss at least 30 employees; or all of the company's workforce is at risk of dismissal, there are more than five employees affected, and the collective dismissal is a consequence of the total cessation of the company’s activities.

Since 2012, collective dismissals no longer require the prior authorization of the labor authorities; however, employers must still inform the authorities of all of the steps of the process.

In addition, in any collective dismissal procedure, the employer must negotiate with employee representatives. The employer must provide the representatives with a written communication at the start of the procedure, along with detailed documentation and the reasons for the dismissals. Negotiations between the company and the employee representatives mainly relate to the level of any severance payments offered (which must comply with the statutory minimum). Depending on the circumstances of the employer and employees, negotiations may give rise to simpler or more complicated severance payment calculations in order to reach an agreement. In addition, agreements reached in the course of collective dismissals increasingly include outplacement measures and arrangements for early retirement.

If an agreement has been reached with the employee representatives within the consultation period, the terms and conditions of the agreement will apply. In the event that no agreement is reached after the compulsory negotiation period, the employer can terminate the employment of the affected employees by paying the statutory amounts (or higher if granted by the employer). In certain cases, additional obligations also apply, such as an obligation to make contributions to the Spanish Treasury and/or to cover outplacement costs.

Collective legal claims are not unusual where no agreement has been reached in the course of the negotiations. Individual claims related
to the selection criteria in collective dismissals are also possible.

**Business transfer**

Where there is a transfer of assets, business or part of a business which qualify as an autonomous production unit and, following the transfer, the operation of that unit is continued, the employment of employees working in that business is transferred from the transferor (normally the seller) to the transferee (normally the buyer).

Prior to a transfer, both the transferor and the transferee must provide certain information to employee representatives. Such information must include the proposed date of the transfer; the reasons for the transfer; the legal, economic and labor consequences for the employees arising from the transfer; and what (if any) measures will be taken with regard to the employees. If the company does not have any employee representatives, all employees affected by the transfer must be provided with this information on an individual basis.

The relevant information must be provided in sufficient time, and before the date of the transfer. In addition, should either the transferor or the transferee intend to take any employee related measures, a period must be allowed in which to negotiate with the employee representatives.
SWEDEN: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most private employers recruit externally by advertisements and professional recruitment agencies.

Pre-employment references and background checks

Most private employers make employment conditional on the receipt of satisfactory references. Employers may, as a general rule, ask applicants to undergo medical examinations or present various certificates, e.g., extracts from credit records and criminal records. However, there are restrictions on how employers may use this information. There is a legislative proposal to restrict an employer’s right to request medical tests and certain data extracts. However, it is uncertain whether or not this proposed law will come into force in the near future.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of gender, transgender identity or expression (i.e., discrimination against transsexuals, transvestites, intersexual and other persons who do not identify as either male or female), ethnic origin, religion, disability, sexual orientation or age.

Itemized pay slips

Employers must give their employees itemized pay statements specifying gross and net salary, and the amount and purpose of any deductions.

Health and safety

Employers are obliged to safeguard the health and safety of their employees. The obligation includes ensuring that the workplace is safe, and that such safety arrangements necessary to ensure that proper care is taken of employees are implemented in the workplace. If an employer does not take sufficient care, or otherwise fails to comply with health and safety requirements, criminal and civil penalties may apply.

Written contract of employment

The use of offer letters is not commonplace, and there is no statutory requirement that an employment contract be in writing. However, no later than one month after the commencement of the employment, an employer is obliged to provide the employee with a written statement setting out all of the material terms and conditions of employment. In addition, it is customary for collective agreements to require that the employment contract be in writing and contain particular terms. In practice, a written employment contract is normally entered into. Since the terms of employment are typically governed by collective agreements signed at the industry level, negotiation of contractual terms at the local level is relatively uncommon in Sweden, except in relation to senior executives and employees with specific functions. Employment contracts with executive level or senior employees tend to be more detailed.

Implied duties of the employer and the employee

In addition to the terms and conditions set out expressly in the contract of employment, the law also implies certain additional terms into every employment relationship. These include the following:

- Employers have a right to lead and distribute work, and employees have a duty to be ready and willing to work, to use reasonable care and skill, and to obey lawful and reasonable instructions;
- Both parties are bound by a mutual obligation of loyalty and good faith. For an employee this means that he or she cannot set up business in direct competition with his or her employer, solicit customers while employed or use or disclose his or her employer’s or its clients’ confidential information or trade secrets; and
- Employers have a duty to pay the employee, to (in some cases) provide work and to take care of the employee’s health and safety.

Company rules

Employers must comply with health and safety requirements and employers with more than 10 employees must prepare a gender equality action plan ("jämställdhetsplan") and review this on an annual basis. However, there is no
requirement in Sweden to have other company rules.

Data protection
An employer has duties under the Swedish Personal Data Act in respect of the processing of personal data. These duties mean an employer must fairly and lawfully process data; process them only for limited purposes; and ensure they are adequate, relevant, not excessive, accurate, up to date, not kept for longer than necessary, processed in line with the data subject’s rights, kept secure and not transferred to other countries that do not have adequate protection. Failure to comply with these duties may lead to fines and compensation claims from affected employees.

STATUS
A key consideration for any business setting up in Sweden is how to staff its operation. In Sweden, a business has many choices to make with regard to staffing its operations, including the status of the individual. It is possible to employ employees, or to engage a workforce as independent contractors or consultants. The status of the individual dictates the level of statutory protections he or she is entitled to receive, and his or her rights.

Employees
An employment relationship gives the employer a greater ability, both during and after the employment, to protect company confidential information and intellectual property and to prevent the former employee setting up in competition or poaching other staff. Contractually agreed non-compete and non-solicitation clauses are, however, more common for more qualified employees and management, and their applicability is restricted.

Independent contractors or consultants
There are certain legal and administrative advantages of using self-employed persons. For example, the engagement of a contractor or consultant is governed by the terms of the services or consultancy agreement, and has few statutory protections or rights (e.g., there is no requirement to have just cause in order to terminate the contract). Further, as long as the consultancy agreement is not considered a sham (i.e., it is clear that both parties’ true intention is to avoid the establishment of an employment relationship), the company is under no obligation to withhold income tax or to pay social security contributions based on the compensation to the consultant. These arrangements can be scrutinized by the Swedish Tax Authority or challenged by the employee in court.

Agency workers
It is possible to engage workers in an employment agency (with some limitations for companies that are bound by a collective agreement where the respective trade unions can have a veto right in these cases). These workers are generally the employees of the agency, to whom a fee is paid for providing the manpower plus any applicable VAT.

PRACTICALITIES
Restrictions on overseas individuals working in Sweden
European Union (EU), European Economic Area and Nordic citizens and their immediate families do not need permission to work in Sweden. Other individuals need a work permit in order to work in Sweden. If the offer of work is for more than three months’ duration, the individual will also require a Swedish residence permit. If the individual will be in Sweden for less than three months, they do not need a residence permit but may require an entry visa. Visas are normally granted for three months at the most.

It is a criminal offense to wilfully or negligently employ an individual without a work permit, and committing the offense can lead to fines or, in severe cases, imprisonment for one year. In addition, a company that employs a person without a work permit is obliged to pay a fee of kr 22,200 (approximately €2,487) (2014 rate) per instance of illegal employment, regardless of whether the conditions for the criminal offense are fulfilled or not. If the employment has lasted for more than three months, the fee is doubled to kr 44,400 (approximately €4,974) per instance of illegal employment, but can be reduced under special circumstances. To avoid liability, the business must carry out certain checks before the selected individual starts work.

Tax and social security contributions
If an organization has employees in Sweden, it is responsible for deducting income tax from each employee’s wages and salaries. In addition, they must provide each employee with an itemized pay statement setting out what deductions have been made. Other
deductions can only be made in specific circumstances or with the consent of the employee.

