



Employment Law Overviews from around the Globe: A Comparative Analysis

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Executive Summary

Overview of Employment Law in Different Jurisdictions

Australia: Employment law sources are Federal, State and Territory based. Workers can be employed on a casual or permanent basis as employees or engaged as independent contractors or on a self-employed basis. There are extensive grounds prohibiting discrimination in the workplace, the maximum working week is 38 hours and there are significant protective leave arrangements for parents. Where an employee has been terminated, there is a very short time frame of 21 days from the date of termination to lodge a claim. From an industrial relations perspective, there is a right to join a trade union. In 2014, the Australian Bureau of Statistics stated that, trade union membership has decreased from approximately 40% to 15% of the workforce over the last two decades.

United Kingdom: Employment law sources are based on statute, European law and common law. Workers can be employed on a casual or permanent basis or engaged as independent contractors or on a self-employed basis. There are extensive grounds prohibiting discrimination in the workplace. The maximum working week is 48 hours although, workers may opt out of the 48-hour limit. There are significant protective leave arrangements for parents. The UK has generous maternity leave rights affording employees with 52 weeks maternity leave (26 ordinary maternity leave, and 26 weeks additional maternity leave). Employees have a right not to be unfairly dismissed provided they have been employed for the qualifying period of 2 years and may be awarded compensation which is capped, or reinstatement if their claim is upheld. A claim for unfair dismissal must be lodged within 3 months from the date of termination of employment. Workers have a right to join a trade union and can apply to be recognised for collective bargaining purposes by applying to the Central Arbitration Committee.

France: Employment law sources are based on the French Constitution, French Labour Code, international treaties, European law, Collective Bargaining Agreements and case law. Workers can be employed as an employee or engaged as an independent contractor or on a self-employed basis. There are extensive grounds of discrimination and the time limit for lodging a complaint is generous up to 5 years. The normal working week is 35 hours per week with a maximum of 45 hours in one week or an average of 44 hours over 12 weeks. Maternity leave is 16 weeks. In relation to unfair dismissal, the termination must be based on real and serious cause, which can be individual or economic. Recent reforms have introduced a cap on compensation, which means there is a cap on wrongful dismissal and has resulted in a decrease in claims. In terms of industrial relations, only 10% of employees are a member of a trade union. Unions have until recently enjoyed a lot of power as they had the monopoly for collective bargaining, which has changed since reforms were introduced in 2017.

Germany: Employment law sources are based on Statute, Regulations, European law, Collective Bargaining Agreements and individual contracts/agreements.

Workers can be employed on a casual or permanent basis as employees or engaged as independent contractors or on a self-employed basis. There are extensive grounds prohibiting discrimination in the workplace. In terms of working hours, the daily working time may not exceed 8 hours per day although this may be extended up to 10 hours per day if an average of 8 hours per day is worked over a 6 months or 24 weeks. Employees have a right not to be unfairly dismissed provided they have been employed for the qualifying period of 6 months and may take a claim and seek compensation for unfair dismissal. Employees are entitled to 18 weeks maternity leave which is fully paid by health insurance and the employer. Work Councils are common in German workplaces and there are Collective Bargaining Agreements that set out typical working conditions such as working hours, holidays and notice period.

Ireland: Irish employment law is based on the Irish Constitution, Statute, European law and common law. Workers can be employed on a casual or permanent basis as employees or engaged as independent contractors or on a self-employed basis. There are extensive grounds prohibiting discrimination and compensation can be significant, up to 2 years gross remuneration with potentially unlimited damages in the civil courts for gender discrimination claims. Protection for discrimination applies from day one of employment. However, only employees with at least 12 months service are protected against being unfairly dismissed. Compensation for unfair dismissal can be significant, up to two years gross remuneration and or reinstatement or re-engagement can be ordered if the Claim is successful. There are also circumstances where an employee can apply to the court for an injunction restraining a termination of their employment if their constitutional right to a fair hearing has been infringed. The maximum working hours is 48 hours per week. Employees in Ireland are entitled to 26 weeks maternity leave, which is payable by the state or employer and an additional 16 weeks unpaid leave. Industrial relations tends to be voluntary. While there is a right to join a trade union there is no right to collective bargain, although, there is relatively new law which enables the court to issue binding recommendations for a trade dispute. Union density is in and around 30% of all workers and is more prevalent in the public sector.

Italy: Employment law sources are based on international treaties, Italian Constitution, Italian Civil Code, Collective Agreements and European Law. Workers can be employed as an employee or engaged as an independent contractor or on a self-employed basis. There are extensive grounds of discrimination with generous time limits in which to make a claim. In Italy, the normal working time is 40 hours per week and the standard Maternity leave is from 2 months before birth and up to 3 months after the birth. In terms of an unfair dismissal claim, the amount of compensation is dependent on the size of the company and when the dismissal occurred. Employees have the right to join a trade union. Collective Agreements may apply if an employer is a signatory to the agreement and there is legislation requiring employers to consult with a union in certain circumstances, such as where there is a transfer of business or collective dismissal.

Netherlands: Employment law sources are based on the Dutch Civil Code, European legislation, Collective Bargaining Agreements and common law.

Workers can be employed as an employee or engaged as an independent contractor or on a self-employed basis. There are extensive grounds of discrimination with lengthy time limits for which to submit a claim. The normal weekly working hours for full time employees in the Netherlands are between 36-40 hours per week or 7-8 hours per day 5 days a week. In terms of maternity leave employees are entitled to a least 6 weeks leave before giving birth and at least 10 weeks of maternity leave after. The Dutch Civil Code sets out the procedure for terminating an employee that must be adhered to depending on the reason for the termination. In the event of an unlawful dismissal, the employee can ask the court to annul the dismissal or to award compensation/reinstatement. 18% of employees in the Netherlands are union members and the prevalence of collective bargaining is high.

Peoples Republic of China: Employment law sources are based on the Constitution of the Peoples Republic of China, national laws and regulations. Worker status is confined to employees, who can be employed on a full-time or part-time basis. Full time employees can be on an open-ended contract, fixed term or project based. There are prohibited grounds of discrimination in respect of which workers cannot be discriminated against with a significant time limit within which to submit a complaint. In China, workers work for no more than 8 hours per day and no more that 40 hours per week. In relation to maternity leave, female employees can take 98 days to include 15 days leave before the child birth. There are specific grounds when an employee can be terminated but in the case of an unlawful dismissal, an employee can seek to be reinstated and compensation for back pay. If the employee is not seeking to be reinstated, punitive damages can be awarded against an employer, which must be paid at the rate of twice the severance pay. The All-China Federation of Trade Union and its trade union organisations are entitled to act on behalf of the interest of the employees and protect employees' legal rights.

Portugal: Employment law sources are based on the Constitution and Labour Code, together with Collective Bargaining Arrangements and individual arrangements. Workers can be employed as an employee or engaged as an independent contractor or on a self-employed basis. There are very extensive grounds for discrimination. The standard working hours must not exceed 8 hours a day and 40 hours per week. In terms of parental leave both the mother and father of the child are entitled to an initial parental leave of 120 or 150 consecutive days from the birth of their child, which may be shared following childbirth. It is mandatory for the mother to take 6 weeks of leave following the birth. There are provisions for unfair dismissals under Portuguese law once the trial period of employment is passed. A termination can only occur for specific reasons. If the termination is unlawful compensation can be awarded. Employees have 60 days from the date of termination in which to submit a complaint of unfair dismissal or 6 months for a collective dismissal. The Portuguese Constitution recognises the right for workers to join and form trade unions. Employees also have the right to take industrial action and set up work councils also known as workers committees and sub committees.

Spain: Employment law sources are based on the Constitution, international treaties, national law, Collective Bargaining, national regulation, case law and

individual employment contracts. Workers can be employed as an employee or engaged as an independent contractor or on a self-employed basis. There are extensive grounds for discrimination and a very tight time limit of 20 days in which to submit a complaint. Maximum legal working time is 40 hours per week. Employees are eligible to take 16 weeks paid by social security for maternity leave with the option to transfer the maternity leave to the father. The decision to terminate an employee in Spain specifies several key requirements before a termination can occur. For example, there are many collective bargaining agreements that establish an obligation to communicate any dismissal to a work council. Compensation for an unfair dismissal can depend on the length of service of an employee. In Spain there is a right to join a trade union and a right to collectively bargain.

Switzerland: Employment law sources depend on the Federal Constitution of the Swiss Confederation, Statute, international treaties, regulations and collective labour agreements. Workers can be employed as an employee or engaged as an independent contractor or on a self-employed basis. There are extensive grounds of discrimination and it is unfair to terminate an employee for a discriminatory reason. The normal working week is 45 hours per week for white collar workers and employees in the industrial trade. For other workers, 50 hours is the maximum working hours, anything above 45 or 50 must be paid. There is 14 weeks maternity leave, the majority of which may be paid up to 80% of salary provided certain conditions are met. Unlike other countries there is freedom to terminate without reason. There is protection against pregnancy related dismissals. The right to join a trade union is a constitutional right, there is no obligation to join a trade union. Both employer and employee enjoy the right to collectively bargain. Industrial disputes are extremely rare in Switzerland because many collective bargains entail provisions that oblige the contracting parties to work out disputes peacefully. Switzerland has a long history of social partnerships which means that disputes or differences in opinion between the so-called social partners of the labour market can be solved in a peaceful manner.

AUSTRALIA

Employment Law Sources

In Australia the Sources of Employment Law are Federal, state and territory-based statutes and regulations together with Industrial instruments, such as modern awards or enterprise agreements and Common Law

Enforcement:

The Fair Work Commission (FWC) has responsibility for setting minimum wages for employees, determining the conditions under modern awards, facilitating good faith bargaining and the making and approval of enterprise agreements. In addition, it has jurisdiction to grant remedies for unfair dismissals and in limited circumstances some breaches of the general protections. The Federal Court of Australia and the Federal Circuit Court of Australia have jurisdiction regarding civil and criminal matters brought under the FW Act. The Federal Circuit Court also has a small claims jurisdiction. Appeals can be made to Federal Court and the High Court.

The Fair Work Ombudsman (FWO) has the power to prosecute matters such as underpayments. Common law remedies sought are through civil jurisdictions

Fees and Costs:

Generally, proceedings are 'no cost' and parties must bear their own costs of the proceedings (except for federal discrimination claims if proceed to Federal Court from federal human rights agency). There are Modest fees to make applications to the FWC with varying practices for discrimination tribunals.

The Fees for commencing a claim in the Small Claims Division of the Federal Circuit Court for underpayment claims varies depending on quantum of underpayment: if less than \$10,000 underpayment the fee is \$215, if underpayment is between \$10,000-\$20,000 the fee is \$355.

Mediation

The FWC and human rights agencies offer conciliation / mediation services. FWO provides assisted voluntary resolution. Once the matter has been escalated to federal court system parties may be offered or request mediation services.

Worker Status

Status:

Casual or permanent employment, Self-employed/independent contractor

Test:

- Casual employees: casual employees have no guarantee of continued employment and are engaged under a series of short contracts. Based on whether the relationship is one of a true casual nature or if it is regular and systematic employment therefore giving rise to protections associated with permanent employment.
- Self-employed/independent contractors: A common law multi-indicia test looks to the totality of the relationship as to whether the individual is employed or self-

employed/contractor status.

Consequences of Status:

- Employees can utilise protections found within statutes, regulations, applicable industrial instruments and at common law.
- Self-employed/independent contractors can utilise only very limited protections found within the same statutes.

Penalties apply to employers found to have knowingly misrepresented employment as an independent contractor arrangement.

Equality

Prohibited grounds of discrimination:

Prohibited discrimination grounds are derived from various federal, state and territory anti-discrimination legislation and are not uniform. Common grounds include. Race, sex, sexual orientation, gender identity, marital/relationship status, age, impairment/disability, religious belief or activity, industrial/ union activity, parental status or carer/family responsibilities, breastfeeding, political beliefs or an associate or relation of a person with a protected discrimination trait. Discrimination is further protected from under the federal Fair Work Act – General protections provisions.

Legal remedies:

Remedies under the federal, state and territory anti-discrimination legislation include, declarations, compensatory damages, injunctions, variations of contract, apologies and Retractions

Remedies under the Fair Work Act if an unlawful dismissal/general protections claim is made include Reinstatement and Payment of compensation and/or lost remuneration and the continuity of service re-established.

Time limits:

Discrimination claim: Unless exceptional circumstances applications can be refused if event occurred over 12 months prior to claim lodged Unlawful dismissal/general protections claim: 21 days from the date of the discrimination/breach of the general protection.

