

# Linklaters



European cross-border guide to  
Employment Law

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## European cross-border guide to Employment Law

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# Introduction

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Global workforces are critical for the success of multinational businesses operating in a global economy. Successful businesses need to be aware of and comply with the relevant employment, regulatory and remuneration requirements which apply to their workforce. Failure to do so can have negative consequences across the business.

This Linklaters Guide provides a practical overview of employment and remuneration legislation across 13 European jurisdictions. It is designed to be your at-a-glance first point of call on European employment and remuneration matters. If you require more detailed advice, please speak to your Linklaters Employment and Incentives team contact.

I hope that you find this guide helpful and welcome your feedback.

**Nicola Rabson**

Global Head of the Employment and Incentives practice  
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Employment Law in  
**Belgium**

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## ON HIRING

### Employment status

Employees are divided into two main categories, blue-collar and white-collar. Although this has recently been ruled unconstitutional and is in the process of harmonisation, it is still included in Belgian employment law. Various rules and regulations may differ for other kinds of employees such as sales representatives and students.

### Employment contracts

Employment contracts can be for an unlimited duration, limited duration, seasonal employment, full-time or part-time, or for a training period or the replacement of an employee. With the exception of contracts for an unlimited duration, all contracts must be in writing.

### Work regulations

All companies with personnel must have work regulations which specify the rights and duties of both employees and employers. The text of the work regulations is to be drafted by the works council or, in its absence, by the employer taking into account views of employees.

### Practicalities

An employer has to (1) prepare, keep up to date and retain certain social documents (e.g. employment contracts) in order to allow the Social Inspectorate to confirm compliance with the law; (2) take out a private insurance policy against industrial injuries; (3) affiliate with the National Social Security Office; (4) affiliate with a child benefit fund; (5) affiliate with a medical service which must advise the employer on health and safety with respect to working conditions; and (6) if applicable, obtain an authorisation to employ foreign nationals.

### Language

Belgium has three official languages: Dutch, French and German. Regulations specify the language in which communications should take place between employers and employees. The sole criterion for which language is used is the location of the employer's operational seat, or, for the bilingual Brussels region, the language of the employee.



## DURING EMPLOYMENT

### Remuneration

There is a national guaranteed monthly income (set, as at 2016, at €1,501.82 for full-time workers aged 18 or over). However, the joint industrial committee of each particular sector usually fixes minimum wages for specific occupations. In addition, a 13th month is paid to the majority of employees in December, in accordance with a sector-level collective agreement (or individual employment agreement).

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions in Belgium. In particular, for employees of banking groups identified as material risk takers there are rules which require: (1) deferral of at least 40-60% of variable remuneration for not less than three to five years; (2) at least 50% of remuneration to be in non-cash instruments; (3) a cap on variable remuneration of: (i) 100% of fixed remuneration if fixed remuneration is less than €50,000; (ii) €50,000 if fixed remuneration is between €50,000 and €100,000; or (iii) 50% of fixed remuneration if fixed remuneration is more than €100,000; and (4) awards of variable remuneration to be subject to clawback in certain circumstances. Other comparable rules (except for the cap on variable remuneration) apply to employees of insurance groups and asset management companies.

### Pensions

Belgium has a three-pillar pension system: (1) a mandatory contributions "legal pension"; (2) an "occupational pension" which is subscribed for by an employer for its staff; and (3) "pension saving" subscribed for by an employee on an individual basis. Both the "occupational pension" and "pension saving" are discretionary pension schemes.

### Working time and holiday

In general, the basic working time may not exceed eight hours daily on a five-day week, and 38 hours per week. However, there are a number of exemptions, e.g. for the healthcare sector, and the set maximum can be reduced, e.g. by a collective bargaining agreement. In any case, the working time regulations are complex and contain many special arrangements regarding category of employees, shift work, female employees, night work, break and overtime etc.

Statutory holiday entitlement is dependent on the number of hours worked in the previous year. The maximum statutory holiday an employee is entitled to is 20 days, plus 10 days of public holidays. Joint industrial committees or individual employers can grant additional holiday. Employees have the right to be absent from work without loss of normal remuneration on certain special occasions, such as certain family events, for meeting civil duties or in case of appearance before a court.

### Sickness absence and sick pay

Employees who are absent due to illness are entitled to receive a guaranteed salary from the employer for up to 30 days (the precise duration depends on the length of illness and the employee's status as a blue or white-collar worker). After this period, the health insurance fund guarantees occupational disability benefits.