Employers are also obliged to make contributions in respect of their employees to the social security fund. This fund provides employees with sickness benefits, childcare benefits, unemployment insurance, pensions, and disability and industrial injury benefits. Contributions at the rate of 31.42 percent (2014 rate) of an employee’s gross wage or salary and taxable benefits are payable by the employer, but are tax deductible.

**Taxation of individuals working in Sweden**

Persons resident, ordinarily resident and domiciled in Sweden are liable for Swedish income tax on their worldwide income and for Swedish capital-gains tax on their worldwide capital gains. Benefits-in-kind (including shares and share options) derived from employment are generally taxable as employment income at their fair market value. Certain types of fringe benefits are not taxable if they are customary and reasonable, e.g., benefit from a general health service program of the employer, and free life and health insurance. Options granted to employees are generally characterized either as employee stock options or as securities. Employee stock options are not taxed when granted, but when the options are exercised. Individuals working for a foreign company who are sent to Sweden for the purpose of working in its Swedish business operations will, in broad terms, only pay tax in Sweden if their actual residence in Sweden lasts longer than 183 days in any 12-month period.
THE EMPLOYMENT CONTRACT
Overview of key terms and legal requirements:

**Probationary Period**
Probationary periods are very common. The maximum length is six months.

**Minimum Wage**
There is no statutory minimum wage but collective agreements often contain rules on minimum wage and/or minimum salary reviews.

**Non-pay Benefits**
Fringe benefits are not a legal requirement but they are common and are often contained in collective bargaining agreements. Fringe benefits may include:

- Private health care
- Permanent health insurance
- Accidental insurance
- Company cars
- Pension contributions
- Bonuses
- Share options

**Hours of Work**
Ordinary working time may not exceed 40 hours per week. Overtime is limited to 48 hours over a four-week period or 50 hours during a calendar month, with a maximum of 200 hours in aggregate over a calendar year. There is a daily rest entitlement of 11 hours and a weekly rest entitlement of 36 hours.

**Holiday Entitlement**
Employees are entitled to a minimum of 25 days of paid annual leave plus 13 public holidays per year. Collective agreements may provide for additional holiday entitlement.

**Default Normal Retirement Age**
The normal retirement age is around 65 years, but employees are entitled to work until 67 years of age, at their request. Thereafter, an employee may continue to work, subject to an agreement with his or her employer.

**Sick Pay Entitlement**
Employees are entitled to sick pay ("sjuklön") amounting to a minimum of 80 percent of their salary during the first 14 days of sickness, with the exception of the very first day of sickness (the qualifying day ("karensdag")). After 14 days, the Social Insurance Agency will provide sickness benefits ("sjukpenning"), at the rate of 80 percent of salary, subject to a maximum daily amount. Normally, sick pay is paid by the Social Insurance Agency for 364 days during a period of 450 days (approximately 15 months). It is possible to receive extended sick pay for a maximum period of 550 days (approximately one-and-a-half years), and in certain cases even longer or without a time limit (e.g., in respect of absence due to a work accident).

**Rate of Tax Payable by Employee**
Municipality taxes vary between 28 and 34 percent on incomes under kr 420,800 (approximately €47,141) (2014), depending on the municipality the employee resides in. On incomes ranging from kr 420,800 to kr 602,600 (approximately €47,141 to €67,508) (2014), a 20 percent state tax is added. On incomes exceeding kr 602,600 (approximately €47,141) (2014), state tax at a rate of 25 percent is added.

**Rates of Social Security Payments**
Employers' social security contribution rates are 31.42 percent of gross salary and taxable benefits (2014).

**Maternity Benefits**
Employees have a right to maternity leave during a continuous period of at least seven weeks prior to the estimated time for delivery of the child, and seven weeks after the delivery. Two weeks of maternity leave are compulsory and should be taken either before or after the delivery of the child.

**Paternity Benefits**
A father is entitled to 10 days of leave in connection with the birth of his child, to be taken within 60 days of his child coming home from the hospital. During paternity leave, the father is entitled to temporary parental benefits from the Social Security Agency at 80 percent of his salary, capped at an annual salary of 339,840 (approximately
Parental Benefits
In addition, all parents have a right to take leave in order to care for a child; parental benefits are paid by the Social Insurance Agency for a maximum (for both parents combined) of 480 days. This right can be assigned by one parent to the other, with the exception of 60 days, which are entirely reserved for each parent. The benefits may be drawn at any time until the child reaches the age of eight or completes the first class of school.

For 390 days of the total grant of 480 days of parental leave, benefits correspond to the sickness benefit, i.e., 80 percent of the employee's salary, capped at an annual salary of kr 339,840 (approximately €38,071) (2014). For the rest of the days, i.e., 90 days, the parent will receive a minimum benefit of kr 180/ (approximately €20.16) per day.

Flexible Working
Employees have a right to work part-time if they take parental leave or are on study leave.

Equal Opportunities
Employees are protected against discrimination on the grounds of sex, transgender identity or expression, religious faith, ethnic origin, disability, sexual orientation and age.

Protected Employees
Protected employees include trade union officials, trade union members (in certain circumstances), pregnant women, those on maternity, paternity or adoption leave and those working part-time or on a fixed term contract.

Minimum Notice Periods
For employees employed after January 1, 1997, the minimum periods of notice to be provided by employers are one month for employees with less than two years' service, two months for employees with between two and four years' service, three months for employees with between four and six years' service, four months for employees with between six and eight years' service, five months for employees with between eight and 10 years' service, and six months for employees with at least 10 years' service.

For employees employed before 1997, the minimum periods of notice to be provided by employers are either one month or, if the employee has been employed for the last six months or for a total of 12 months during the last two years, two months if the employee is over 25, three months if the employee is over 30, four months if the employee is over 35, five months if the employee is over 40 and six months if the employee is over 45.

Individual employment contracts or collective agreements may specify longer notice periods.

Collective Agreements
Any applicable collective agreements must be referred to in the employment contract. Collective agreements apply according to business sector and category of employees.

Disciplinary Rules
Employers can only impose disciplinary sanctions if they are set out in an applicable collective agreement or, for employers who are not bound by collective agreements, are set out in the employment contract. In either case, the sanctions that may be applied must be reasonable and comply with good employment practice.

Grievances
An employee may raise a complaint about his or her treatment at any time during the course of his or her employment. However, there are no statutory grievance procedures that must be followed.
**SWEDEN: FIRING**

**PRIOR TO FIRING**

**Disciplinary action and dismissal**

Employers can only impose disciplinary sanctions if they are set out in legislation or an applicable collective agreement. For employers who are not bound by collective agreements, disciplinary action may be taken if it is provided for in the employment contract. In either case, the sanctions that may be applied must be reasonable and comply with good employment practice.

**Grievances**

An employee may raise a complaint about his or her treatment at any time during the course of his or her employment. There are no statutory grievance procedures that must be followed; however, if the employee and the employer cannot agree, the employee can refer the matter to his or her trade union or bring the matter to court.

**Consultation with employees**

Under the Employment Protection Act, an employer who intends to dismiss an employee must notify the employee and his or her trade union (if he or she is a member). The trade union or the employee may ask that deliberations be held regarding the dismissal and, if that request is made, the employer has an obligation to participate in, and cannot dismiss the employee before, those deliberations have been concluded.

Under the Co-Determination at Work Act, an employer is also obliged to consult with trade unions with which it has entered into a collective agreement on matters relating to changes to the business, or the employment or working conditions of any employee who is a member of the union. Consultation is held initially with the local workplace union. If an agreement cannot be reached between the employer and the union, the local trade union can refer the consultations to the central level. This is the second and final stage of consultation and must be undertaken only when referred by the local trade union. There is no obligation to reach an agreement with or obtain approval from the unions; however, in most cases the employer is required to defer its decision on its proposals until consultation has been completed.