Working time

Working hours:

38 hours per week is the maximum ordinary hours an employee may work. However, when and how these hours can be worked or averaged are set by individual contracts and/or, if applicable an industrial instrument. The contract cannot ‘opt out’ of industrial instrument obligations. Typically, higher ‘overtime’ rates are to be paid when hours are worked in excess of 38ordinary hours for employees covered by industrial instruments.

Higher ‘penalty rates’ are provided to employees covered by industrial instruments to compensate them when working unfavourable or unsocial ordinary hours.

Exceptions:

The maximum ordinary hours is subject to the right of an employer to request an employee work additional hours that are reasonable. .

Annual leave/public holidays:

Permanent employees are entitled to 4 weeks of annual leave per year or 5 weeks for employees who are eligible for shift worker status.

Public holidays are gazetted by the states and territories. Employees are entitled to public

holidays specific to the area in which they work..

Federally recognised public holidays are: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Christmas Day and Boxing Day

Records:

Specific obligations apply to the keeping of employee records including, but not limited to, hours worked by the employee.

Protected Leave

Available leave and duration:

- Parental: All employees are entitled to unpaid parental leave if they have worked for the employer continuously for at least 12 months to the date of the baby's birth or adoption. The employee may also request a further extension of up to 12 months (total of up to 24 months' unpaid leave). During the period of leave the employee must be the primary carer. Parental leave entitlements extend also to paternity and partner leave, adoption leave, and special maternity leave (where an employee has a pregnancy-related illness or her pregnancy ends after 12 weeks because of a miscarriage, termination or stillbirth.)
- Unsafe job leave: where an eligible employee is unable to work due to safety risks and subject to appropriate evidence requirements, the employer is obligated to provide the employee with paid 'no safe work' leave up to 6 weeks prior to the due date of birth.

Pay/benefits:

- Parental leave pay: eligible employees may receive up to 18 weeks federally funded paid leave which is payable to the primary carer at the national minimum wage currently at \$672.60 per week.
- Dad and partner pay: eligible employees may receive up to 2 weeks federally funded paid leave which is payable to the father of the child or the partner to the birth mother.

Employment protection:

The employee has the right to return to their pre-leave role or a suitable alternative role with equivalent terms and conditions. The continuity of service not broken but also not extended by period of unpaid leave. The protection from dismissal based on leave or parental status.

Remedies

Dismissal based on leave or parental status may give rise to an unfair dismissal, unlawful dismissal/general protection claims, or discrimination claims and remedies will vary dependent on the type of claim brought by the employee.

Termination

Requirements:

Procedural fairness is highly relevant when determining whether a dismissal was unfair.

Remedies:

Unfair dismissal: The remedy for an unfair dismissal claim is available to employees with over 6 months' service (working in an employer with 15 or more employees) or over 12 months' service (employer with fewer than 15 employees) are reinstatement or compensation up to 6 months' wages or 50% of the 'high income threshold' (\$69,450 (2016/2017FY)) whichever is lesser

Unlawful dismissal/general protections breach: The remedy for an unlawful dismissal claim is available to employees both prior and upon commencement of employment is

reinstatement or uncapped compensation.

Time limits:

Unfair and unlawful dismissal/general protections breach: 21 days from the date of the termination, unless exceptional circumstances.

Breach of contract claim: Within 6 years of the contract breach.

Industrial Relations

Brief history

Shortly after the formation of the Commonwealth of Australia, the Commonwealth Court of Conciliation and Arbitration (“**CCCA**”) was established in 1904, the first body of its kind in the world. The role of the CCCA was to settle disputes between employees, unions and employers by conciliation or, if no resolution could be reached, a final determination through arbitration.

By international law standards, Australia is regarded as in breach of some of its international obligations given the restrictions it has imposed on industrial action. Virtually all industrial action in Australia is unlawful at common law with the addition of legislation that imposes sanctions against various types of industrial action, set out further below.

Right to join or not join a trade union

The right to join, not to join, remain or cease to be a member of a trade union for both employees and independent contractors is heavily protected by the *Fair Work Act 2009* (Cth) (“**FWA**”). Under the FWA it is unlawful for a person to pressure, coerce, induce, misrepresent, treat adversely or terminate employment because of a worker’s choice to be or not be involved in industrial action or become a member of a trade union.

While the FWA seeks to protect workers freedom of association, or non-association, there have been many instances in Australia where trade unions have been able to dominate and in some circumstances, bully an industry resulting in corruption. In 2014 the Australian Government launched a Royal Commission into trade unions in Australia.

In *Australian Building and Construction Commissioner v Barker & Anor* [2017] FCCA 1143 (30 May 2017) the FWC imposed penalties on a union official totaling \$6,000 and \$80,000 on the CFMEU in circumstances where two non-union members were deprived of the right to work, losing the opportunity to earn income for two days because they refused to join and pay union membership fees.

Lawful industrial action

In 1993 the Australian government took steps to recognise the concept of lawful industrial action. Today industrial action may only be taken, lawfully, when bargaining for a new enterprise agreement. This is known as “protected” industrial action. There are several requirements which must be met for industrial action to be protected, being:

- a) the existing agreement has passed its nominal expiry date;
- b) parties have genuinely tried to reach an agreement;
- c) the action is authorised by a protected action ballot;
- d) the notice requirement for action is met;
- e) the action taken is in support of claims about 'permitted matters', (that is matters that can lawfully be included in a new enterprise agreement);

- f) the action taken is not about unlawful terms; and
- g) there is no 'pattern bargaining'.

Any other industrial action is unlawful and unprotected. In these circumstances, the Fair Work Commission may make an order to stop or prevent the unprotected industrial action and individuals may face liability for damages arising from losses suffered as a result of the action as well as pecuniary penalties under the FWA.

Future of Trade Unions in Australia

In 2014 the Australian Bureau of Statistics released statistics that showed that union membership had decreased in Australia from about 40% to 15% of the workforce over the last two decades. While more recent data is not available, the current political and industrial environment in Australia suggests that unless unions revive or reinvent their role in industrial relations their membership base will continue to decline.

ENGLAND

Employment Law Sources:

In England the Sources of Employment Law are statutes (Acts of Parliament and regulations issued by government ministers under Acts); European law (European Directives and decisions of the European Court of Justice) and common law.

Enforcement:

Most employment related claims can be heard in the Employment Tribunal (ET). Contract based claims can also be heard in the County Court or High Court. Such claims include unauthorised deduction of wages, loss of bonus or other benefits or breach of contract claims or enforcement of restrictive covenants.

Fees and Costs:

- In the Employment Tribunal:
 - Fees were abolished in July 2017 ;
 - Typically, each party bears their own costs, though the ET can make a costs order or wasted cost order.
- In the County Court or High Court:
 - Court fees apply;
 - It is standard practice for the court to order the losing party to pay a percentage of the successful party's costs.

Mediation

Commercial contracts will sometimes contain a mediation clause to give the parties the opportunity to resolve the dispute before litigation commences, the parties will normally need to agree upon a mediator. ET judges can propose voluntary judicial mediation in suitable cases.

Worker Status

Status:

Employee, Worker, Self-employed/Independent contractor.

Test:

An "Employee" is defined by s230(1) of the Employment Rights Act 1996 as "an individual who has entered into or works under...a contract of employment". A "contract of employment" is defined as "a contract of service or apprenticeship, whether express or implied and (if it is express) whether oral or in writing." There is no single legal test to establish whether an individual is an employee, worker or independent contractor but the following factors will be taken into consideration:

- Mutuality of obligation;
- Control/degree of subordination;
- Requirement of personal service;
- Economic reality;
- Terms of Contract.

Other relevant factors may include:

- Which party supplied the equipment used;

- The level of work undertaken by the worker;
- The exclusivity of the arrangement;
- Its typical duration;
- Method of payment.

Consequences of Status:

Employees have the most protections, such as unfair dismissal protection, the right to a statutory redundancy payment and the right to statutory sick pay.

Workers have slightly more limited protections but are still entitled to the national minimum wage, paid annual leave, rest breaks, whistleblowing and discrimination protection.

Independent contractors have only the most basic protections, such as the right to a safe and healthy working environment and the right not to be discriminated against.

Equality

Prohibited grounds of discrimination:

There are 9 grounds of discrimination set out in the Equality Act 2010: age, disability, gender reassignment, race, religion or belief, marriage or civil partnership, pregnancy or maternity, sex, sexual orientation.

Legal remedies:

Remedies for unfair dismissal

- Compensatory award capped at a year's pay or £83,682 (from 6 April 2018 and subject to annual review) whichever is the lower;
- Reinstatement/reengagement (although very rare);
- Basic award – which is a statutory award and is calculated by looking at the employee's length of service, age and gross weekly pay.

Remedies for Discrimination

- There is no cap on compensation, it is loss based but with it is a duty to mitigate losses;
- Can cover pecuniary loss, injury to feelings, loss of earnings, bonus/commission or other benefits;
- Recommendations that the respondent takes specified steps aimed at alleviating the adverse effect of complaints (this was restricted in scope as of 1 October 2015).

Remedy for whistleblowing claims

- Compensatory damages - there is no cap on compensation, loss based and subject to a duty to mitigate losses.

Time limits:

Most employment law claims (including discrimination, unfair dismissal and whistleblowing claims) must be brought within 3 months less one day from the date of the unlawful act or dismissal (subject to certain exceptions). Before submitting the claim, it is a requirement to submit an Early Conciliation Notification to ACAS (a non-departmental government body) to commence mandatory Early Conciliation which 'stops the clock' running on the 3 month time limit. Early Conciliation usually lasts for 1 month but may be ended early by either party or extended for up to 14 days by agreement between the parties.

Working Time

48 hours per week (including overtime) is the maximum an employee may work on average over a 17-week reference period. Workers may opt-out of the 48-hour limit on average working time and is typical to see in an employment contract. Daily rest periods of at least 11 hours', uninterrupted, rest are required. Weekly rest periods of 24 hours are required (or 48 hours per fortnight). A 20 minute rest period is required when working more than 6 hours per day.

Exceptions:

The above entitlements do not apply to:

- Workers in excluded sectors;
- Workers with unmeasured time, such as autonomous decision-makers;
- “Special case” workers.

Annual leave/public holidays:

Workers have the right to 5.6 weeks’ paid annual leave in each leave year (28 days for a full time employee including UK Bank Holidays). For part time workers and workers who commence employment partway through the year, their holiday entitlement is calculated on a pro rata basis. The UK Bank Holidays include New Year’s Day, Good Friday, Easter Monday, Early May Bank Holiday, Spring Bank Holiday, Summer Bank Holiday, Christmas Day and Boxing Day.

Records:

Employers are required to keep records showing whether limits on average working time are being complied with (Regulation 9 WTR 1998).

Protected Leave

Available leave and duration:

- Maternity: 52 weeks maternity leave made up of 26 weeks ordinary maternity leave and 26 weeks additional maternity leave. First 2 weeks following childbirth is compulsory.
- Paternity: 1 or 2 weeks consecutive leave to be taken between the date of the birth and 56 days after that date.
- Shared Parental Leave: Parents are able to opt to share a total of up to 50 weeks of shared parental leave between them (using the remaining 50 weeks other than the compulsory maternity leave).
- Adoptive: 52 weeks adoptive leave made up of 26 weeks ordinary adoption leave and 26 weeks additional adoption leave.

Pay/benefits:

- Maternity: Subject to eligibility criteria: 39 weeks paid (90% of normal weekly earnings for first 6 weeks and then flat rate set by Government each year or 90% of normal weekly earnings, whichever is the lower); 13 weeks unpaid.
- Paternity: Lower of either 90% of weekly average earnings or flat rate set by the Government.
- Adoptive: 39 weeks paid (90% of normal weekly earnings for first 6 weeks and then remainder paid at flat rate or 90% of normal weekly earnings, whichever is the lower); 13 weeks unpaid.

Employment protection:

All benefits and terms and conditions under the employment contract continue, during the protected leave except remuneration. Any dismissal related to pregnancy, birth or maternity leave is automatically unfair. Pregnancy and maternity are a protected characteristic under the Equality Act 2010. For those who are on maternity leave, they are entitled to return to the same role (if they return before the end of ordinary maternity leave) or otherwise to a suitable alternative role on equivalent terms and conditions.

Remedies

Dismissal/less favourable treatment based on leave or parental status may give rise to an unfair dismissal claim or discrimination claim and remedies will vary dependent on the type of claim brought by the employee.