### Family and carer entitlements

Maternity leave is in principle 15 weeks and it is paid for by the health insurance fund. Adoption leave is a maximum period of six successive weeks, if the child is younger than three years old and four successive weeks, if the child is between three and eight years of age. During the first three days of adoption leave, the employee is entitled to his/her normal salary to be paid by the employer. For the remainder of the leave period, social security pays an allowance. Paternity leave is 10 days to be chosen by the father within a period of up to four months starting with the day of the birth (three days of which is paid by the employer and seven by the health insurance). Under certain conditions, either parent has the right to take parental leave at any time in the child's first 12 years and can claim a payment from the National Employment Office.

### Data protection

Personal data should only be processed for specific and lawful purposes and should not be used in a way incompatible with those purposes. The data should be adequate, pertinent and not excessive in relation to that purpose. Individuals have the right to see a copy of the information held about them.



## TROUBLESHOOTING

### Discrimination

Unequal treatment is prohibited if based on age, sex, sexual orientation, marital status, birth, wealth, religious or philosophical beliefs, language, current or future health, disability, physical or genetic characteristics, skin colour, descent, or national, social and ethnic origin. In addition, any unequal treatment between part-time and fixed-term employees and those engaged full-time or indefinitely is also prohibited. Further, men and women must receive equal pay for doing equal work.

### Whistleblowing

There is no specific legislation on whistleblowing and therefore no set procedure or protection for employees.

### Employment disputes

Social matters are adjudicated by the Labour Tribunal, which consists of a professional judge and two lay judges. Depending on the nature of the case, a public prosecutor may be present to provide his/her opinion. Appeals are made to the Labour Court.

### Consultation requirements

The works council, if any, or the prevention committee, must be informed of any events and internal decisions, which may have an important effect on the enterprise. In the event of a merger, takeover, closing or other important structural changes on which the company is negotiating, the works council or the prevention committee, or, in its absence, the union delegation, should be informed, and consulted on the effects of these changes on employment, at the appropriate time and in any event before any announcement.

### Business transfers

A transfer of an enterprise (or part of an enterprise) involving a transfer of personnel will be governed by collective bargaining agreement n°32bis (implementing the Acquired Rights Directive). Under CBA n°32bis, the rights and obligations resulting from the employment contract are automatically transferred to the transferee. CBA n°32bis does not apply to a share transfer. Specific rules may apply if the transfer of a business (or part) occurs in the framework of a scheme of composition (entered into in insolvency situations) or a bankruptcy.



## TERMINATION

### Notice periods

There is a statutory minimum notice period of two weeks, except in cases of dismissal for serious cause where there is no notice period. In order to be valid, the notice must take the form of a recommended letter and specify the beginning and the duration of the notice period (which is calculated by reference to the employee's length of service).

### Protection against dismissal

Generally, an employer has a unilateral right to end the employment contract, as long as it does not act in a discriminatory way and complies with the termination provisions in the contract (such as giving the correct notice period). Certain categories of employees, such as pregnant women and members of the works councils, benefit from particular protections against dismissal.

### Breach of contract

Except in cases of termination for serious cause, if a contract is terminated without notice or with insufficient notice it will constitute a breach of contract that requires payment of severance pay. A significant unilateral change of an essential element of the employment contract may also constitute a breach of contract.

### Serious cause

Any major violation of the employment contract or of the principle of good faith which results in continuation of the employment relationship being immediately and permanently untenable, constitutes a serious cause, justifying a termination on the spot without notice or payment. If a court rejects the existence of a serious cause, a "normal" severance allowance will be awarded.

### Collective dismissal

In principle, an employer has to comply with specific provisions where a certain percentage of employees are dismissed within a period of 60 days, for reasons not related to the employee's performance or competence. Additional rules apply if the collective dismissal is effected in the context of the closure of an enterprise.



## POST-TERMINATION

### Confidentiality and restraint of trade

Post-termination restrictive covenants such as non-competition and confidentiality clauses are common in employment contracts.

Because these clauses are merely aimed at protecting the interests of the employer, they have to respect strict legal conditions.

### References

There are no specific rules concerning references.



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Employment Law in  
**England & Wales**

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## ON HIRING

### Employment status

Individuals providing services will benefit from different rights depending on whether they are classified as employees, workers or consultants. The employment status will be fact-specific and will depend on the actual arrangement between the individual and the entity receiving the services.