An employer may also be required to consult with trade unions with which it has not entered into a collective agreement, if an issue “especially concerns” an employee who is a member of that union, e.g., before making any decision in respect of redundancies or business transfers. Trade unions must also be continually informed of any developments in, and the standing of, the company. This rule also applies to employers who are not bound by any collective agreement.

Failure to comply with consultation obligations may result in claims for damages, which can be relatively high. In addition, such a failure can result in a poor reputation and impact on future relations with the union. However, it would not invalidate the employer's decision or action.

**INDIVIDUAL TERMINATIONS**

**Employment**

Under the Employment Protection Act, an employer may only terminate an employee's employment if there is “just cause,” i.e., acceptable and objective grounds for dismissal. An employer will have just cause where the termination is due to a redundancy situation arising out of a shortage of work (e.g., a shutdown, reorganization or rationalization). There will also be just cause where the employer terminates the employment on personal grounds relating to the employee (e.g., negligence, disloyalty, difficulties in cooperation with other employees, unsatisfactory performance or lack of efficiency). Termination on personal grounds is lawful only in severe cases.

Other than in cases of gross misconduct (which are rare), the employer must notify the employee of the problem (e.g., his or her performance or conduct) and attempt to resolve it. For example, in most cases, the employer will not be able to dismiss the employee until it has been established that the employee's performance has not improved. The employee must also be made aware of the unsatisfactory performance or conduct, and the possible consequences of failing to improve. The employer can provide the employee with written reminders or warnings in order to demonstrate this awareness. Additionally, it should be noted that dismissals must not be based solely on facts that have been known to the employer for more than two months. Ordinarily, the employer must also have offered the employee any other work that might be
available within the company and for which the employee has the necessary skills.

The employer must issue a notification to the employee regarding the dismissal two weeks prior to serving the dismissal. At the same time, the employee's trade union must be notified, if he or she is a member. During the notice period (i.e., the statutory notice period, contractual notice period or the notice period specified by the applicable collective agreement, whichever is longest), the employee is entitled to salary and other employment benefits, including vacation benefits. There is no statutory severance pay entitlement, but this can be found in individual employment contracts (mostly for executive and management level employees).

The Employment Protection Act applies only to employees and not, for example, to the engagement of independent contractors. In principle all employees are covered, the most important exception being certain employees in executive positions.

**Contractual claims**

If no severance pay has been agreed in the employment contract, the employee will have no contractual claims on termination.

**Statutory claims**

The Employment Protection Act applies to all employees (irrespective of an employee's length of service) and all companies (irrespective of the number of employees).

An employer who is in contravention of the Employment Protection Act may be liable for payments of compensation, as well as additional damages for the violation, to the employee and/or the relevant trade union. If the employee is represented by a trade union, the trade union can bring an action to the Swedish Labour Court. If the employee is not represented by a trade union, he or she may bring an action to the district court.

Damages may be awarded for: (i) salary and other benefits to which the employee is entitled; and (ii) for any loss or damage incurred by the employee as a result. Damages may consist of compensation for any resulting loss as well as for any suffering caused as a result of the unlawful act. Compensation for losses occurring after termination is fixed within the range of 16 to 32 months' pay (depending on the length of service of the employee).

If an employee is dismissed without just cause, the dismissal may also be set aside by a court at the employee's request. In addition, the dismissal may be set aside if the employee has been immediately dismissed for gross misconduct on grounds which would not even have sufficed for ordinary dismissal. The employer will still be able to choose whether or not to comply with such a judgment. In the event of non-compliance, the employee may be awarded punitive damages in the range of 16 to 32 months' pay (depending on the length of service of the employee). However, damages cannot be based on more months' salary than the number of months the employee worked, with the exception that employees employed for less than six months are nonetheless entitled to damages of six months' salary.

If the dismissal is challenged purely because it contravenes the priority rules (see below), the dismissal cannot be declared void, in accordance with the above.

During any court proceedings regarding the validity of a termination, the employment must continue, and the employer is obliged to continue paying the employee's salary during that period (approximately one year), irrespective of the outcome.

An employee seeking to have a termination for redundancy or a dismissal set aside, or to claim damages, must inform the employer of this within two weeks of the termination or dismissal. However, if an employer, when terminating or dismissing an employee, fails to tell the employee what he or she must do if he or she wishes to have the termination or dismissal set aside or claim damages as a result of the termination or dismissal, the deadline is one month from the date of termination. If consultations are requested within the period of notification, an action must be brought within two weeks from the end of the consultations. Otherwise, the action must be brought after the expiry of the period of notification.

Anyone wishing to claim damages or present other claims based on the Employment Protection Act must inform the other party of this within four months after the date when the damaging act occurred or the pecuniary claim became due. If, when terminated or dismissed, an employee does not receive a notice fulfilling all formal requirements, the deadline will commence on the date of termination. If consultations have been requested on the issue in dispute within the period of notification, an action must be brought within four months after the
conclusion of the consultations. Otherwise, the action must be brought within four months after the expiry of the period of notification. If no notification is submitted or if no action is brought before the above deadlines, the party's action will be time-barred.

**Redundancy payments**

There are no statutory severance pay entitlements for employees who are dismissed by reason of redundancy. However, applicable collective agreements or individual employment contracts may provide otherwise. Very often, collective agreements grant an additional six months’ notice period to redundant employees over the age of 55 who have been employed for more than 10 consecutive years.

An employer would normally offer severance pay, in addition to salary and benefits during the notice period, in order to be able to agree with the local trade unions on deviations from statutory requirements relating to the order of priority or in individual termination agreements with an employee, if just cause for termination is hard for the employer to prove.

**Discrimination**

It is unlawful to discriminate against employees on the grounds of gender, transgender identity, ethnic origin, religious belief, disability, sexual orientation, age, part-time and fixed-term status, participation in parental leave and trade union activity in relation to dismissal.

A discrimination claim can be brought by an employee, a contract worker, a trainee or a contract labourer. There is no minimum period of service required in order to bring a claim of discrimination. In 2009, Sweden implemented new legislation which introduced “discrimination compensation” (instead of damages) with the intention that higher compensation amounts be awarded.

**GROUP TERMINATIONS**

**Redundancies**

In a redundancy situation, the employer may not freely choose which employees to retain and which to dismiss as redundant. Instead, the Employment Protection Act regulates the order in which employees are to be selected for redundancy. The general principle is that the employee who was employed last has to go first when a business downsizes, provided that the remaining employees have the necessary skills for the remaining work.

The employee's position on the priority list is decided on the basis of his or her aggregate period of employment with the employer, including the length of service at other group companies. Where two employees have equal periods of employment, the age of the employees will decide their positions on the priority list.

An employer may not terminate employment where it is possible to transfer the employee to another position within the same production unit and collective agreement sector. Also, the employer must ascertain whether it is possible to assign the employee to another vacant position elsewhere in the company, i.e., within other production units or collective agreement sectors. Only if the employer is unable to find other duties for which the employee has sufficient skills can the employment be terminated.

A breach of the last-in-first-out principle does not affect the validity of the termination of employment as such, but the employee in question may be entitled to damages from the employer. It is also possible to deviate from this principle by way of agreement with the relevant trade unions or by individual agreements with the employees. To reach such an agreement, the company would normally offer severance pay to the affected employees, in addition to salary and benefits in respect of the notice period.

Where an employer intends to terminate the employment of five or more employees by reason of redundancy, it is required to notify the Swedish Public Employment Service (“Arbetsförmedlingen”).