Termination

Requirements:

For those with at least 2 years' service there must be a fair reason (only 5 potentially fair reasons) and employers must follow a fair process (taking into account the ACAS Code of Practice which sets out a minimum requirement of fairness in relation to handling disciplinary situations).

Remedies:

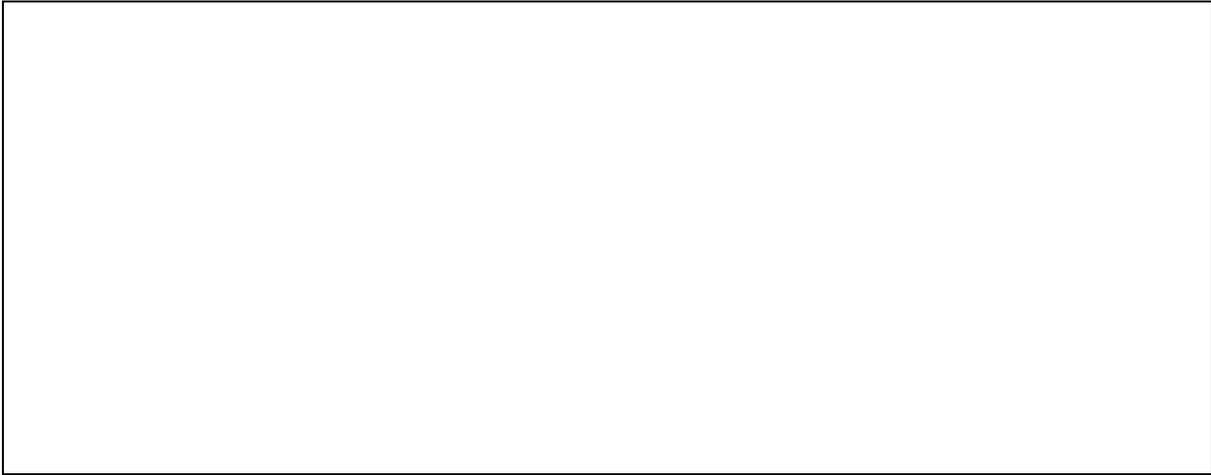
- Unfair dismissal: for dismissal for an unfair reason and/or for failing to follow a fair dismissal process. Employees must (usually) have at least 2 years' continuous service. Potential remedies include, compensation (basic and compensatory award) or reinstatement or reengagement.
- Wrongful Dismissal: for dismissal in breach of contract (i.e. failure to provide notice or payment in lieu of notice in breach of contractual obligation). Damages aim to put employee in situation they would have been in if the employer had complied with the terms of the contract – i.e. the value of notice period.
- Redundancy: qualifying employees who have at least 2 years continuous service, who are dismissed by reason of redundancy are entitled to a statutory redundancy payment which is calculated by taking into account the employee's age, length of service and gross weekly pay, which is subject to a statutory cap.

Time limits:

- Unfair dismissal: 3 months less 1 day from effective date of termination.
- Wrongful dismissal: Within 6 years of the contract breach if brought in civil court or 3 months less 1 day if brought in the ET.
- Redundancy: Within 6 months from the date of termination or dismissal.

Industrial Relations

In the UK employees and workers have the right to join a trade union. Once a trade union has been "recognised" for collective bargaining purposes (either by voluntary means with the employer or statutory means by applying to the Central Arbitration Committee), it may collectively bargain on behalf of a group of workers (referred to as a bargaining unit). Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 sets out the circumstances in which a trade union can apply to the Central Arbitration Committee in order to be recognised and also prohibits the detrimental treatment, including dismissal of workers in connection with the recognition of trade unions.



FRANCE
Employment Law Sources

In France the Sources of Employment Law are the Constitution of France, the French labour code (statutes and regulations), International treaties (ILO) and European conventions (EU & ECHR), Collective bargaining agreements, Case-law.

Enforcement:

- Labor court (*Conseil des Prud'hommes*)
- Appellate Court
- Supreme Court (limited appeal on legal issues only, no review of the facts)

Fees and Costs:

No tribunal fees apply and When the employer loses, he pays a lump sum for the legal fees of the employee. On the other hand, employees are almost never condemned to pay for the employer's legal fees

Mediation

Mediation is possible for individual disputes between an employer and one of his employees

Worker Status

Status:

Employed, Self-employed/independent contractor.

Test:

There are two main criteria to qualify an employment relationship: subordination (instructions, schedule, dress code, disciplinary power) and economic dependency.

Consequences of Status:

Employees do not pay social contributions, they have legal protections (need cause to terminate) and are entitled to unemployment benefits. Those who are self-employed pay their own social contributions and have no guarantee of employment.

Equality

Prohibited grounds of discrimination:

In France the prohibited grounds of discrimination are gender, age, race, family status, civil status, religious beliefs, disability, sexual orientation, education, way of life, health, political belief, union activity.

Legal remedies:

- Any sanction or termination grounded on a discriminatory reason is void
- Compensation for the entire loss (financial, emotional distress)
- Right of reinstatement after termination based on a discriminatory reason
- Appeal to the Appellate Court
- Possibility of a criminal claim too
- Claims for discrimination can be brought by associations, unions or employees' representatives

Time limits:

5 five years from the date of the discrimination

Working time

Working hours:

35 hours per week is the by-default legal work time with a maximum of 48 hours over one week and 44 hours in average over 12 weeks. The Maximum of 10 hours worked per day. The minimum of 11 hours of rest between two days of work. Employees take a break of 20 min for 6 hours worked. The Maximum of 6 work days per week, the rest day is normally on Sunday. Specific rules govern night shifts workers and additional pay is granted for work on Sundays. There are exceptions to these rules are possible under certain conditions.

Exceptions:

Employees who are responsible for determining their own working time are generally exempt.

Annual leave/public holidays:

Employees are entitled to a minimum of five working weeks' annual leave. Employees are also entitled to 11 public holidays: New Year's Day, Easter Monday, Labour Day (May 1st), May 8th, Ascension Day, Whit Monday, Bastille Day (July 14th), the Assumption (August 15th), Saints' day (November 1st), Armistice 1918 (November), Christmas day.

Records:

For most employees, the employer has the obligation to keep detailed records of employees' working time

Protected Leave

Available leave and duration:

- Maternity: 16 weeks ordinary (6 weeks before the birth and 10 after), during which social welfare benefit is paid. Longer breaks can be provided by collective conventions.
- Paternity: 2 weeks during which social welfare benefit is paid.
- Adoptive: 10 weeks ordinary, during which social welfare benefit is paid
- Parental: Up to three years, unpaid
- Illness or accident at work: Social welfare benefit paid if justified by a medical

certificate

Pay/benefits:

Benefit from the State during Ordinary Maternity and Adoptive Leave, and during Paternity Leave.

Employment protection:

- All benefits and T&Cs of employment continue except remuneration
- Dismissal during the leave is possible but shall not be caused by the leave
- Entitlement to return to the same role or suitable alternative
- Dismissal because of pregnancy and during maternity leave is void

Remedies

Damages for unfair dismissal and reinstatement in their employment.

Termination

Requirements:

The termination must be grounded on a “real and serious” cause, which can be individual or economic

Remedies:

- Dismissal without a real and serious cause: damages are granted depending on seniority (legal minimum and cap in the recent Macron reform)
- Dismissal based on a discriminatory reason: The dismissal will be considered as void and as it never happened if it was unauthorized by the French Labour code.

Time limits:

- Dismissal without a real and serious cause : 1 year from the dismissal.
- Economic redundancy : one year from the dismissal

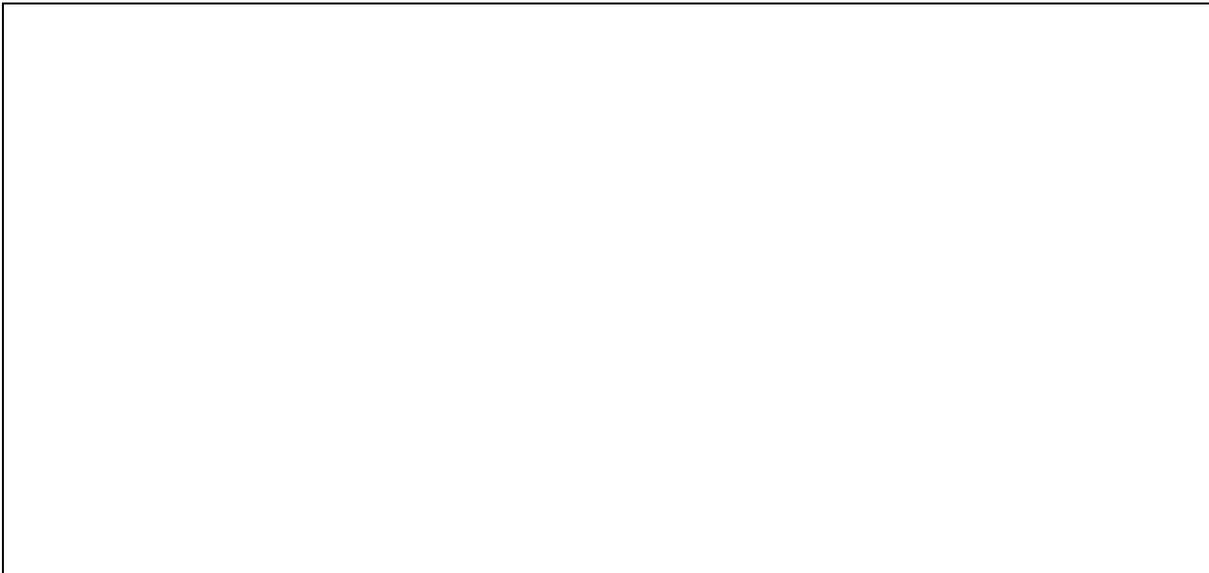
Industrial Relations

The right to unionise is a fundamental right. Traditionally very few employees are unionized in France (roughly 10 %). However, unions enjoy a lot of power because until recently they had a monopoly for collective bargaining. Until the Macron reform in September 2017, any collective bargaining had to be negotiated with the unions.

Since the reform, new possibilities are available to negotiate without the unions:

- Companies with less than 11 employees: a collective agreement can be approved by the majority of employees
- Between 11 and 50 employees: a collective agreement can be signed with the Works Council

Since the Macron reform in September 2017, there is a cap on damages for wrongful termination. This seems to discourage employees from challenging their termination and the trend is a decrease in new cases.



GERMANY
Employment Law Sources:

In Germany the sources of Employment Law are Statutes and Regulations, European Law, International Treaties (e.g. European Convention on Human Rights), Works agreements, Collective bargaining agreements, Company practice, Individual agreements and Case law.

Enforcement:

In principle, Labour courts are competent for all employment-related disputes there is also the right of appeal to Regional Labour Court and also limited appeal on point of law to the Federal Labour Court and Disputes involving managing directors of corporations are heard at the Civil Court

Fees and Costs:

In principle, the losing party is obliged to cover the court fees and statutory lawyer fees (however, the latter not in first instance labour cases). Court fees and statutory lawyer costs depend on the amount in dispute. If an appeal to the Regional Labour Court is made, the court fee rises by 60%. Generally, the court fee is waived if the dispute is settled by mutual agreement before the court.

Mediation

Courts can suggest mediation or other forms of alternative dispute resolution. The legal proceedings are suspended during the mediation process. However, mediation in employment matters is rare as the clear majority of (dismissal protection) cases is settled in court.

Worker Status

Status:

Employee (full-time, part-time, agency-worker, fixed-term, trainee) or Self-employed/independent contractor.

Test:

The test applied is the Multi factor; in general, will depend on whether the individual is organizationally integrated and to what extent he or she is subject to the power of the other party to give instructions with regard to place, time and nature of performance.

Consequences of Status:

- **Employees** are integrated into the Social Security system and respective contributions have to be borne by employer and employee. Employees benefit from protection by various employment law provisions, but are subject to the employer's authority.
- **Self-employed persons** are not entitled to equal pay and equal treatment. Risk of "bogus" self-employment (which can lead to the involuntary establishment of an employment relationship and severe financial consequences and even criminal prosecution).

Equality

Prohibited grounds of discrimination:

In general, the principle of equal treatment prohibits the employer from treating comparable employees differently. Furthermore, the Equal Treatment Act expressly prohibits discrimination based on race or ethnic origin, gender, religion or belief, disability, age or sexual orientation

Legal remedies:

Remedies under the Equal Treatment Act include:

- Right to withhold performance (only in cases of harassment or sexual harassment)
- damages
- compensation (up to three monthly salaries)

Time limits:

The employee has 2 months from date of discrimination to bring a Claim.