### Employment contracts

Employers must provide employees with written particulars of employment (setting out the basic terms and conditions of employment including job title, place of work, wages, hours of work, holiday entitlement, and notice) within two months of employment starting. There is no obligation for this to be in a written contract of employment, but most employers recognise the value in tailoring terms in a written contract. Collective agreements are less common in England & Wales, but where such agreements are in place the terms may be incorporated into the employment contract.

### Practicalities

Employers must (1) be registered with the UK tax authority (HMRC); (2) check that employees have the right to work in the UK; (3) if relevant and permissible, carry out DBS (criminal record) or regulatory checks; and (4) take precautions to protect the health and safety of staff and insure against liability for personal injury or disease sustained by employees.



## DURING EMPLOYMENT

### Remuneration

Employees aged 25 and above must be paid at least the national living wage (£7.20 per hour as at April 2016). Lower minimum rates apply for employees under the age of 25 and apprentices.

### Remuneration in financial institutions

Base pay is commonly supplemented with a range of benefits and variable remuneration which are subject to a range of restrictions. Notably, for employees identified as material risk takers: (1) at least 40% of variable remuneration must be deferred (over three years for banks, asset managers and insurers; and up to seven years for some senior staff at banks), subject to performance adjustment during that period; (2) at least 50% of any variable remuneration must be in non-cash instruments (for banks and some asset managers); (3) there is a cap on variable remuneration of 100% of fixed remuneration (or 200% with shareholder approval) (for banks); and (4) awards of variable remuneration are subject to clawback for a minimum of seven years where there is, amongst other things, reasonable evidence of employee misbehaviour or material error (for banks).

### Pensions

In addition to the state pension, eligible workers must be enrolled into a pension scheme by the employer (unless the worker opts out) and both employer and worker have to make mandatory minimum contributions into the scheme.

### Working time and holiday

A worker's maximum weekly working hours must not exceed an average of 48 hours (calculated over a 17-week reference period), unless the worker opts out of this limit. Workers are entitled to rest breaks of (1) 20 minutes when working more than six hours; (2) 11 hours in each working day; and (3) 24 hours in each seven-day period. Workers are also entitled to at least four weeks' paid leave plus eight bank or public holidays per year (pro rated for part-time employees).

### Sickness absence and sick pay

Many employers have policies dealing with sickness absence, although there is no specific statutory right to fully-paid time off. Employees who are unable to work due to illness or injury for four or more consecutive days and meet certain conditions are entitled to statutory sick pay for up to 28 weeks in any rolling three-year period.

### Family and carer entitlements

Statutory maternity / adoption leave is 52 weeks with statutory maternity / adoption pay for qualifying employees paid for up to 39 weeks. Statutory paternity leave and pay entitlement is two weeks. Maternity and adoption leave can be converted into shared parental leave and used by both parents. In addition, both parents can take up to 13 weeks' unpaid parental leave before the child is 18 years old. Employees with at least 26 weeks' continuous service who meet certain criteria can request flexible working.

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation, which includes processing data in a proportionate manner and for legitimate reasons. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Discrimination by employers and by employees in the course of their employment is prohibited if on the grounds of age, sex, race, disability, sexual orientation, religion or belief, maternity or pregnancy or gender reassignment. This encompasses direct and indirect discrimination, harassment (unwanted conduct related to one of the above protected characteristics) and victimisation (treating someone less favourably because they have done something under discrimination legislation such as made allegations of discrimination). Further, men and women must receive equal pay for work that is equivalent or of equal value.

### Whistleblowing

Employees are protected from being dismissed or subjected to a detriment because they have made a “protected disclosure” about particular “wrongdoings” by their employer.

### Employment disputes

There is guidance (the Acas code) on how employers should deal with (1) complaints made by employees; and (2) disciplinary matters against employees. The code broadly requires that employers investigate any grievances or disciplinary issues, meet with the employee to discuss the issue and allow the employee to appeal against any decision. Non-compliance with the code will be taken into consideration by an Employment Tribunal if the employee ultimately makes a complaint about the matter.

### Consultation requirements

There are relatively few statutory consultation obligations. These mainly arise in the case of business transfers and collective redundancies. Failure to comply can result in claims for protective awards.

### Business transfers

On the sale of a business or a service provider change, the employment of employees assigned to the business/services will automatically transfer to the buyer or new provider of services. The employer must inform and consult with employees about the transfer. Employees have additional protection from dismissal because of a transfer and changes to the employees' terms and conditions can only be made in limited circumstances.