An employer considering a reduction in its work force is also under a duty to initiate and finalize consultations with the relevant trade unions prior to making any decision on the matter. If the employer is bound by a collective agreement, the relevant trade unions will be the trade unions with which the employer has entered into collective agreements. If the employer is not bound by a collective agreement, the employer is obliged to consult with all trade unions that have members among the affected employees.

**Business transfer**

Where there is a transfer of a business or part of a business, the employment of employees is
automatically transferred to the buyer. The buyer assumes all of the seller's rights and obligations under the employment contracts (except age, disability and survivor's benefits). The buyer may also be obliged to assume rights and obligations under the seller's collective agreement(s). The employees of the transferred business may object to the transfer, in which case they remain with the seller. This also applies to a change in a service provider, provided that the change constitutes a transfer of an undertaking.
SWITZERLAND: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements and professional recruitment agencies.

Pre-employment references and background checks

Most employers make employment conditional upon the receipt of one to three satisfactory references, usually from former employers. Other background checks, such as criminal record checks and health exams, may be used only where relevant to the performance of the job.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of sex.

Itemized pay slips

Employers must give their employees itemized pay statements, on a monthly basis, specifying gross and net salary, and the amount and purpose of any deductions.

Health and safety

Employers are obliged to safeguard the health and safety of their employees and must make all necessary arrangements to do so. Employers must have insurance in place in respect of accidents both at and outside the workplace. Generally, employers are not obliged to obtain public liability insurance (with exceptions for certain professions, e.g., medical doctors, lawyers); however, this is strongly recommended.

Written contract of employment

There is no requirement for a contract of employment or contract for services to be in writing in order to be binding. However, most employers have written agreements in place. Where there is no written agreement, the employer must inform the employee in writing of the most important terms of employment such as salary, function and hours of work. This must be provided within one month of the employment commencing. Separate offer letters are rarely used.

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly in the contract of employment, the Swiss Code of Obligations sets out mandatory and default rules. These include the following:

- Employees have a duty to be ready and willing to work, to use reasonable care and skill, and to obey lawful and reasonable instructions;
- Both parties are bound by a mutual obligation of loyalty and good faith. For an employee, the duty of loyalty means, among other things, that he or she may not set up in direct competition with his or her employer, solicit customers while employed or use or disclose his or her employer’s, or its clients’, confidential information or trade secrets; and
- Employers have a duty to pay the employees for the work performed, to provide work (except in certain limited circumstances), and to safeguard the employees’ health and safety and personality.

Company rules

There is no requirement in Switzerland to have company rules, but these are common. Where an employer wishes to impose certain rules or restrictions, such as in relation to its employees’ use of the Internet or company telephone, it is helpful to include these within company rules or a staff handbook.

Data protection

An employer is restricted to processing and collecting employees’ personal data only to the extent such personal data concern recruiting potential employees or are necessary for the performance of the employment contract. Personal data must be processed lawfully and only for the purpose given at the time of collection; processing must be carried out in good faith and proportionately. An employee’s express consent is required for the processing of sensitive personal data.

STATUS

In Switzerland, organizations have the option of either an employing individuals or contracting independent contractors or consultants. Such independent persons may either be individuals who are self-employed, or legal entities which in turn employ individuals.
Typically, statutory protections are granted to employed individuals, whereas self-employed persons or independent contractors’ rights are limited to those contractually agreed between the parties.

**Employees**

Employers are more able, both during and after employment, to safeguard confidential company information and intellectual property, and to prevent former employees from setting up in competition or soliciting staff. However, when contracting with independent personnel such as consultants and contractors, it is usual to include such safeguards in the contract between the parties.

**Independent contractors or consultants**

Independent contractors or consultants are common in Switzerland. Engaging an individual as a self-employed person can be beneficial because (i) the relationship is governed by less stringent rules; and (ii) the self-employed person is responsible for making social security contributions, rather than the engaging entity. Swiss authorities, in particular social security authorities, scrutinize such arrangements and carefully investigate whether the contractual relationship is in fact a disguised employment relationship. If that is found to be the case, the engaging entity may be held liable for any unpaid social security contributions.

**Agency workers**

In the case of short-term demands, e.g., to cover absences or for very specialized jobs, employers may use temporary workers supplied by an employment agency. These workers have an employment contract with the agency, which is paid a fee for providing the manpower. Employment agencies commercially providing such services need a license to do so.

**PRACTICALITIES**

**Restrictions on overseas individuals working in Switzerland**

A Swiss business must ensure its employees have a valid residence and work permit prior to starting work in Switzerland. Gainfully employed nationals from the European Union or the European Free Trade Associates states can benefit from agreements regarding the free movement of persons and have, in principle, a right to such a permit. Only a limited number of management-level employees, specialists and other qualified employees are admitted from other countries.

It is an offense to employ an individual who is not entitled or permitted to work, carrying both civil and criminal sanctions. Penalties include fines of up to CHF 500,000 or imprisonment, and, in severe cases, both. If the offense is repeated, the maximum fine is doubled.

**Tax and social security contributions**

Swiss tax law is based on a system of self-declaration. A Swiss employer is only required to deduct income tax from the salary of employees who are not resident in Switzerland. The rate of tax payable varies from canton to canton (the member states that make up Switzerland) and depends on the level of income. However, where the employee is subject to the Swiss social security system, employers are required to deduct social security contributions from salary and to pay that to the appropriate insurance or fund on a monthly basis.

**Taxation of individuals working in Switzerland**

Swiss residents are liable for Swiss income tax on their worldwide income, and for Swiss wealth tax on their worldwide wealth. All benefits-in-kind derived from employment are likely to be subject to income tax, including share-option or incentive schemes associated with employment, although some exemptions might apply.

Private capital gains, e.g., those resulting from the sale of shares, are excluded from taxation. Capital gains resulting from the sale of Swiss real estate property are subject to a cantonal real estate capital gains tax but remain tax-free at a federal level.

Individuals working for an overseas company who are sent to Switzerland to work in its Swiss business operations will become tax residents and therefore subject to Swiss taxes after a stay of 30 days or more. However, most double tax treaties, if applicable, state in broad terms that Switzerland is only allowed to tax such employees if they stay 183 days or more in Switzerland.
THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th><strong>Probationary Period</strong></th>
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<tbody>
<tr>
<td>Probationary periods are very common. The statutory maximum length is three months. During the probationary period, the statutory notice period is seven days (although this can be modified or removed contractually).</td>
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<table>
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<tr>
<th><strong>Minimum Wage</strong></th>
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<tr>
<td>There is no statutory minimum wage, but collective bargaining agreements may set this.</td>
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<tr>
<th><strong>Non-pay Benefits</strong></th>
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<tbody>
<tr>
<td>Employers are required to make contributions to social security entitlements such as old-age and unemployment insurance, accident insurance and pension funds.</td>
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</tbody>
</table>

Other fringe benefits are not a legal requirement, but may include:
- Private health care
- Bonuses
- Share options
- Company cars
- Travel expenses