Working time

Working hours:

Generally, the daily working time may not exceed 8 hours. However, the working time may be extended to up to 10 hours per day if an average of 8 hours per day is kept within 6 months or 24 weeks. Employees whose daily working time is > 6 hours must be given a 30-minute break, if daily working time is > 9 hours break has to be at least 45 minutes. Daily rest periods of at least 11 consecutive hours in every 24-hour period must be observed.

Exceptions:

There are exceptions for (amongst others) executive employees, chief physicians. Divergent provisions may be found in collective bargaining agreements and in works agreements.

Annual leave/public holidays:

Employees are entitled to a minimum of four working weeks' annual leave. Public holidays are gazetted by the states and territories. Employees are entitled to public holidays specific to the area in which they work (9-13 public holidays, depending on the federal state). Federally recognised public holidays are: New Year's Day, Good Friday, Easter Monday, 1st May, Ascension Day, Whit Monday, German Unification Day (3rd October), Christmas Day and Boxing Day.

Records:

The employer is required to keep records regarding the working time which exceeds eight hours per day. However, it is common practise for companies to keep full records.

Protected Leave

Available leave and duration:

- Maternity: 14-18 weeks maternity leave
- Parental and Adoption: Up to 3 years

Pay/benefits:

- Maternity Leave pay fully paid by health insurance and employer
- Parental and Adoption Leave pay paid by the state: 67% of the individual's monthly net salary, max. EUR 1.800 p.m.

Employment protection:

Employment agreement is dormant, however, especially protected against dismissal: Employer may not dismiss the employee during pregnancy or four months after giving birth or during or eight weeks before parental leave. Only on rare occasions may the employer dismiss the employee after receiving special permission from the competent authority. The entitlement to return to the same role or suitable alternative on equivalent terms and conditions.

Remedies

Dismissal during the above-mentioned protected period of time may give rise to a dismissal protection claim.

Termination

Requirements:

- Procedural requirements: Form, delivery, notice periods, consultation of Works Council
- General protection against dismissal: Termination by employer is severely restricted by Protection Against Unfair Dismissal Act (applicable in all workplaces with more than ten employees)
 - Conduct-related dismissal: prior warning required
 - Dismissal on personal grounds (i.e. frequent or long-term illness: negative prognosis, serious detriment to business interests)
 - Dismissal for operational reasons: entrepreneurial decision that entails loss of respective workload need, lack of possibility of reassignment, "social selection" among comparable employees
- Ordinary dismissal: ends employment relationship after the expiration of the notice period.
- Dismissal for cause ends the employment relationship immediately (without notice-period): severe grounds for dismissal needed (and often prior warning), weighing of interests

Remedies:

- Unfair dismissal claim is available to employees with over 6 months' service
- Protection against dismissal proceedings:
 - Remuneration claims: Employees are obliged to work till the end of the notice period. If they are sent on garden leave they still have to be paid by the employer.
 - If the dismissal was invalid, the employer owes the employee the remuneration, as the employment did not end.

Time limits:

Once a dismissal has been issued, an employee can file a claim with the Labour Court within three weeks of receiving the dismissal notice.

Industrial Relations

Works Council:

- Not mandatory to join, but common in German workplaces
- Rights of participation and co-determination (social matters, hiring and transfers, dismissals, economic matters, transfer of business, transformation and restructuring)
- Works agreements (contract between works council and employer containing general provisions regarding the employees' working conditions)

Trade Unions:

- Collective bargaining agreements between employer (or rather employer's association) and trade union
- Typical content: working conditions in (in particular remuneration and working hours, holidays, notice periods).

IRELAND
Employment Law Sources:

The Sources of Employment Law in Ireland the Constitution of Ireland, Statutes and Regulations of European Law (European Directives of decisions of the ECJ), International treaties (eg European Convention on Human Rights), Common Law.

Enforcement:

Workplace Relations Commission (WRC) is the body responsible for all statutory claims with a right of Appeal to the Labour Court and limited rights of appeal on point of law to the High Court, Common law remedies sought through Civil Courts and Statutory interim relief preventing termination for "whistleblowing" sought through the Circuit Court

Fees and Costs:

No tribunal fees apply, and costs are not awarded by the WRC or Labour Court. Costs are awarded at Civil Court level

Mediation

The WRC supplies mediation for Equality claims otherwise ad hoc.

Worker Status

Status:

Employed (Permanent/ Fixed Term/ Casual/ Agency) or Self-employed/independent contractor

Test:

There is no single test under Irish law but, in general, will depend on whether the individual is under the control of the employee, is treated as an employee for tax and social insurance purposes, can profit from own efficiencies, etc.

Consequences of Status:

Employees can avail of employment legislative and common law protections, and social welfare benefits and Self-employed can avail of Equality, Industrial Relations, Protected Disclosures (whistleblowing) protections

Equality

Prohibited grounds of discrimination:

Gender, Age, Race, Family Status, Civil Status, Religious Belief, Disability, Sexual Orientation, Membership of the Traveller community.

Legal remedies:

- Statutory claim to the WRC pursuant to the Employment Equality Acts 1998-2015
- Compensation of up to 2 years' gross remuneration.
- Appeal to the Labour Court
- Claims may be brought by independent contractors, and partners of firms.
- Separate claim for victimisation on foot of equality claim also possible, with compensation to a maximum of 2 years' gross remuneration.

Time limits:

6 months from date of discrimination, or 12 months where individual can show evidence of reasonable cause.

Working Time

Working hours:

- 48 hours per week is the maximum average hours an employee may work, averaged over 4 months, not including lunch breaks or rest breaks.
- Daily rest periods of at least 11 consecutive hours in every 24-hour period.
- Employees must have at least 1 weekly rest period of 24 consecutive hours, not including the 11-hour daily rest period.
- The weekly rest period must include a Sunday, unless otherwise provided for in the employment contract.
- Specific rules govern overnight workers.
- Sunday workers are normally entitled to additional pay, ie a "Sunday premium".

Exceptions:

Employees who are responsible for determining their own working time are generally exempt.

Annual leave/public holidays:

Employees are entitled to a minimum of four working weeks' annual leave. Employees are also entitled to 9 Public Holidays: New Year's Day, St Patrick's Day, Easter Monday, First Monday in May, June and August, last Monday in October, Christmas Day, St Stephen's Day (26 December).

Records:

Specific rules apply to the keeping of detailed records of employees' working time.

Protected Leave

Available leave and duration:

- Maternity: 26 weeks, during which social welfare benefit is paid, + 16 weeks Additional, unpaid
- Paternity: 2 weeks, during which social welfare benefit is paid

- Adoptive: 24 weeks Ordinary, during which social welfare benefit is paid, + 16 weeks Additional, unpaid
- Parental: Up to 18 weeks, unpaid
- Force Majeure: Up to 3 days, or 5 days in a 36-month period, paid by employer

Pay/benefits:

Benefit from the State during Ordinary Maternity and Adoptive Leave, and during Paternity Leave.

Employment protection:

All benefits and T&Cs of employment continue except remuneration (other than Force Majeure leave which is paid by the employer, or where the employer chooses to pay/top up social welfare benefits). Protection against dismissal for taking leave – no qualifying period. Entitlement to return to the same role or suitable alternative on equivalent terms and conditions. Dismissal during maternity leave is void.

Remedies

- Individual legislation carries penalties, usually capping compensation at 20 weeks' pay (or 2 weeks in the case of Paternity Leave).
 - The Unfair Dismissals Acts may also be availed of in cases of dismissal, where compensation is up to 2 years' gross remuneration, capped at actual loss
- The Employment Equality Acts may also be relevant, where compensation is up to 2 years' gross remuneration, not limited to loss.

Termination

Requirements:

Fair procedures, broadly in accordance with the Workplace Relations Commission's Codes of Practice

Remedies:

- Statutory remedy of Unfair Dismissal available to employees with 12 months' service. No service required where dismissal is by reason of maternity, protected disclosures, trade union membership [finish].
 - Compensation up to 2 years' gross remuneration, limited to actual loss.
- Wrongful Dismissal for breach of contract. In practice, manifests as a mandatory High Court injunction, restraining the dismissal.
- Protected Disclosure Interim relief (ie statutory injunction) also available from Circuit Court where dismissal is by reason of protected disclosure, pending a hearing for Unfair Dismissal where dismissal by reason of "whistleblowing" alleged.

Time limits:

- Unfair Dismissal: 6 months from date of termination, up to 12 months where employee can show reasonable cause for delay.
- The Statute of Limitations for breach of contract is 6 years but, in practice, employees must apply for injunctions immediately.

Protected disclosure interim relief must be sought within 21 days of the date of dismissal.

Industrial Relations

- Right to join a trade union
- Traditionally very Voluntary
- No right to Collective Bargain
- Increase in Industrial disputes

- New legislation introducing measures to enable the Labour Court to make binding Legal Recommendations for non- unionised workers

ITALY

Employment Law Sources:

The sources of Italian Employment Law are International Treaties, European Treaties and European Labour Law, Italian Constitution, Italian Civil Code and Italian Code of Civil Procedure, Italian Labour Law, National and Company Collective Labour Agreements, Company's practice (when applied for many years)

Enforcement:

- Labour Court
- Court of Appeal
- Supreme Court

Fees and Costs:

No judicial taxes apply in case the overall claimant's income is not higher than € 34.585,23. Otherwise, judicial taxes for filing a lawsuit, depending on the value of the claim. Judicial taxes and fees for the legal assistance are usually charged on the losing party;

Mediation

- Both employers and employees:
 - i) can trigger the competent local Labour Office to conciliate the dispute;
 - ii) can appeal to a Board of Arbitration whose the President is named by the parties or, in case of disagreement between them, by the competent Court.

Worker Status

Status:

- Permanent employees;
 - Open-ended employment contracts;
 - Fixed-term employment contracts;

- Self-employed contractors;
- Continuous and coordinated collaborators;
- Agents;
- Occasional workers

Test:

General test: to ascertain if a Self-employed contractor / Continuous and Coordinated Collaborator / Agent / Occasional worker is duly classified or is an employee, Italian Law and case law provide some requirements (fixed salary and working time; hierarchical subordination to Company’s directives; subjection to the Company’s disciplinary power; etc.) to be verified. According to Italian law and case law, should such requirements occur a subordinate employment relationship exist.

Consequences of Status:

- Employees can take advantage of Italian Labour Law protections, as well as social welfare and benefits provisions.
- Self-employed contractors not enrolled in any professional register are now eligible for some of social welfare and benefits normally given to employees, such as maternity leave;

Self-employed contractors, enrolled in professional registers, can only take advantage of the benefits granted by the pension fund corresponding to their professional order (e.g. Lawyers are Self-employed contractors enrolled in the Lawyers’ Register and subject to the Pension Fund for Lawyers).

Equality

Prohibited grounds of discrimination:

Grounds of discrimination are wide, direct or indirect, but most of them are provided for both by European and Italian Labour Law. Common grounds of discrimination include age, race or ethnic background, sex or sexual orientation, marriage, any kind of disability, religious belief, union belief and/or activity, political beliefs.

Legal remedies:

In case of discrimination which do not lead to a dismissal, the employee can trigger a specific procedure before the competent Labour Court.

- Sanctions: The Court can order:
 - i) the cessation of the discriminating behaviour and the reimbursement of any damage;
 - ii) the publication of the judgment in a national newspaper.

In case of dismissal based on discriminatory grounds, the employee can challenge the dismissal through a special labour procedure.

- Sanctions: The Court can order the employer to:
 - i) reinstate the employee;
 - ii) pay an indemnity calculated on the basis of the salaries which should be paid from the date of the dismissal to the date of the reinstatement (with a minimum amount of 5 monthly salaries), in addition to social contributions.

In the specific case of discrimination based on union belief and/or activity, the Trade Union are also entitled to trigger a specific procedure before the competent Labour Court.

- Sanctions: the Court can order the employer to:
 - i) cease the discriminatory behaviour;
 - ii) refund damages;

iii) publish the judgment on a national newspaper.

Time limits:

- Legal remedies in general: the time limit is the statute of limitations (5-10 years).
- Legal remedies against discrimination: the claim will be not accepted whether filed after a relevant period of time from the discrimination (it is considered as “relevant period time” 1- 2 months starting from the discriminating behaviour).
- Legal remedies against dismissal on discriminatory grounds:
 - the dismissal must be challenged in writing by the employee within 60 calendar days from the receipt of the letter of dismissal; the employee must file a claim before the Court within 180 calendar days from the above letter of challenge.