## TERMINATION

### Notice periods

Employees are entitled to receive at least a statutory minimum notice period, starting at one week and increasing with length of service to a maximum of 12 weeks from an employer, although the employment contract can specify a longer notice period. If provided for under the contract, the employer can elect to pay the employee in lieu of, and/or put the employee on a period of “garden leave” for all, or part of, the notice period. A failure to pay the employee during or in lieu of the notice period will give rise to a claim for wrongful dismissal.

### Reasons for termination

An employee's employment can only be fairly terminated for one of five fair reasons: conduct, capability, redundancy, contravention of an enactment and “some other substantial reason”. The employer must also follow a fair and reasonable process (which will depend on the reason for the termination).

### Unfair dismissal

Employees who believe they have been unfairly dismissed can bring a claim in the Employment Tribunal, subject to meeting eligibility requirements. If the claim is successful, the employer can be ordered to reinstate or re-engage the employee (such orders are uncommon) or to pay compensation (up to a maximum of the lesser of the employee's annual salary or a statutory amount). Where the termination was linked to discrimination or whistleblowing there is no maximum.

### Redundancy

An employer who dismisses an employee by reason of redundancy must carry out a fair redundancy selection and consultation process, to minimise the risk of an unfair dismissal or discrimination claim. An employer who proposes to make 20 or more employees redundant in a 90-day period also needs to carry out a collective consultation process. Redundant employees who meet certain eligibility criteria are entitled to a statutory payment (with some employers offering enhanced redundancy pay).



## POST-TERMINATION

### Confidentiality and restraint of trade

At the end of the employment relationship most duties end, although limited, common law duties of confidentiality survive. Many employers therefore choose to include express contractual terms protecting confidential information and restricting what an employee can do post-termination (e.g. non-compete or non-solicitation clauses). Such clauses are only enforceable if they go no further than is reasonably necessary to protect the employer's legitimate business interests.

### References

There are no specific duties concerning references, except in regulated environments such as financial services. However, once an employer agrees to give a reference it owes certain duties to both the employee and the recipient of the reference.



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## Employment Law in France

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## ON HIRING

### Employment status

The existence of an employment relationship depends on three elements: (1) performance of work; (2) compensation; and (3) legal subordination, i.e. the employer being empowered to give orders, control performance and sanction the employee. This will be fact-specific and an employment relationship may exist even if the contractual documentation states that the individual is not an employee.

### Employment contracts

Unless otherwise provided in the industry-wide collective bargaining agreement (“CBA”) applicable to the employer, there is no obligation for an employment contract to be in writing (except for fixed-term and part-time unlimited-term employment contracts). However, a written employment contract setting out the basic terms and conditions of employment is recommended.

### Practicalities

Employers must (1) be registered with the French authorities (registration to the *registre du commerce ou des métiers* and filling out the *Déclaration préalable à l'embauche*); (2) check that employees have the right to work in France; (3) if necessary, carry out criminal record and/or regulatory checks; and (4) take precautions to protect the health and safety of staff and insure against liability for personal injury or disease sustained by employees.



## DURING EMPLOYMENT

### Remuneration

The CBA usually provides for a minimum wage to be paid to employees based on their classification. Otherwise, employees must be paid at least the state mandatory minimum wage (*SMIC*) which, as at 2016, is €9.67 per hour.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions in France. In particular, for employees identified as material risk takers there are rules which require: (1) deferral of at least 40-60% of variable remuneration for not less than three years; (2) at least 50% of remuneration to be in non-cash instruments; (3) a cap on variable remuneration of 100% of fixed remuneration (or 200% if shareholder approval is obtained with a prescribed super majority) (for banks and MiFID firms); and (4) awards of variable remuneration to be subject to performance adjustment (“malus”) for poor conduct of the relevant individual or in case of losses in the relevant line of business.

### Pensions

The French pensions system is mostly public and state controlled. Non-executive employees benefit from two mandatory pension schemes (the pension scheme provided for by the Social Security Fund and a complementary mandatory pension scheme (*ARRCO*)). Executives benefit from the same pension schemes as well as another complementary mandatory pension scheme (*AGIRC*). All compulsory schemes are on a “pay as you go” basis. Most of these schemes are provided by insurance companies and are based on defined contributions.

### Working time and holiday

Statutory working time (mainly applicable to non-executives) is 35 hours per week, beyond which overtime is calculated. Maximum working hours are 10 hours per day and 48 hours per week, with a maximum average of 44 hours per week over a 12-week period. There is flexibility allowing the parties to adapt working time arrangements as necessary (particularly through negotiations). Executive employees who are sufficiently autonomous may be subject to a system of computation of their working time in days over the year instead of a classic 35-hour system with overtime calculation. Senior executives are not subject to restrictions on working time.