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<thead>
<tr>
<th><strong>Hours of Work</strong></th>
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<tbody>
<tr>
<td>Regular weekly working hours range between 40 and 42 hours. The statutory maximum is 45 hours per week for office staff, retail workers and employees in industrial enterprises. For other employees, the maximum is 50 hours per week. There is a daily rest entitlement of 11 hours. Typically, a five-day week applies and Sunday work is prohibited (unless an official license is held).</td>
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<thead>
<tr>
<th><strong>Holiday Entitlement</strong></th>
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<tbody>
<tr>
<td>Employees are entitled to a minimum of four weeks of paid annual leave. For employees under the age of 20, this is increased to five weeks.</td>
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<table>
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<tr>
<th><strong>Default Normal Retirement Age</strong></th>
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<tbody>
<tr>
<td>The statutory retirement age is 65 for males and 64 for females.</td>
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<tr>
<th><strong>Sick Pay Entitlement</strong></th>
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<tr>
<td>The length of statutory sick pay depends on the employee’s length of service. For the first year of service, statutory sick pay is payable for up to three weeks (provided the employee has been employed for at least three months); after 20 years of service, it is payable for up to six months.</td>
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<table>
<thead>
<tr>
<th><strong>Rate of Tax Payable by Employee</strong></th>
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<tbody>
<tr>
<td>Income tax is payable at three levels: federal, cantonal and communal. The tax rate is set on a sliding scale by each municipality, each canton and the Federation separately. There are large differences between the tax rates in each canton and no standard rate applies. Rates also depend on other factors, such as marital status. An average personal income tax rate for an employee might vary between 25 percent and 35 percent.</td>
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<tr>
<th><strong>Rates of Social Security Payments</strong></th>
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<tbody>
<tr>
<td>The following social security contribution rates apply: old age insurance at 8.4 percent; disability insurance at 1.4 percent; income compensation insurance at 0.5 percent; unemployment insurance at 2.2 percent (on salaries up to CHF126,000 (approximately €103,300)) and thereafter one percent. Employers and employees share the premiums equally.</td>
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<tr>
<th><strong>Maternity Benefits</strong></th>
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<tbody>
<tr>
<td>Employees who have been insured by old-age insurance for at least nine months before the birth, and who have worked for at least five of those nine months, are entitled to 14 weeks of maternity leave. Maternity pay amounts to 80 percent of the average salary earned before birth, capped at CHF196 (approximately €161) per day.</td>
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<tr>
<th><strong>Paternity Benefits</strong></th>
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<tbody>
<tr>
<td>There are no statutory paternity benefits. Paternity benefits, if granted at all, are on a voluntary basis. Typically, employers grant one to three paid days' leave.</td>
</tr>
</tbody>
</table>
### Flexible Working
There is no statutory right to make a request to work flexibly. Flexible working arrangements may be agreed between the parties on a contractual basis.

### Equal Opportunities
Employees are protected against discrimination on the grounds of sex, age, race, origin, language, social position, lifestyle, religious, philosophical or political beliefs, and physical or mental disability.

### Protected Employees
Protected employees include pregnant women, and young adults.

### Minimum Notice Period
The statutory notice period required from either party is (always at the end of a month) one month for employees with less than one year’s service, two months for employees with between two and nine years’ service, and three months thereafter. These notice periods may be varied by individual employment contracts or collective bargaining agreements but may not be reduced to less than one month. Shorter notice periods are permissible only during the first year of employment and if set out in a collective bargaining agreement.

### Collective Bargaining Agreements
Any applicable collective bargaining agreement must be referred to in the employment contract. About 600 collective bargaining agreements currently exist in Switzerland. In the public sector, collective bargaining agreements are very common. Authorities may extend the scope of collective bargaining agreements for an entire industry, even to non-members.

### Disciplinary Rules
As a general rule, the only statutory disciplinary sanctions that may be applied by an employer are an explicit warning or dismissal without notice. Neither measure needs to be set out in the employment contract. Employers may implement internal disciplinary rules within their company policies. Employees must be informed of those, if applicable. The enforcement of other sanctions is more common in the public sector.

### Grievances
There are no statutory rules regulating the grievance process. Employers may implement internal grievance procedures within their company policies.
SWITZERLAND: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

There are no statutory rules regulating disciplinary procedure or action. Unless an employer has specific company rules in place, the only measure that can be taken is dismissal and, in severe cases, dismissal without notice.

Employers may implement internal disciplinary rules within their company policies and include additional sanctions in those policies. The enforcement of other sanctions is more common in the public sector.

Grievances

There are no statutory rules regulating grievances. Employers may implement internal grievance procedures within their company policies. If they do not, employee grievances and complaints take place on an informal basis.

Consultation with employees

Employers are only required by law to consult with an employee representative body (or with the employees directly if there is no representative body) in cases where the employer is considering large-scale redundancies, or the transfer of a business. Company rules or an applicable collective bargaining agreement, however, may specify further obligations to consult.

INDIVIDUAL TERMINATIONS

The principle of “freedom to terminate” applies to the employment relationship. This means that either party can terminate the employment relationship without having to show that the termination is justified for a specific reason. However, upon request from an employee, the employer is obliged to provide an explanatory statement.

The only procedural requirement is to comply with the terms of the employment contract, or, if there is no contract in place, the statutory notice period. Provided the terms of the contract (including the applicable notice period) are observed, the employee will generally have no claim against the employer.

Otherwise, an employer can dismiss an employee without notice if it has a valid reason to do so. This may include circumstances in which the terminating party can, acting in good faith, no longer be expected to continue the relationship due to the conduct of the other party.

Claims

A termination may be wrongful with respect to its grounds, e.g., if it is discriminatory, or its manner, e.g., if it is particularly ruthless. In addition, a termination without notice requires a valid reason. Where there is no valid reason, the termination will be unjustified.

In the case of wrongful termination or unjustified termination without notice, the maximum legal indemnity that may be awarded to the employee is equivalent to six months’ salary. In the case of unjustified termination without notice, the employee may also be indemnified against the loss of salary and benefits the employee would have received during the notice period.

Claims for wrongful termination or unjustified termination without notice must be brought in the court. The employee forfeits his or her right to a claim for wrongful termination if he or she does not file, in writing, an objection with his or her employer during the notice period, and submit his or her claim to the court within 180 days of the termination.

In both cases, the termination will be valid, even if wrongful or unjustified. However, there are certain statutory periods during which a termination will be ineffective, e.g., where the employee is unable to work due to accident or illness, or a female employee is pregnant.

Redundancy payments

In the case of mass redundancies, employees are entitled to their statutory and contractual benefits until the end of the notice period. The law does not provide for additional payments, e.g., severance pay. It is common practice for employers to provide additional payments or other benefits, often in a social plan. The amount of the additional payments or other benefits granted is generally unique and subject to consultation between the parties.

Discrimination

It is unlawful to discriminate against employees on the grounds of sex, age, race, origin, language, social position, lifestyle, religious/philosophical/political beliefs, and
physical and mental disability in relation to dismissal.

GROUP TERMINATIONS

Redundancies
A mass redundancy is deemed to take place where notices of dismissal are given within a period of 30 days for reasons unrelated to the individual employees, and which affect:

- At least 10 employees in a business that generally employs between 21 and 99 employees;
- At least 10 percent of the employees in a business that generally employs between 100 and 299 employees; or
- At least 30 employees in a business that generally employs at least 300 employees.

An employer planning a mass redundancy must consult with the employees' representative body or, in the absence of a representative body, with the employees directly. The aim of the consultation is to avoid dismissals, or to find ways to limit the number of dismissals, and ways to mitigate their consequences.

As a minimum, the employer must provide, in writing, information on the reasons for the mass redundancy, the number of employees to be made redundant and the number of employees usually employed. The employer must also forward this information to the local cantonal labor office.

Following the consultation, the employer must notify, in writing, the same labor office about the conclusions of the consultation and all other pertinent information on the mass redundancy. The employer must also provide a copy of this notification to the employees’ representative body or the employees, as required. The labor office may seek solutions to the problems created by the redundancies.

By law, the employer is not obliged to come to an agreement with the employees; the employees’ proposals or suggestions are non-binding. Failure to carry out adequate consultation, however, may result in a claim for a maximum indemnity equivalent to two months of the employee’s salary. An exception applies if the employer usually employs 250 employees and intends to terminate at least 30 employees within 30 days for reasons not pertaining personally to the employees. In such cases, the employer is compelled to negotiate a redundancy program. In the event that the employer and its employees, or their representatives, cannot reach an agreement on the redundancy plan, an arbitration tribunal may be appointed to set up a redundancy plan.