Working time

Working hours:

Under Italian law the normal working time is 40 hours per week. Daily rest periods of at least 11 consecutive hours in every 24-hour period, employees are entitled to 1 weekly rest period of 24 consecutive hours, not including the 11-hour daily rest period. The weekly rest period must include a Sunday, unless otherwise provided for by the employment contract. Overnight work is regulated both by Italian Labour Law and National Collective Labour Agreements. Sunday, overnight and holiday workers are normally entitled to additional payments.

Exceptions:

- Employees can be asked to work for a number of hours higher than 40 per week (so called: “overtime”).
- Any work performed exceeding 40 hours per week constitutes “overtime work” and must be compensated with an increase of the normal salary, although National Collective Labour Agreements can provide that the worker must be allowed to take an equivalent period of compensatory rest.
- The 40-hour average is calculated over a period of 6 months (or longer according to National Collective Labour Agreements) but working hours and overtime may not exceed 48 hours per week.
- Unless the National Collective Labour Agreements provide otherwise, overtime is permitted if it does not exceed 250 hours per year.
- Legal and contractual provisions regarding working hours are not applicable to executives.

Annual leave/public holidays:

Employees are annually entitled to a minimum four weeks paid holiday period. The timing of the holiday period must be agreed between the employee and the employer. Employees have right to the following annual bank holidays New Year’s Day, Easter and Easter Monday, 1 May, 2 June, 15 August, 2 November, Christmas Day, 26 December. Additional days of vacation are provided for by National and Company Collective Labour Agreements.

Records:

Specific rules apply to the keeping of employee’s records.

Protected Leave

Available leave and duration:

- Standard mandatory maternity leave: from 2 months before birth up to 3 months after birth.
- Flexible maternity leave: from 1 month before birthing up to 4 months after birthing.
- Early commencement of maternity leave before the seventh month of pregnancy:

- in case of serious complications during pregnancy or pre-existing diseases;
- when working or environmental conditions are detrimental to women's and children's health;
- when the worker performs heavy tasks (for example, lift weights or stand for long periods) and cannot be assigned to lower tasks.
- Optional maternal leave: after the mandatory leave, the woman (and, in some cases, the father) can take 6 more optional months in the first 12 years of the child's life.
- Same benefits are guaranteed in case of adoption;
- Father is entitled to 2 days of obligatory paid leave within 5 months from the birth;
- The 2 days of obligatory leave for fathers are paid at 100% by INPS.

Pay/benefits:

The mandatory maternity leave is paid by INPS (social security authority) at 80% of normal earnings. National Collective Labour Agreements usually ask the employer to make up the difference in remuneration, so that the employee receives her normal earnings. Optional parental leave allowance is equal to 30% of normal earnings. In case of early commencement of maternity leave all the period is fully paid. Self-employed contractors are eligible for a maternity allowance paid by INPS [5 months (2 + 3 or 1 + 4)]. The amount of the allowance is equal to the 80% of the earnings declared in the last year. According to recent Italian Labour Law provisions, female Self-employed contractors can be replaced by another self-employed worker during pregnancy with Client's consent.

Employment protection:

- Employees cannot be dismissed from the wedding's announcement up to one year after getting married.
- At the end of maternity leave the employee is entitled to return into the same position and to perform the same duties and tasks she had before the maternity leave. Employees cannot be dismissed starting from the pregnancy until the child's first year of age is completed, except for:
 - just cause;
 - cessation of the company's activities;
 - negative outcome of the trial period.

Remedies

Dismissal during the first year of marriage or during the maternity period (until one year after child's birth) is considered unfair and discriminatory. Should the dismissal be stated as null and void, the employee will be reinstated and will receive a compensation for damages equivalent to the monthly salaries from the unfair dismissal up to the reinstatement (with a minimum of 5 monthly salaries).

Termination

Requirements:

- Dismissal shall be based on justified (subjective or objective) reasons, or on just cause.
- Dismissal must be notified to the employee:
 - i) in writing;
 - ii) in accordance with the specific procedures provided by Italian Law and National Collective Labour Agreements.

Remedies:

Unfair dismissal:

- i. Company with more than 15 employees:
 - o Consequences of a dismissal which is declared null and void (including a dismissal orally notified and a discriminatory dismissal):
 - a1) employees hired before 7th of March 2015: (i) the reinstatement of the employee and (ii) the payment of a minimum compensation for damages equal to the monthly salaries from the date of the dismissal to the date of the reinstatement (with a minimum amount of 5 monthly salaries);
 - a2) employees hired after 7th of March 2015: (i) the reinstatement of the employee and (ii) the payment of a minimum compensation for damages equal to the monthly salaries from the date of the dismissal to the date of the reinstatement (with a minimum amount of 5 monthly salaries);
 - o Consequences of an unfair dismissal (for example, when it is based on a reason which does not exist):
 - b1) employees hired before 7th of March 2015: (i) the reinstatement of the employee and (ii) the payment of a compensation for damages equal, as a maximum, to 12 monthly salaries;
 - b2) employees hired after 7th of March 2015: (i) the reinstatement of the employee and (ii) in some specific cases, the payment of a compensation for damages equal, as a maximum, to 12 monthly salaries;
 - o Other cases of unfair dismissal:
 - c1) employees hired before 7th of March 2015: payment of a compensation for ranging between 12 and 24 monthly salaries;
 - c2) employees hired after 7th of March 2015: payment of a compensation for damages ranging between 4 and 24 monthly salaries depending on the employee's company seniority;
 - o Breach of formal and procedural requirements:
 - d1) employees hired before 7th of March 2015: payment of a compensation for damages ranging between 6 and 12 monthly salaries;
 - d2) employees hired after 7th of March 2015: payment of a compensation for damages ranging between 2 and 12 monthly salaries depending on the employee's company seniority;
- ii. Company up to 15 employees:
 - o Dismissal which is null and (including a dismissal orally notified and a discriminatory dismissal):
 - e1) employees hired before 7th of March 2015: (i) the reinstatement of the employee and (ii) the payment of a minimum compensation for damages equal to the monthly salaries from the date of the dismissal to the date of the reinstatement (with a minimum amount of 5 monthly salaries);
 - e2) employees hired after 7th of March 2015: (i) the reinstatement of the employee and (ii) the payment of a minimum compensation for damages equal to the monthly salaries from the date of the dismissal to the date of the reinstatement (with a minimum amount of 5 monthly salaries);
 - o Dismissal without a just cause or a justified reason:
 - f1) employees hired before 7th of March 2015: the employer can, alternatively, (i) re-hire the employee or (ii) pay an indemnity whose amount is included between 2,5 and 6 monthly salaries;
 - f2) employees hired after 7th of March 2015: payment of a compensation for damages ranging between 2 and 12 monthly salaries depending on the employee's company seniority.
 - o Breach of the formal and procedural requirements:

g1) employees hired before 7th of March 2015: the employer can, alternatively, (i) re-hire the employee or (ii) pay an indemnity whose amount is included between 2,5 and 6 monthly salaries;

g2) employees hired after 7th of March 2015: payment of a compensation for damages ranging between 1 and 6 monthly salaries.

Time limits:

Unfair dismissal can be validly challenged only if the following requirements are met; the employee has challenged the dismissal in writing within 60 calendar days from the receipt of the letter of dismissal; the employee has filed a claim before the competent Court within 180 calendar days from the above letter of challenge.

Industrial Relations

The right to join a Trade Union is free and cannot be limited by the parties. In principle, the employer can decide not to apply any national collective agreement. Nevertheless, the employer must apply a specific national collective agreement if he is member of the employers' association which is among the signatories of that collective agreement. Specific rights are granted to Trade Unions who have signed a collective agreement. Italian law sets forth specific consultation procedures to carry out with Trade Unions in some cases (e.g. transfer of business, smart working, remote controls at the workplace, collective dismissals, etc.)

•Trade Unions can sue the employer before the Italian Courts in case of anti-union conducts carried out by the same.



**NETHERLANDS
Employment Law Sources:**

- Dutch Civil Code
- European Legislation
- Collective bargaining agreements
- Common law

Enforcement:

Almost all employment law matters need to be brought before a Cantonal Judge of one of the district courts. Disputes between a statutory director and a company need to be brought before the Civil Section of these district courts. The Works Council must go to the Enterprise Section of the Amsterdam Court of Appeal when it has a dispute with a company. The Central Appeals Tribunal for Public Service and Social Security Matters deals with appeals in cases involving public servants and social security cases. Other legal authorities that settle employment law matters are:

- National Ombudsman
- The Netherlands Institute for Human Rights

Fees and Costs:

- Employment law proceedings involve a range of costs, such as court fees, the lawyer's fees and the costs of the proceedings.
- Court fees: court fees are payable as a contribution to the costs of the proceedings before a district court. They have to be paid in advance to the court that will be hearing the case. The amount of the court fee depends on the value of the claim and whether it is a natural person or a legal person.
- Costs of the proceedings: the judge will check case-by-case whether the losing party has to pay the winning party's costs (only partially, not integrally).
- Legal aid: anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to subsidized legal aid. The legal aid itself is mainly financed by the state and only for a minor part by an income-related contribution of the individual client.

Mediation

The court hearing the case, will alert parties to the possibility of opting for mediation.

Worker Status

Status:

Employee (definite period of time, indefinite period of time, full-time, part-time, stand-by)
Self-employed/independent contractor

Test:

Employee

An employment agreement will be deemed to exist where:

1. the worker operates under a relationship of authority with the principal
2. the work has to be carried out personally (exclusively) by the worker
3. the worker receives remuneration in the form of wages for his/her work.

Self-employed

On 1 May 2016, the Assessment of Employment Relationships Act came into force. As a result thereof, parties will have to work on the basis of model agreements as provided by the Tax Authorities or their commission agreement will have to be approved by the Tax Authorities. If parties use a model agreement or an approved commission agreement and work accordingly, their relationship will in principle not qualify as an employment relationship for tax purposes. Otherwise, there is a risk that an additional levy and/or tax penalty will be imposed in respect of the payroll levies due.

By concluding a model agreement, both self-employed person and contractor know who will be responsible for paying payroll taxes and contributions.

At this moment, it is uncertain whether this system will continue, as the new government has announced revisions in the recent coalition agreement.

Consequences of Status:

Employees can utilise protections from international and European law and Dutch employment law. Self-employed can utilise protections from international and Dutch law.

Equality

Prohibited grounds of discrimination:

Employees are protected from discrimination on grounds of sex, age, sexual orientation, race, nationality, marital status, religious beliefs, disability, part-time status/fixed term status.

The discrimination may be direct or indirect. Direct discrimination is mostly forbidden. Indirect discrimination is forbidden when there is no objective ground for justification of the discrimination.

Legal remedies:

Legal actions can be brought in the civil court or with The Netherlands Institute for Human Rights. The sanction to infringe the prohibition of discrimination is nullity.

The employee has also the possibility of claiming damages on the basis of an unlawful act.

Time limits:

A claim for damages on the basis of an unlawful act, ends five years after the victim becomes aware of the damage and the responsible person.

Working time

Working hours:

The majority of fulltime jobs in the Netherlands are between 36 and 40 hours a week, or seven to eight hours a day, five days a week.

An employee can legally work a maximum of 12 hours per shift and a maximum of 60 hours per week. This limit is only for brief periods, for longer time frames the limit is lower.

Across a four week period an employee may not exceed 55 working hours per week, and over a 16 week period an employee may not exceed 48 working hours per week.

If the employee works a shift of more than 5,5 hours then the employee has a right to a 30 minute (unpaid) break, which can be split into two breaks of 15 minutes.

Whether or not the employee receives compensation for hours worked overtime depends on the conditions in the employment agreement. Some employers stipulate in the employment agreement that overtime work comes with the job and is covered by the regular salary.

Exceptions:

Sometimes collective arrangements may be waived from the regulations in the Working Time Act. The Working Time Decree contains general exceptions for certain employees and certain situations. In addition, there are additional rules for the care, mining and transport sector.

Annual leave/public holidays:

The minimum annual holiday for an employee needs to be the equivalent of at least four times the employee's usual working week. In addition there are also various free national holidays (New Year's Day, Easter Monday, Whit Monday, King's Day, Ascension Day, Christmas Day and Second day of Christmas),

Records:

The employer is obliged to keep a record of the working and rest periods of employees, regardless the form of the employment agreement.