Business transfer
Where there is a transfer of a business or part of a business, the employment contract of any transferring employee transfers automatically by operation of law, unless an employee rejects the transfer. Both the transferor (normally the seller) and the transferee (normally the buyer) will be jointly and severally liable for any employment claims or liabilities (other than in cases of insolvency).

A collective employment contract will continue to apply for one year following such a transfer, unless it expires or is terminated sooner.

The transferor must inform the employees’ representative body (or where there is none, the employees directly) of the transfer in due time prior to the transfer taking place. The transferor and transferee must each consult with their employees (or a representative body) where the employees may be impacted by the transfer, e.g., where there are proposed dismissals or salary reductions as a result.
UK: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements and professional recruitment agencies.

Pre-employment references and background checks

Most employers make employment conditional on the receipt of two satisfactory references from a candidate. Medical references, criminal record checks and psychological testing may form part of the recruitment process.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate, on the basis of race, color, nationality, ethnic or national origin, disability, age, sex, sexual orientation, gender reassignment, marriage or civil partnership status, pregnancy or maternity, religion or belief, or trade union activities or membership; nor may an employer take account of criminal offenses which are “spent” under the Rehabilitation of Offenders Act 1974.

Itemized pay slips

Employers must give their employees itemized pay statements specifying gross and net salary, and the amount and purpose of any deductions (e.g., income tax and national insurance contributions).

Health and safety

Employers are obliged to safeguard the health and safety of their employees, visitors to their premises and the public. The obligations are extensive. They include the duty to carry out a risk assessment, prepare a written health and safety policy, and report accidents. Employers are also obliged to obtain employers’ liability insurance with coverage of at least £5,000,000.

Written contract of employment

There is no requirement that a contract of employment or contract for services be in writing. However, no later than two months after the commencement of an employee’s employment, an employer is obliged to give the employee a written statement setting out certain specified terms. The statement must include details such as entitlements to pay, working hours, holidays, sick pay and notice period. The statement must also specify any disciplinary rules or procedures applicable to the employee, and to whom the employee can raise any workplace grievance. Typically, a UK employer will send the employee an offer letter and follow up with a contract of employment. It is also common for a more senior UK employee to be given a service agreement, which has more detailed provisions.

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly in the contract of employment, common law also implies certain additional terms into every employment relationship. These include the following:

- Employees have a duty to be ready and willing to work, to use reasonable care and skill, and to obey lawful and reasonable instructions;
- Both parties are bound by a mutual obligation of loyalty and good faith. For an employee, this means that he or she cannot set up business in direct competition with his or her employer, solicit customers while employed or use or disclose his or her employer’s, or its clients’, confidential information or trade secrets; and
- Employers have a duty to pay the employee and (in some cases) provide work, and to take care of the employee’s health and safety.

Company rules

Save for any health and safety requirements, there is no requirement in the UK to have company rules, but these are common.

Data protection

An employer has duties under the Data Protection Act 1998 in respect of the personal data and sensitive personal data of its current and former applicants, employees, workers, contractors, consultants and agency staff. These duties mean an employer must fairly and lawfully process data; process them only for limited purposes; and ensure they are adequate, relevant, not excessive, accurate, up to date, not kept for longer than necessary, processed in line with the data subject’s rights, kept secure, and not transferred to other
countries that do not have adequate protection.

**STATUS**

A key consideration for any business setting up in the UK is how to staff its operation. In the UK, a business has many options in respect of the status of the individual. It can employ employees under a contract of employment, contract with workers under a contract for services, or engage self-employed individuals such as independent contractors or consultants. The status of the individual dictates the level of statutory protections he or she is entitled to receive and his or her rights.

**Employees**

An employment relationship gives the employer a greater ability both during and after the employment to protect company confidential information and intellectual property, and to prevent a former employee setting up in competition or poaching other staff.

**Workers**

A UK business may also use workers. A worker is someone who undertakes to do the work personally and often contracts directly with the business. Although the business is responsible for deducting income tax and national insurance contributions (NICs) via the Pay As You Earn system (PAYE) and paying employers' NICs in respect of the individual, the worker has fewer statutory rights and protections in relation to pay and benefits during absence, time off and termination.

**Independent contractors or consultants**

There are significant legal and administrative advantages to using self-employed persons. For example, the engagement of a contractor or consultant is governed by the terms of the services or consultancy agreement; he or she has few statutory protections or rights; his or her remuneration will generally be paid gross without deduction of tax; and there is no liability on the engaging party to pay NICs. As a result, these types of arrangements are often scrutinized by the UK tax authority, HM Revenue and Customs (HMRC), and can be subject to challenge in the employment tribunal.

**Employee shareholders**

An employee shareholder is an employee who gives up his or her right to certain statutory employment protections in exchange for at least £2,000 worth of shares in his or her employer (or his or her employer’s parent company). The most significant of the protections to be waived by the employee is the right not to be unfairly dismissed (with some exceptions) and to receive a statutory redundancy payment. There are tax benefits associated with the grant of shares; in particular, the grant will not give rise to liability for income tax or national insurance contributions and the employee benefits from a capital gains exemption on disposal of the shares (for shares worth up to £50,000 on acquisition). This is a new status which took effect from September 1, 2013.

**Agency workers**

If the business has short-term demands or needs to cover absences, it can use temporary workers from an employment agency. These workers are generally the employees or workers of the agency, to whom a fee is paid for providing the manpower plus any applicable VAT. Under the Agency Worker Regulations 2010, temporary agency workers are afforded equal treatment in respect of certain employment and working conditions as they would have enjoyed if they had been recruited directly by the agency’s end user client.

**PRACTICALITIES**

**Restrictions on overseas individuals working in the UK**

A UK business must ensure its staff has permission to work in the UK, or it could be liable for civil and criminal sanctions. British citizens, those with the right of abode, those with indefinite leave to remain, nationals of the European Economic Area (EEA), Swiss citizens, certain commonwealth nationals, and spouses of British citizens, EEA nationals and Swiss nationals do not need permission to work in the UK (although some may need to register or obtain approval before doing so). Other individuals need permission to work in the UK under the government’s points-based system (PBS).

It is an offense to employ someone who is not entitled or permitted to work in the UK, and committing the offense can lead to a civil penalty of up to £10,000 (doubled to £20,000
from May 16, 2014) per instance of illegal employment. To avoid liability and obtain a statutory defense the business must carry out certain identity checks before the individual starts work. This includes requesting verification of certain original documents, and taking and retaining copies of the same.

**Tax and national insurance contributions**

If an organization has employees in the UK, it is responsible for working out the income tax deductions and national insurance contributions (social security contributions) that need to be paid on each employee’s wages or salary, and paying them over to HMRC. Income tax is accounted for via PAYE.

The 2014/2015 rates of income tax are as follows:

<table>
<thead>
<tr>
<th>Income Amount</th>
<th>Rate of Tax Applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0 - £10,000</td>
<td>0 percent*</td>
</tr>
<tr>
<td>£10,001 - £41,865</td>
<td>20 percent</td>
</tr>
<tr>
<td>£41,866 - £150,000</td>
<td>40 percent</td>
</tr>
<tr>
<td>Over £150,000</td>
<td>45 percent</td>
</tr>
</tbody>
</table>

*The zero percent rate is not available to certain higher-rate tax payers, in which case income within that band would be taxed at 20 percent.

In addition to income tax on salary and wages, income tax in relation to benefits-in-kind, such as cars, fuel, low-interest loans and medical insurance must also be paid. NICs are payable by the employees (at the rate of 12 percent up to a cap, then two percent) and the employer alike (at the rate of 13.8 percent). Employer’s NICs cannot be deducted from the employee’s salary, as they are an employer’s cost.

All payments of PAYE are payable to HMRC either by direct debit on a monthly basis or, where an employer will pay less than £1,500 a month to HMRC, it may request to make payments on a quarterly basis. PAYE may be applied using the PAYE real-time payment system. The PAYE coding system is complicated and requires special computer software; therefore, it is normal practice for firms with a small number of employees to appoint a payroll agent. The agent will take care of the necessary form filling and calculations.

PAYE is due on the 22nd of each month, or quarterly, following the end of the tax month/quarter. HMRC strongly recommends making payments via electronic methods of direct debit or using Bill Pay.

**Taxation of individuals working in the UK**

In order to determine if a person is resident in the UK, the Statutory Residence Test (SRT) must be applied. The SRT has three parts: the automatic-residence test, the sufficient-ties test, and the automatic-overseas test. Essentially: (i) if any of the automatic-overseas tests are satisfied, that would be sufficient to make an individual not resident; (ii) if an individual satisfies any of the automatic-residence tests, but none of the automatic-overseas tests, that would itself be sufficient to make an individual resident; and (iii) if none of the automatic-residence tests and none of the automatic-overseas tests are satisfied, then the sufficient-ties test is to be used and taken together, may make an individual a UK resident.

The automatic tests turn on the application of four factors: (i) physical presence in the UK; (ii) having a home in the UK; (iii) full-time work either in the UK or overseas; and (iv) death in a tax year. Under the sufficient-ties test, an individual will be resident according to a scale of the number of days spent in a tax year in conjunction with five connecting factors: a family tie; an accommodation tie; a work tie; a 90-day tie; and a country tie.

If a person is a UK resident (under the SRT) and he or she is domiciled in the UK, such a person is taxed on an “arising basis” (meaning that tax is paid on income/capital gains in the tax year they arise) on both his or her UK income and capital gains and his or her foreign income and capital gains. If a person is not domiciled in the UK but is resident in the UK (under the SRT) and such person has foreign income, that person is taxed on his or her UK income and capital gains, as well as his or her foreign income and capital gains. In this scenario, the person can choose to pay the tax on his or her foreign income and capital gains using the “remittance basis” (meaning that tax is paid when the income/capital gains are brought into the UK) or on all of his or her worldwide income.
THE EMPLOYMENT CONTRACT
Overview of key terms and legal requirements:

<table>
<thead>
<tr>
<th>Probationary Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probationary periods are quite common. They do not have a maximum length, but typically last three to six months.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum Wage</th>
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</thead>
<tbody>
<tr>
<td>National minimum wage from October 1, 2013, is £6.31 per hour for workers aged 21 and above; £5.03 per hour for workers aged 18–20; £3.72 for workers aged 16–17; and £2.68 for apprentices. It is expected that these rates will increase from October 1, 2014, to £6.51, £5.13, £3.79 and £2.73, respectively.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-pay benefits</th>
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</thead>
<tbody>
<tr>
<td>Fringe benefits are not a legal requirement, but they are common and may include:</td>
</tr>
<tr>
<td>• Private health care</td>
</tr>
<tr>
<td>• Permanent health insurance</td>
</tr>
<tr>
<td>• Death-in-service benefit</td>
</tr>
<tr>
<td>• Company cars</td>
</tr>
<tr>
<td>• Pension contributions</td>
</tr>
<tr>
<td>• Bonuses</td>
</tr>
<tr>
<td>• Share options</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hours of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is a 48-hour average maximum working week, but employees have the ability to agree to opt-out of the maximum (subject to conditions). There is a daily rest entitlement of 11 hours, and a weekly rest entitlement of 24 hours.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Holiday Entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees are entitled to a minimum of 5.6 weeks of paid annual leave (inclusive of public holidays). There are normally eight public holidays per year.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Default Normal Retirement Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no default compulsory retirement age. However, employers can retain a compulsory retirement age if they are able to objectively justify doing so, i.e., show that doing so is a proportionate means of achieving a legitimate aim.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sick Pay Entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no requirement for employers to pay company sick pay, although many do so. Statutory sick pay is payable for up to 28 weeks (subject to a current maximum of £86.70 per week). There will be no payment during the first three days of illness.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate of Tax Payable by Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is a sliding scale of tax payable at 20 percent, 40 percent and 45 percent.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rates of Social Security Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers’ national insurance contribution rates are 13.8 percent. Employees’ national insurance contribution rates are 12 percent on earnings between £146 to £817 a week, plus 2 percent on earnings higher than £817 per week.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Maternity Benefits</th>
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</thead>
<tbody>
<tr>
<td>There are 52 weeks’ maternity leave for all employees; no length-of-service conditions apply. Maternity pay is payable at 90 percent of normal pay for the first six weeks and at the prescribed rate (currently £136.78 per week) or 90 percent of normal pay, if lower, for the next 33 weeks. Expectant mothers are also entitled to time off work to attend antenatal appointments.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Paternity Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are two weeks of paternity leave for employees who meet length-of-service conditions. Paternity pay is set at the prescribed rate (currently £136.78 per week) or 90 percent of normal pay, if lower, for two weeks.</td>
</tr>
</tbody>
</table>

For parents of babies born on or after April 3, 2011, up to 26 weeks’ additional paternity leave may be granted before the child’s first birthday (subject to service conditions and the mother returning to work from maternity leave). Additional paternity pay may be granted at the prescribed rate (currently £136.78 per week or 90 percent of
normal pay, if lower) for up to 26 weeks (subject to the mother's remaining entitlement to statutory maternity pay).

From October 1, 2014, fathers and partners will be entitled to time off work to attend up to two antenatal appointments with the mother.

**Flexible Working**

Employees have the right to make a request to work flexibly. This is currently limited to parents and carers. However, from June 30, 2014, the right to request flexible working will be extended to all employees.

**Equal Opportunities**

Employees are protected against discrimination on the grounds of race, religion and belief, sex, sexual orientation, gender reassignment, marital and civil partnership status, pregnancy and maternity, disability and age.

**Protected Employees**

Protected employees include trade union officials, trade union members (in certain circumstances), health and safety officials, pregnant women, those on maternity, paternity or adoption leave, those working part-time or on a fixed-term contract and those dismissed in connection with exercising a statutory right.

**Minimum Notice Period**

The minimum periods of notice to be provided by employers are one week’s notice for employees with more than one month’s and less than two years' service; and one week’s notice for each complete year of service for employees with more than two years' service, up to a maximum of 12 weeks’ notice. Individual contracts can provide for longer periods of notice.

The minimum period of notice to be provided by employees is one week. Individual contracts can provide for longer periods of notice.

**Collective Agreements**

Any applicable collective agreement must be referred to in the employment contract. Collective agreements are generally limited to public-sector or former public-sector businesses, or those that recognize a trade union.

**Disciplinary Rules**

The employee must be told of any applicable disciplinary rules, and to whom he or she can appeal in respect of disciplinary decisions.

**Grievances**

An employee must be told with whom to seek redress of any grievance relating to his or her employment, and the procedure he or she must follow.
UK: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

If an issue cannot be resolved informally and an employer is contemplating taking disciplinary action or dismissing an employee, then it must follow an appropriate and fair procedure before deciding on disciplinary sanctions or dismissal. In cases of misconduct or poor performance, the employer must comply with the Advisory, Conciliation and Arbitration Service Code of Practice on Disciplinary and Grievance Procedures (the “ACAS Code”). Unreasonable failure to follow the ACAS Code may result in a finding of unfair dismissal, and the tribunal may increase any award by up to 25 percent. The ACAS Code applies only to employees. A fair procedure under the ACAS Code will usually include informing the employee of the reason for the potential action, holding a meeting before a decision is reached and offering the employee the right to appeal. Employees also have a statutory right to be accompanied at any formal disciplinary, dismissal or appeal meeting.