This registration of working and rest periods must be kept by the employer for a minimum of 52 weeks.

Protected Leave

Available leave and duration:

Pregnancy and maternity leave: pregnant employees are entitled to at least 6 weeks pregnancy leave before giving birth and at least 10 weeks maternity leave (after childbirth).

Parental leave: employees with children aged up to 8 can take unpaid parental leave.

Adoption leave: employees who have adopted a child, are entitled to adoption leave. The leave applies to both parents. Employers can apply for an allowance on behalf of their employee to the Employee Insurance Agency.

Emergency leave: is intended for unforeseen personal circumstances for which an employee has to take time off immediately, for instance, when making arrangement for the care of an ill family member or in the event of a death in the family. An employer must always grant a reasonable request for emergency leave. The employer pays the full salary of the employee.

Short-term care leave: can be taken to provide essential care to parents, ill children who still live at home or partners. This leave is only granted on the condition that the employee in question is the only person who can look after the ill person at that moment in time. During the period of leave, the employer pays a part of the employee's salary.

Long-term care leave: in the event a child, partner of parent of the employee is seriously (life threateningly) ill and requires care, the employee can request long-term care leave. This is an unpaid leave.

Pay/benefits:

Pregnancy, maternity and adoption leave: employers can apply for an allowance on behalf of their employee to the Employee Insurance Agency.

Emergency leave: employers have to pay the full salary.

Short-term leave: employers have to pay at least seventy percent of the salary of the employee. There is a maximum amount, based on the maximum daily wage.

Parental and long-term leave: unpaid leave.

Employment protection:

Right to return to their pre-leave role or a suitable alternative role with equivalent terms and conditions.

Protection of terminating the employment agreement during and in connection with pregnancy and maternity leave, but also because of the use of care and parental leave.

Remedies

If the employment agreement has been terminated in violation to the cancellation bans, the employee may request for the resignation to be declared void by the Cantonal Judge. To this end, the employee must submit a request to the district court within a two-months expiry date.

If the resignation has been declared void, it is deemed not to have taken place. The employer is liable for the period during which the employee did not work and was willing to carry out the work. The judge may decide to impose, in addition to the wage due, a statutory increase of maximum 50% plus the statutory interest.

Termination

Requirements:

Procedures for terminating the employment agreement

The Dutch Civil Code states that an employer can terminate the employment agreement if there are reasonable grounds to do so and reassignment of the employee to a different suitable job, possibly, with training, is impossible or inappropriate. The law specifies 'reasonable grounds' as follows:

- a) economic reasons
- b) illness or disability for more than 104 weeks
- c) frequent sickness absence
- d) unsatisfactory performance after timely warning and improvement programme
- e) culpable conduct
- f) conscientious objection
- g) damaged working relationship
- h) other ground, not included in a through

For grounds a) and b) the employer must apply to the Employee Insurance Agency ("UWV") for permission to terminate the employment agreement by giving notice if the employee concerned does not agree in writing with the dismissal. If the dismissal is based on one of the other grounds (c through h) the employer must apply to the district court if the employee does not agree in writing with the proposed dismissal.

Instant Dismissal

The employer can terminate the employment agreement by instant dismissal in the event of an 'urgent cause'. This is the most severe way to terminate the employment agreement.

Remedies:

Unlawful dismissal: an employee who has been dismissed without his or her consent in the absence of a dismissal permit, or in breach of a dismissal prohibition, may ask the court to annul the dismissal or to award compensation. An employee who has been

dismissed pursuant to a dismissal permit may apply to the court for reinstatement or compensation.

In determining the amount of the compensation, the district court will take all circumstances of the case into account. Besides the compensation the employee is entitled to the wages if the employment had been terminated observing the period of notice.

The employee can also claim a so-called transitional compensation (“transitievergoeding”) if the employment contract lasts two years or longer. These transition payments are calculated as follows:

- for the first 120 months of the employment contract the employee receives compensation for (the number of six-month periods that the employee is employed) x (1/6 of the gross monthly salary).
- From 120 months and over the employee receives compensation of $\frac{1}{4}$ of the gross monthly salary for each consecutive six-month period that the employee is employed. Transition payments have a maximum of € 76.000 or an annual salary if this is higher than € 76.000.

Time limits:

If the employee disagrees with the dismissal, he or she must submit an application to the court within two months after the dismissal. The two-months limit is an expiry period and can therefore not be interrupted or extended. If the application is not submitted within the two months, the instant dismissal becomes irreversible.

Industrial Relations

Collective bargaining coverage is high with 18% of employees are union members

PEOPLE’S REPUBLIC OF CHINA
Employment Law Sources:

- The Constitution of the People's Republic of China;
- National Laws;
- Administrative Regulations promulgated by the State Council;
- Departmental Rules promulgated by the Ministry of Human Resources and Social Security and other ministries and commissions of the State Council;
- Local Regulations and Local Rules of provinces, autonomous regions, municipalities directly under the central government and other districted cities.

Enforcement:

Labour Security Administrative Department for most of the labour supervision and inspection with the Labour Dispute Arbitration Institute in charge of daily labour dispute mediation and arbitration. The People’s Courts hear the filed lawsuits after the labour dispute arbitration

Fees and Costs:

Labour dispute arbitration is free and Labour dispute lawsuit charges 10 RMB.

Mediation:

Mediation shall be applicable to resolve labour disputes during the whole procedure.

Worker Status

Status:

- Employee (full-time, part-time, labour dispatch)
- Full-time employment (open-ended contract, fixed-term contract, project-based term contract)

Test:

The qualification of both the employer and the employee accord with the laws and regulations. An employment relationship will be recognized if the work rules of the

employer are applied to the individual; are administered by the employer and the individual provides the labour which is paid by the employer; the labour provided by the individual constitutes a part of the business of the employer.

Consequences of Status:

A Full-time employee and dispatched employee have the rights under the *Employment Contract Law* and the *Labour Law*, especially rights to written contract, overtime payment, social welfare benefits, annual leave, sick leave and termination compensation. A Part-time employee can obtain remuneration no less than minimum standard of hourly wage with the payment cycle not exceeding 15 days.

Equality

Prohibited grounds of discrimination:

- Ethnic Minorities
- Race
- Gender
- Religious Beliefs
- Disability

Legal remedies:

The applicant or the employee can ask Trade Union, Women's Federation, Disabled Person's Federation, Labour Security Administrative Department to handle the issues according to the law. The applicant or the employee can lodge a lawsuit in the People's Court for the employer's civil liabilities.

Time limits:

3 years from the date on which the victim knows or ought to be aware of the damage to the rights. (Newly amended on Mar 15, 2017, General Rules of the Civil Law)

Working time

Working hours:

Employees work for no more than 8 hours a day and 40 hours a week. An employer must guarantee at least one day off a week for an employee. Specific rules govern overnight workers. Wage payment is no less than 150 percent of their wage for normal work if they are asked to work longer hours, 200 percent if no rest can be arranged afterwards when they are required to work on rest days, 300 percent if they are required to work on statutory holidays.

Exceptions:

Due to the nature of work and production, the standard working hour system cannot be implemented by some employers, the comprehensive working hour system, piecework working hour system and other working hour system can be implemented in alternative with the consent of employee and approval of government.

Annual leave/public holidays:

Employees who have continuously worked for at least one year are entitled to annual leave based upon his accumulated service years. Employees are entitled to 11 Statutory Holidays: New Year's Day (1), Spring Festival (3), Tomb-sweeping Day (1), Labour Day (1), Dragon Boat Festival (1), Mid-Autumn Festival (1), National Day (3).

Records:

It is highly recommended that the employer keeps the record of working hours especially for the spread over period of employees.

Protected Leave

Available leave and duration:

- Maternity: 98 calendar days and female employee can take 15 days leave before the childbirth.
- Paternity: Different from 7 to 30 days in various districts, and wage is paid by the employer in most districts.
- Breastfeeding Hour and Nursing period: 1 hour for breastfeeding arranged for female employees during working time in the nursing period. The nursing period is terminated when the child is one year's old can be extended for one or two months.
- Sick: Medical treatment period from 3 months to 24 months based upon the number of accumulated service years and service years in the employer.

Pay/benefits:

Benefits from the Maternity Insurance and Basic Medical Insurance during Maternity Leave and Sick Leave respectively. Wage payment for the employer during Sick leave.

Employment protection:

All wages shall be paid according to relevant laws during the period of leaves. Position shall be remained during the period of leaves. Maternity allowances and medical expenses as parts of insurance benefits. Protection against dismissal for taking leave or in the statutory period for protected employees.

Remedies

Unlawful dismissal leads to punitive damages, or the reinstatement and the back pay.

Termination

Requirements:

Basically, the employer can terminate an employee:

- with a notice period (without employee's faults);
- without a notice period (with employee's faults);
- by mutual agreement;
- by mass lay-off procedure;
- due to expiration of contract;
- due to loss of subject eligibility.

Besides termination by mutual agreement, an employer must terminate an employee under circumstances required by law. The termination must be in accordance with legal procedures required by the law, for example, notifying the trade union in advance while the employer terminates unilaterally.

Remedies:

In the case of employer terminating an employee illegally, if employee requests for continuous performance (reinstatement) of the contract, the employer shall do so if the **unlawful dismissal** is recognized by the arbitration tribunal or the court. Meanwhile, back salary shall be paid by the employer for the period of mediation, arbitration and litigation.

If the employee does not request reinstatement or if continuous performance is

impossible, the employer shall pay punitive damages, which must be paid at the rate of twice the severance pay.

Industrial Relations

The All-China Federation of Trade Union and its trade union organizations are entitled to conduct on behalf of the interests of the employees and protect employees' legal rights. All the employees in China who provide physical or mental labour to enterprises, public institutions or state organs and earn their living primarily from their salaries, shall have the right to be members of and organize any trade union. Trade unions in China shall, through equal negotiation and the system of collective contract, harmonize the employment relations and protect the employment rights of the employees. Trade unions shall also through the employees' congress or other ways, organize the employees to participate in the democratic decision-making, democratic management and democratic supervision according to the law.

PORTUGAL

Employment Law Sources:

National Law:

- Portuguese Constitution
- Portuguese Labour Code
- Other local laws
- Collective Bargaining Agreements
- Individual agreements (e.g. employment contracts);
- Established practices that are not contrary to the principle of good faith;

European Law:

- EU Treaties
- EU Directives and Regulations

International Law:

International Treaties (e.g. European Convention on Human Rights)

Enforcement:

Labour Courts are first instance courts of law with jurisdiction in all employment matters.

Fees and Costs:

Fees may apply.

Mediation

“Sistema de Mediação Laboral” – the parties may voluntarily apply to labour mediation regarding any employment matters, with the exception of matters related to inalienable rights and work accidents.

Workers Status

Status:

- Employee (full-time, part-time, agency-worker, fixed-term, student employee, young

person).

- Self-employed/independent contractor.
- A foreigner working in Portugal, in principle, has the same rights and duties as a Portuguese employee.

Test:

An employment relationship generally exists when the entity contracting the services is entitled to control not only the result of the services rendered, but also the means by which that result is achieved. This is true even where the parties fail to agree upon the exact nature of their relationship or misconstrue that relationship to be one of independent contracting. An independent contractor relationship is generally created when an individual (“self-employed”) is given a task to do but is free to use his own judgement in performing that task, works without supervision, typically using his own tools and materials on the job and being paid by commission or lump sum based on the job or project rather than by the hour. Under Portuguese labour legislation, an employment relationship is presumed to exist where at least two of the following characteristics exist:

- i) The activity is carried out in a place which belongs to the hiring entity or is determined by it;
- ii) The equipment and work tools belong to the hiring entity;
- iii) The worker complies with a work schedule determined by the hiring entity;
- iv) A certain amount is paid with regularity to the worker, as compensation for this activity;

The worker performs management or leadership functions in the organic structure of the company.

Consequences of Status:

If an employment relationship is misconstrued as an independent contractor relationship, the following contingencies may be triggered:

- Social Security contributions: Under Portuguese Law employing entities and employees are obliged to contribute to social security in accordance with the following rates applicable over remunerations paid (23,75% supported by the employer and 11% by the employee). If the relationship qualifies as an employment contract, the employer will be obliged to pay social security contributions concerning the salaries of the last 5 years.
- Employment status: If the relationship qualifies as an employment contract, the employer will be obliged to apply the full employment status to the employee (e.g. paid holidays, payment of Christmas and holiday bonus, overtime work payments, similar benefits, etc...)