Grievances

An employee may exercise his or her statutory right to raise a complaint about his or her treatment at any time during the course of his or her employment. The ACAS Code will apply to most grievances commonly brought by employees. The employer must follow the procedure, even if the grievance is raised during the dismissal process. Unreasonable failure to follow the ACAS Code may result in the employment tribunal increasing any subsequent award for unfair dismissal by up to 25 percent.

Consultation with employees

Prior to making the decision to dismiss, employers may be required to inform and consult with employees, employee representatives or a recognized trade union. For example, it may be necessary where there is: a business transfer; individual redundancy situations; large-scale redundancy situations; the presence of a European Works Council; an information and consultation agreement; health and safety issues; certain changes to pension schemes; or a takeover.

INDIVIDUAL TERMINATIONS

If an employee or worker is dismissed, or the engagement with a self-employed contractor is terminated, he or she will generally have no claim against the business as long as the employer or engaging entity has observed the terms of the contract (including in respect of applicable notice periods). Therefore, the employer will be under an obligation to give the employee notice of termination in accordance with the minimum period set by statute, or the individual’s contract of employment if the notice period is longer. If the individual is an employee, the employer must also have fair grounds for dismissal, and it must have followed a fair dismissal procedure. It is common in the UK for an employer to have the ability under an employment contract to make a payment in lieu of salary and/or benefits for the duration of the notice period.

Contractual claim: wrongful dismissal

A wrongful dismissal claim is a contract-based claim. It takes place where an employer terminates the employment of its employee in breach of its contractual obligations. An employer may only terminate an employment contract without giving proper notice where it has a contractual entitlement to do so, or if the employee commits gross misconduct.

An employee may bring a claim of constructive dismissal, which is a form of wrongful dismissal, if the employer has committed a repudiatory breach of contract that the employee accepts. A unilateral change to terms and conditions, particularly relating to pay, will usually amount to a repudiatory breach of contract. If the employer commits a breach, the employee is entitled to resign in response; he or she does not have to work out his or her notice period. In addition, he or she may also be able to bring a constructive unfair dismissal claim, which is a statutory claim.

Claims for wrongful dismissal can be brought either in the courts or the employment tribunal. There is no maximum award in the courts, but an employment tribunal may only award up to £25,000. The amount of damages is usually the loss of salary and benefits the employee would have received had he or she worked out his or her notice period.
Statutory claim: unfair dismissal

Any employee may be entitled to bring a statutory claim for unfair dismissal if his or her employment is terminated without a potentially fair reason or if his or her employer fails to follow the correct procedure, provided that he or she has two years’ continuous employment. Any statutory claim for unfair dismissal will be in addition to any claim for wrongful dismissal. To defend a claim of unfair dismissal, an employer must be able to prove that the reason for the dismissal was one of the five prescribed “potentially fair reasons” for dismissal, and that it acted reasonably in all the circumstances of the case.

Certain dismissals will be automatically unfair. These include dismissals relating to pregnancy, health and safety, trade union membership, the making of a protected disclosure (whistleblowing) or asserting a statutory right. In some circumstances, special awards also apply. Generally, there is no minimum qualifying period of continuous employment needed to bring a claim of automatically unfair dismissal.

An employee who alleges that he or she has been unfairly dismissed must generally bring a claim at the employment tribunal within three months of dismissal.

If a complaint for unfair dismissal succeeds, the employment tribunal may make a declaration, an award of compensation or an order requiring the employer to take action. A basic award is calculated using a formula based on the employee’s length of service, age and weekly pay (which for this purpose is capped, from April 6, 2014, at £464 per week). The maximum basic award is capped at £13,920 (as of April 6, 2014). The maximum compensatory award is capped at £76,574 (as of April 6, 2014). In very rare cases, the employment tribunal may make an order for reinstatement or re-engagement. If the order is not complied with, then it can award additional compensation.

Redundancy payments

The dismissal of an employee by reason of redundancy is one of the prescribed “potentially fair reasons” for dismissal. An employee’s dismissal is due to redundancy where it is wholly or mainly because of his or her employer ceasing or intending to cease carrying on a business, either altogether or simply at the location where the employee works. It may also be due to a reduction or an expected reduction in the employer’s requirements for employees to do work of a particular kind.

An employee dismissed by reason of redundancy who has two complete years of continuous employment with his or her employer will be entitled to a statutory redundancy payment. A claim for such a payment must generally be brought at the employment tribunal within six months of the date of dismissal. The level of statutory redundancy pay is calculated by using a formula based on the employee’s length of service, age and weekly pay (which for this purpose is capped, from April 6, 2014, at £464 per week). The current maximum statutory redundancy payment is £13,920 (as of April 6, 2014). A statutory redundancy payment can be paid free of deductions for income tax and NICs. Any entitlement to a statutory redundancy payment is in addition to an employee’s contractual and/or statutory right to notice of termination or a payment in lieu of notice. Some UK employers also offer enhanced redundancy or severance payments which exceed the statutory redundancy payment.

Discrimination

It is unlawful to discriminate against employees on the grounds of sex, marital or civil partnership status, gender reassignment, race, color, nationality, ethnic or national origin, disability, sexual orientation, religion or belief, or trade union activities/membership in relation to the taking of disciplinary action or dismissal. A discrimination claim can be brought by an employee, a contract worker employed by another party, a partner or an office holder in the employment tribunal. A claimant does not need to have had a period of continuous service in order to bring such a claim, and there are no limits on compensation awarded.

GROUP TERMINATIONS

Redundancies

A large-scale reorganization, a closure of part of a business or closure of an entire business is likely to result in a redundancy situation. Where there is a proposal to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer will have a duty to carry out a collective consultation process at least 30 days before the first dismissal is due to take effect. Where 100 or more redundancies are proposed within a 90-day period, the collective
consultation process must begin at least 45 days before the first dismissal takes effect. (Please note that the question of whether the minimum thresholds must be met within one establishment of the employer rather than from the workforce as a whole is currently the subject of a referral to the European Courts of Justice.) The employer will also have an obligation to notify the Department for Business, Innovation and Skills (BIS) of the proposed redundancies before any notices of dismissal are given, and at least 30 days (or, if 100 or more dismissals are proposed within a 90-day period, 45 days) before the first dismissal is to take effect. Failure to comply with this notification requirement is a criminal offense.

The information and consultation process may involve the election of representatives, or information and consultation with the recognized trade union.

Failure to carry out adequate consultation may result in a claim for a “protective pay award” of up to 90 days’ uncapped pay per affected employee.

If the employer is proposing to change the terms and conditions of 20 or more of its employees by dismissing and re-engaging them, the dismissals will be treated as redundancies for collective consultation purposes. The employer must notify BIS and comply with the collective consultation obligations for redundancy.

**Business transfer**

An asset sale or a change in service provider may be deemed a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006. The contract of employment of any transferring employee does not come to an end. It transfers automatically by operation of law. The transferee (i.e., buyer or new service provider) and transferor (i.e., seller or old service provider) must inform and/or consult representatives of any of their own employees who will be affected by the transfer. This obligation arises regardless of the number of affected employees.

Failure to carry out adequate consultation may result in a claim for a “protective pay award” of up to 13 weeks’ uncapped pay per affected employee.
LEGAL DISCLAIMER

The contents of this Guide are for information purposes and provide an overview only. This Guide does not provide legal information on all issues relating to the hiring and firing of employees in Europe and is current as at April 1, 2014 only. Although we hope and believe that the Guide will be helpful as background material, we cannot warrant that it is accurate or complete, particularly as circumstances change after publication. Moreover, the Guide is general in nature and may not apply to particular factual or legal circumstances. This Guide is intended to convey only general information; therefore it may not be applicable in all situations and should not be relied or acted upon as legal advice. Readers seeking to act upon any of the information contained in this Guide are urged to seek individual advice from legal counsel in relation to their specific circumstances.

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