Termination: If the services relationship is terminated by the entity and the contract qualifies as having an employment nature, the following remedies may apply: i) compensation for property and personal damage arising from the unlawful dismissal; ii) reinstatement without prejudice to his category and length of service; iii) payment of the earnings he did not receive from the time he was dismissed until the time the court decision becomes final (Any sums he may have received as a result of the termination of their employment contract which he would not have received were it not for his dismissal (e.g. unemployment subsidy) will be deducted from this compensatory sum). In lieu of reinstatement, the employee may choose to receive a compensatory award, the amount of which is established by the courts and is equivalent to between 15 and 45 days of basic pay and seniority payments for each full year or fraction of a year’s service.

Equality

Prohibited grounds of discrimination:

The employer shall not directly or indirectly discriminate an employee or an applicant

based on the following, but not limited to, grounds of Ancestry and race, sex, age, sexual orientation, gender identity, intersex status, genetic heritage, marital status or family situation, language, territory of origin, economic situation or social condition, ethnic background,

- Ancestry and race
- Sex
- Age
- Sexual orientation
- Gender identity
- Intersex status
- Genetic heritage
- Marital status or family situation
- Language
- Territory of origin
- Economic situation or social condition
- Ethnic background
- Impairment/disability
- Religious belief or religious activity
- Industrial/union activity
- Parental status or career/family responsibilities
- Breastfeeding
- Political or ideological beliefs

Legal remedies:

Payment of compensation for personal injury and damage to property.

Time limits:

The entitlement to a compensation for personal injury and damage only expires 1 year after the termination of employment.

Working Time

Working hours:

Standard working hours must not exceed 8 hours a day and 40 hours a week. Collective bargaining agreements may reduce the maximum limits of the normal working periods. The daily work period must be interrupted by a rest period of not less than 1 hour and not more than 2 hours so that the employee does not render more than five consecutive hours of work. As a general rule, the employee is also entitled to a rest period of not less than 11 hours straight in between two consecutive daily working periods and a weekly rest of 2 days.

All work rendered outside the work schedule is deemed to be overtime work and in cases where exemption from work schedule is limited to a certain number of daily or weekly hours, all work rendered outside such period is also deemed to be overtime work. Overtime work should only be rendered when the undertaking has to meet eventual and transitory increases of work, which do not justify the admittance of another employee. It can also be rendered in cases of force majeure or when indispensable to prevent or repair severe damages to the company or its viability. The employee is compelled to render overtime except when, there being reasonable grounds, he expressly requests to be excused. The employee who renders overtime work which inhibits him/her from enjoying his/her daily rest is entitled to a paid compensatory rest equivalent to the missing rest hours, which should be enjoyed in one of the subsequent three business days. In case of overtime work on mandatory weekly rest day the employee is entitled to one day of paid compensatory rest, which should also be enjoyed in one of the subsequent three business days.

Exceptions:

- The Portuguese Labour Code foresees other forms of working time organisation, such as night work, shift work, bank of hours, adaptability and concentrated work schedule.
- It is also possible to establish an exemption from working schedule, by means of a written agreement, in the following cases:
 - (i) Exercise of management, direction, confidence or supervision positions, or activities of support to such kind of positions;
 - (ii) Execution of preparatory or complementary works which, because of its nature, might only be executed outside the limits of the working schedule;
 - (iii) Teleworking jobs and other cases of regular exercise of activity outside the establishment, without the immediate control of the superior.
- Collective bargaining agreements might provide other situations in which the exemption from working schedule is admitted.
- The parties might agree on one of the legal modalities of exemption from working schedule. As a general rule, the Portuguese Labour Code predicts the non-submission to the maximum limits of the normal working period (8 hours per day and 40 per week).
- This regime does not prejudice the right to weekly day rest, holidays and diary rest (at least 11 straight hours between two consecutive periods of work).

Annual leave/public holidays:

- Employees are entitled to no less than 22 working days of paid holiday per year, accrued by a holiday allowance of an equivalent amount.
- In the year of hiring and after completion of six months of work, the employee is entitled to 2 days of holidays by each month of duration of the contract up to 20 days' maximum
- There are 13 mandatory public holidays.

Records:

The employer must keep the employees' working time records, including of those exempt from working schedule, in an accessible location so that its immediate consultation is always possible. The employer shall assure that the employee who performs his/her activity outside the company certifies the record immediately after returning to the company, or sends it dully certified, so that the company has the record dully certified within a period of 15 days counted from the performance of the respective activity. The employer must keep the working time records for a period of 5 years. The employer shall also keep a record of overtime work in which, before the beginning of the performance of overtime work and immediately after its termination, the hours in which each situation occurs must be recorded.

The employee who performs overtime work outside the company shall certify the record immediately after returning to the company, or send it dully certified, so that the company has the record dully certified within a period of 15 days counted from the performance of the overtime work. The employer shall also keep for a period of 5 years the nominal roll of the employees who performed overtime work, differentiating the number of hours performed and indicating the days enjoyed as compensatory rest.

Protected Leave

Available leave and duration:

- Initial Parental Leave: The mother and father are entitled, by birth of their child, to an initial parental leave of 120 or of 150 consecutive days, which might be shared by them following the childbirth.
- Maternity Leave: It is mandatory for the mother to enjoy at least 6 weeks of leave following the childbirth. The mother can also choose to enjoy up to 30 days of the initial parental leave before childbirth. In addition, a pregnant employee can take leave before giving birth if there are clinical risks for the employee or her unborn child that, for whatever reason, may impede the performance of her duties.

- **Paternity:** Fathers must enjoy a specific paternity leave of 15 consecutive or non-consecutive working days, which must be taken in the first month following the birth of the child, five of which being enjoyed consecutively following such event.
- After the first 15 days, the father is entitled to enjoy an extra 10 consecutive or non-consecutive working days, as long as they are enjoyed simultaneously with the initial parental leave enjoyed by the mother.
- **Parental Rights:** Parents are entitled to special working conditions, such as:
 - (i) Protection in case of dismissal;
 - (ii) Exemption from work by pregnant, parturient, or breastfeeding employee, for the purposes of health and safety protection;
 - (iii) Exemption from work for the purposes of attending prenatal medical consultations;
 - (iv) Exemption from work for the purposes of evaluation of adoption;
 - (v) Exemption from work in adaptability regime;
 - (vi) Exemption from rendering overtime work;
 - (vii) Absence for rendering assistance to the son/daughter;
 - (viii) Absence for rendering assistance to the grandson/granddaughter;
 - (ix) Leave for rendering assistance to the son/daughter;
 - (x) Leave for rendering assistance to son/daughter with disability or chronic illness;
 - (xi) Reduction of the working period for rendering assistance to child with disability or chronic illness;
 - (xii) Part-time work of employee with family responsibilities;
 - (xiii) Flexible work schedule of employee with family responsibilities;
 - (xiv) Exemption from night work;
 - (xv) Protection of security and health of pregnant, parturient or breast feeding employee.
- **Sick Leave:** In case of sickness, the shall give prior notice, when possible, and must justify his/her absences on the ground of the disease providing a medical certification. If the absence lasts for more than one month the employment contract is deemed to be suspended for all purposes.

Pay/benefits:

The social security system grants subsidies to employees in lieu of their regular remuneration.

Employment protection:

The exercise of maternity or paternity rights does not involve the loss of any rights and, except as regards pay, is considered as continuous employment.

Remedies

Protection in case of dismissal of pregnant, parturient, breastfeeding employee or employee on parental leave. It is necessary a prior approval of Commission for Equality in Labour and Employment.

Termination

Requirements:

Open-ended employment contracts:

- Dismissals without just cause are not permitted, except during the trial period where both the employer and employee may terminate the employment contract without prior notice (unless the trial period has lasted more than 60 or 120 days, in which case the employer must give a prior notice, respectively, of 7 or 15 days) or just cause. In this event there is no right to any compensation.
- Once the trial period has run, employers may only be entitled to unilaterally terminate

an employment relation by:

1. Dismissal with disciplinary cause;
 2. Dismissal on grounds of redundancy (individual or collective) – the employee is entitled to a severance compensation;
 3. Dismissal on grounds of failure to adapt – the employee is entitled to a severance compensation.
- Employers and employees may terminate employment contracts by way of a mutual agreement – which in order to be valid must be made in writing, contain the effective date of termination and the signature of the parties. The parties are free to agree on the terms & conditions concerning the termination of employment.
 - Lapsing occurs when i) the extraneous, absolute and definitive impossibility of the employee carrying out his work or the employer to receive it, and ii) retirement on grounds of age or disability.
 - Termination on the employee's initiative: i) during the trial period; ii) with prior notice and no need of just cause; iii) with just cause and no prior notice.

Fixed-term employment contracts:

- Fixed-term employment contracts shall lapse upon expiry of the term established therein, provided that communication of the intention to terminate them is given in writing either by employers 15 days before their term expires or by workers 8 days before that same date. The termination of term contracts on the employer's initiative entitles the employee to a severance compensation of an amount equivalent to 18 days' basic pay and seniority payments for each full year of service.

Remedies:

In the event the dismissal is declared unlawful, the following remedies apply:

- The employee is entitled to compensation (i) for property and personal damage arising from the unlawful dismissal, (ii) reinstatement without prejudice to his category and length of service, and (iii) to the earnings he did not receive from the time he was dismissed until the time the court decision becomes final.
- In lieu of reinstatement, the workers may choose to receive a compensatory award, the amount of which is established by the courts and is equivalent to between 15 and 45 days of basic pay and seniority payments for each full year or fraction of a year's service.
- In the case of enterprises that have a maximum of 10 workers in their employ or if the workers are directors or managers, the employer is entitled to oppose reinstatement provided it can justify that the return of these workers would seriously interfere with and prejudice the normal running of the enterprise.

Time limits:

An employee may oppose dismissal, upon filing a claim with the competent court, within 60 days (in case of individual dismissal) or 6 months (in case of collective dismissal) from the termination date.

Industrial Relations

The Portuguese Constitution recognizes employees' freedom to form and join trade union as a means of creating the unity required for the defence of their rights and interests (the right to form trade union associations at all levels, the right to join or refrain from joining a trade union; the right to choose which trade union to join; the right to organize and regulate their trade unions; and the right to engage in trade union activity at the company). Trade unions are responsible for defending and fostering the rights and interests of the employees they represent, and are entitled, therefore, to take the following actions: participate in the drafting of labour legislation; participate in the management of social security institutions and other organizations that seek to safeguard employees' interests; provide opinions on socio-economic plans and monitor their implementation; be

represented on social-dialogue bodies; take part in company restructuring processes, particularly in relation to training courses or changes in working conditions; negotiate collective bargaining agreements; provide services of an economic and social character to their members; and create relationships with or become members of international trade union organizations. Employees are guaranteed the right, free of discrimination, to join the trade union that represents their respective profession in their own sector of activity. However, an employee may not be a member of more than one trade union at the same time, with respect to the same profession or activity. Trade unions are officially recognized after the registration of its by-laws with the Ministry of Labour, Solidarity and Social Security. The registration can only be refused by a court order and if the Trade Union itself, or its by-laws, are not in accordance with the applicable legal rules. Employees have a right to take industrial action, and are responsible for establishing the range of interests they wish to defend by this means. The right to strike may not be waived. The decision to call a strike is made by the trade union associations. Lockouts are prohibited under Portuguese labour law. A lockout is any decision by the employer with the objective of disrupting the normal activity of the company by preventing some or all employees from entering the workplace or refusing to provide work, conditions, and working instruments, and which has the effect of totally or partially paralyzing the company or company sectors. Employees are free to set up works councils, also known as workers' committees and subcommittees.

SPAIN

Employment Law Sources:

- Constitution of Spain
- International Treaties and EU Regulations
- National Laws
- National Regulations - Spanish Worker's Statute
- Collective Bargaining Agreements
- Employment Contracts
- Supreme Court's Case Law

Enforcement:

- Employment and Social Security Inspection body
- Labour Court
- Administrative Spanish Authorities

Fees and Costs:

- Court fees apply
- No tribunal costs are imposed to employees, except reckless claims
- In general, employees do not have to pay fees

Mediation

- Mandatory step of Administrative Conciliation before going to Court, with few exceptions.

Worker Status

Status:

- Employee (directly hired or throughout an agency)
- Self-employed/ Independent contractor
- Self-employed contractor economically dependent

Test:

Applicable to workers voluntarily rendering their services for compensation on behalf of another party, within the scope of the organization and management of another, physical or legal person.

Consequences of Status:

Employees receive an special protection, as they are considered as the weaker party.

Equality

Prohibited grounds of discrimination:

Gender, age, race, sexual orientation, religious beliefs, opinion or any other individual or social condition or circumstance

Legal remedies:

Any dismissal grounded on a discrimination reason may have as a consequence, the declaration by the Court of the dismissal as null. Moreover, if the employee's claim is based on discrimination grounds, the employer has the burden to prove that the dismissal grounds are not related to discriminatory reasons. In case that the judge declares the dismissal as null: the employer may choose to readmit the employee in the same conditions that he had before the dismissal or to pay the indemnity corresponding to the unfair dismissal.

Time limits:

General term of limitation or expiration applies, corresponding to the same of the legal action wherein such fundamental rights infringement is based. For instance, the term regarding dismissal claims is 20 days from the effective date of the dismissal, thus, any claim regarding an infringement of fundamental rights produced by such dismissal would have to be sued within those 20 days.

Working Time

Working hours:

Maximum legal working time is 40 hours per week, yearly calculation. Employees are entitled to a minimum weekly rest time of one and a half uninterrupted days, which generally include Saturday afternoon or, Monday morning and whole Sunday. At least 12 hours must elapse between the end of one working day and the start of the following working day. When the duration of the continuous working day exceeds six hours, a rest period of at least 15 minutes must be allowed during the day. In the case of workers under 18 years of age, the rest period is a minimum of thirty minutes and must always be allowed when a duration of the continuous working day exceeds four and a half hours. The duration of the weekly rest time for people under 18 is a minimum of two uninterrupted days.

Exceptions:

Working time have no exception unless it improves what said above. Minimum rest can be agreed in any other days of the week. Again, the minimum rest cannot be worsened, only improved.

Annual leave/public holidays:

- Minimum 30 calendar days of annual paid leave
- Majority of employees take AL in August.
- Approximately 14 bank holidays.

Records:

There is the obligation of keeping detailed records regarding part-time employees working time.

Protected Leave

Available leave and duration:

- Maternity:
 - Eligible to take 16 weeks paid by the Social Security maternity leave (must take at least 6 weeks).
 - Option to transfer remaining ML to the father.
 - Women are entitled to 1 hour of absence from work every day to breastfeed (child must be less than 9 months).
 - It is possible to take up to three years unpaid leave and return to the same employer.
 - The woman has the right to reduce her working day by 1/8 to a half until her child is 12 years old. In this case her salary decreases accordingly.
- Paternity:
 - Paternity leave - maximum 1 month, has to be taken within the 16 weeks of ML.
 - After the 126-day period of maternity leave, employees can benefit from parental leave of up to 2 3 years to raise their child. Up to 3 years if the child has disabilities.
 - Employer is not obliged to pay the employee during parental leave.

Pay/benefits:

Workers during maternity and paternal leave are continued being payed.

Employment protection:

Employees in Maternity or Parental leave are protected from the following:

- Automatically unfair dismissal where reason or principal reason for dismissal is taking or seeking to take shared parental leave.
- Detriment (at any time) for a reason connected to taking or seeking to take parental leave

Remedies

Dismissal based on leave or parental status have the risk to be declared as an unfair dismissal, or unlawful dismissal. Moreover, the Court may deem appropriate to establish a compensation for damages.

Termination

Requirements:

- There are several procedural requirements to meet. For instance, there are many collective bargaining agreements that establish an obligation to communicate any dismissal to the works council.
- Employers and Employees must provide a written notice, normally 15 day-calendar if no other period is agreed privately or in the applicable collective bargaining agreement. Except in case of disciplinary dismissal, that may usually take effect

immediately.

- For disciplinary dismissal, the employer must hand a letter where it states the facts committed that entails the dismissal as well as the date of those facts.
- For legal representative dismissals, there is a special procedure. The employer has to hand the letter to the worker and to the other legal representatives and give the worker the right to lodge their allegations.

Remedies:

- For objective dismissal legislation requires that employees are paid a minimum legal compensation of 20 days' pay for each year of service, up to a maximum of 12 months' pay.
- For disciplinary dismissal, no severance has to be paid.
- If the dismissal is declared unfair, the severance pay is:
- 33 days' salary per year of service (capped at 24 months' pay) for the length of service accrued after February 12, 2012;
- 45 days' salary per year of service (capped at 42 months' pay), for the length of service accrued before February 12, 2012, up to a maximum of 720 days' salary.
- Dismissal can be declared null and void when it is considered to be based on discriminatory grounds. In this case, the employee must be reinstated and receive back payment of the salaries accrued during the judicial process.
- Also, terminations without cause will be null and void if they affect certain employees, such as pregnant women, employees on maternity or paternity leave, or enjoying working time reduction because of caregiving, or during nine months after the birth or adoption of a child.

Time limits:

Legal action regarding dismissal: 20 days from the date of the termination.

Industrial Relations

- Right to join a trade union (Fundamental right)
- Right to Collective Bargain (collective agreements, company agreements, action in Court...)
- Employees that are part of the Work Council have preference to remain in the company in case of collective dismissals and have guarantees and protections.
- In general, members of the works council rights are the following:
 - Participate in collective bargaining procedures such as collective dismissals or collective substantial modifications of the employment contract
 - File individual or collective claims and represent the interests of the represented employees in Court

SWITZERLAND

Employment Law Sources:

- International treaties (e.g. European Convention on Human Rights)
- Federal Constitution of the Swiss Confederation
- Statutes and Regulations (esp. Code of Obligations, Labour Act and the respective ordinances)
- Collective labour agreements

Enforcement:

- Conciliation authority
- Courts
- Cantonal labour law enforcement authority

Fees and Costs:

No court fees if value in dispute is below or equal to CHF 30'000, but attorney's fees and parties' expenses awarded. Local tables for court and attorney's fees (varying from Canton to Canton)

Mediation

- Mandatory conciliation proceedings ahead of court proceedings
- Mediation procedures provided for by some collective labour agreements

Worker Status

Status:

- Employed
- Self-employed/independent contractor

Test:

- Different distinction in social security and contract law – main criteria:
- Social security law: Independent if working under one's own name and for one's own account, in independent position, and working at one's own economic risk.
- Contract law: Employment agreement if relationship of subordination.

Consequences of Status:

Social security law: Independent contractor is subject to contributions. If employee, the employer is subject to registration and contributions whereas the employee's share is directly deducted from salary. Contract law, Employee protection only if contract is qualified as employment agreement.

Equality

Prohibited grounds of discrimination:

Gender discrimination is prohibited by a specific act (Equality Act).

Specific provisions against certain form of disability and race discrimination.

Notice of termination may not be served because of inherent characteristics of the other party, unless such characteristic relates to the employment or significantly impairs cooperation with the enterprise. These characteristics among others include age, race, sex, origin, marital status, pregnancy, diseases, disability, religion.

Legal remedies:

- Violation of personality rights can result in claims for damages and compensation for pain and suffering as well as claims for injunctive relief and removal.
- Discriminatory dismissal: Is valid, but indemnity of up to six months' salary must be paid.
- Special remedies for gender discrimination which include: Termination can be void, claim to prevent or eradicate discrimination, claim for equal salary, indemnity for non-employment.

Time limits:

- Discriminatory Dismissal: Employee must submit objection to employer until end of notice period. Afterwards, the employee must file a suit within 180 days starting at the end of the notice period.
- Special time limits for gender discrimination claims

General prescription for employment claims: 5 years

Working Time

Working hours:

45 hours per week is the maximum average working hours for employees in industrial enterprises and white-collar workers. For other employees, 50 hours is the maximum.

Working hours above 45 or 50 hours basically have to be compensated. It is common to set the amount of weekly working hours around 40 to 42 hours. Daily rest periods of at least 11 consecutive hours in every 24-hour period. Employees must have at least 1 weekly rest period of 24 consecutive hours, not including the 11 hours daily rest period. Night work and work on Sundays are forbidden. Unless an explicit statutory exception applies, Employers must be granted an authorisation in order for their employees to work during these restricted periods.

Exceptions:

The provisions concerning working hours do not apply to senior management. Exceptions from certain rules for specific kinds of enterprises.

Annual leave/public holidays:

Employees are entitled to a minimum of 20 days annual leave. Employees below 20 years of age are entitled to 25 days. Often, Employers grant 5 weeks on a voluntary basis. Employees are also entitled to around eight holidays which vary regionally.

Records:

Mandatory for all employers to keep detailed records of employees' working time, including location and length of working and rest periods (except for higher level employees). Possibility of simplified recording of working time under certain conditions (only working hours have to be recorded). Possibility to abstain from the keeping of records of employees' working time in collective labour agreements and provided a certain salary threshold is reached.

Protected Leave

Available leave and duration:

- Maternity: 14 weeks, if all conditions are met at 80% of the normal salary (with a cap of CHF 196 per day), during which social welfare benefit is paid.

Sickness/accident: Periods vary regionally and depend on the duration of the employment relationship. Minimum of three weeks in the first year of service. Often, a voluntary daily sickness insurance is concluded covering 80% of salary during 720 days.

Pay/benefits:

- Maternity insurance: 80% of the normal salary (with a cap of CHF 196 per day)
- Sickness/Accident: Either employer pays 100% of salary during mandatory time period varying regionally or opts to conclude daily sickness insurance for 80% of salary for 720 days.

Employment protection:

- Employer may not terminate the employment agreement during pregnancy and 16 weeks after birth. Employer may not terminate the employment agreement during sickness or accident during 30 days in the first year, 90 days from second until fifth year and 180 days from the sixth year on. An Employee may be protected by several blocking periods.

Remedies

A termination during above mentioned period is void.

Termination

Requirements:

- Freedom to terminate contract without reason.
- Employees are protected against termination at an improper time which included pregnancy and 16 weeks after childbirth, sickness/accident, employee's compulsory military or civil-defence service.

- Termination must not be abusive, but even abusive termination is valid (except for certain cases of gender discriminatory termination)

Remedies:

- A termination at an improper time is void. If the termination was served before the beginning of these periods, the expiration of the notice period is suspended until the end of these blocking periods.
- An Employer who serves an abusive notice of termination must pay an indemnity to the Employee of up to six months' salary.

Time limits:

- Abusive Dismissal: Employee must submit objection to employer until end of notice period. Afterwards, the employee must file a suit within 180 after the end date.

General prescription for employment claims: 5 years

Industrial Relations

1) Right to join a trade union

- The right to join a trade union or an employer organization is guaranteed by the Swiss constitution (art. 28)
- Both employees and employers have the right to join an organization that supports or strengthens their position in industrial relations (trade unions for employees, employer organizations/associations for employers)
- There is no obligation to join a trade union or employer organization – membership is therefore voluntary
- Also, any dismissal by an employer on the grounds that an employee is a member of a trade union is considered abusive according to Swiss labor law
- The same applies if an employee is dismissed because he is not a member of a trade union
- Closed Shop or Union Shop clauses are not allowed under Swiss law

2) Collective Bargaining

- Both employees and employers enjoy the right to collective bargaining
- Collective bargaining agreements are fairly frequent in Switzerland and are usually agreed upon by trade unions and employer organizations
- By default, only members of the contracting parties (i.e. trade union or employer organization) can benefit from collective bargaining agreements but it must be possible for non-members to join the collective bargaining agreement if they wish so
- In many cases, however, the contracting parties agree that the collective bargaining agreement applies to non-members as well
- Collective bargaining agreements can, under certain circumstances, be declared as generally binding for all members of a certain industry sector if the contracting parties file an application with the competent State or Federal Authority

3) Industrial disputes

- Industrial disputes are very rare in Switzerland due to the fact that many collective bargaining agreements entail provisions that oblige the contracting parties to work out any disputes peacefully Switzerland has a long tradition of social partnership, which means that disputes or differences in opinion between the so called social partners of the labor market (unions, employer associations and the Government) are solved in a peaceful, cooperative manner in order to reach a compromise that works for everyone.

The logo for Innangard International Employment Law Alliance, featuring the word "Innangard" in a dark blue font with a circular graphic element to its right, and the full name "International Employment Law Alliance" in a smaller font to the right of the circle.

Innangard

International Employment Law Alliance

Innangard is an international employment law alliance bringing together leading employment law specialists from around the world to collaborate on international and cross-border employment law and HR issues. Each firm is individually recognised in their own country for their expertise in labour and employment law issues.

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