### Sickness absence and sick pay

In the event of non-occupational sickness or accident, employees are entitled to statutory sick pay for a maximum of (1) three years in case of long-term sickness; or (2) 360 days over a three-year period. The amount paid depends on the employee’s length of service, reference salary and number of dependent children. In addition to statutory sick pay, employers may be required by a CBA to top this amount up to a proportion of full pay.

### Family and carer entitlements

Maternity leave is (1) 16 weeks for the birth of a first or second child; (2) 26 weeks for the birth of a third (or subsequent) child; (3) 34 weeks for twins; and (4) 46 weeks for triplets or more. Paternity leave is (1) 11 days for the birth of one child; and (2) 18 days in the event of multiple births. It must be taken within the four-month period following birth. Other statutory leaves such as adoption leave, birth leave or parental leave are available. Pay for family leave is partly financed by the Social Security Fund or by the Primary Sickness Insurance Fund (*Caisse Primaire d'Assurance Maladie*). A CBA may provide for longer leaves, higher pay and other specific family leaves (e.g. in case of marriage or death).

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation, which notably includes making a prior declaration to the French data privacy authorities (*CNIL*) and processing data in a proportionate manner and for legitimate reasons. The data collected is confidential and access to the data must be controlled and strictly restricted. Employees must be informed of their rights and the conditions to access, modify and delete their personal data.



## TROUBLESHOOTING

### Discrimination

Direct or indirect discrimination by employers is prohibited if on the grounds of age, race, disability, sexual orientation or identity, physical appearance, place of residence, political opinion, union activities, health condition, disability, genetic characteristics, religion or belief, maternity or pregnancy, family name, and family status. No employee may be sanctioned, dismissed or discriminated against for having testified about or reported discriminatory acts. In addition, there is a general principle of equal pay and treatment for employees doing the same work. A discriminatory measure may be null and void (e.g. an employee dismissed on discriminatory grounds may be reinstated).

### Whistleblowing

Employees are protected from being dismissed or subjected to a detriment because they have made a “protected disclosure” about particular “wrongdoings” by their employer (e.g. breaches or violations of financial regulation by financial institutions).

### Employment disputes

Employers must comply with the statutory disciplinary requirements and procedures, as well as any provision of the applicable CBA, company customs, company internal rules, etc. French regulations broadly require a fair and due process which safeguards the employees’ rights of defence (e.g. a meeting must be organised with the employee for a significant disciplinary measure and the employee must be offered the possibility to defend himself).

### Consultation requirements

Employers are required to annually consult the works council (if any) regarding (1) strategic orientations; (2) the financial and economic situation; and (3) social policy and working conditions. The employer is also required to consult the works council in specific cases set out in the French Labour Code (e.g. introduction of new technologies, change in remuneration, business transfer, social plan).

### Business transfers

On the sale of a business or a service provider change, the employment of employees assigned to the business/services will automatically and mandatorily transfer to the buyer or new provider of services. Employees must not be dismissed in the course of the business transfer or service provider change. Furthermore, when a sale of a business as a going concern is contemplated, French companies employing less than 250 employees are required, under specific conditions, to provide advance information to their employees in order for them to be able to issue an offer to purchase the business. A specific procedure must be followed.



## TERMINATION

### Notice periods

The statutory notice period depends on the reason for termination. Often the CBA and/or contract of employment will vary the statutory minimum (as long as the varied period is not less favourable to the employee than the statutory notice period). The employer may release the employee from working during the notice period and instead make a payment in lieu of notice. The employee may ask to be released from working during the notice period in which case, if the employer agrees, no payment is due. No minimum statutory notice provisions apply in the case of resignation. There is no concept of “garden leave”.

### Reasons for termination

An employee’s employment can only be fairly terminated if based on an actual and serious economic or personal (e.g. misconduct or professional inadequacy) ground. In addition, the employer must follow a fair and reasonable process.

### Unfair dismissal

Employees who believe they have been unfairly dismissed can bring a claim before a Labour Court. If the claim is successful, the Court can order the employer to pay damages (the amount of which depends on the nature of the employer’s breach, the headcount of the employer and the length of service of the employee). An employer cannot be forced to reinstate an employee who has been unfairly terminated.

### Redundancy

Dismissals for economic reasons must be based on a reason unrelated to the employee: economic difficulties, need to safeguard the company’s competitiveness or fundamental technological change allowing for a reduction in staff. Before commencing any redundancy procedure the employer must (1) determine which employee is to be made redundant by application of mandatory legal criteria (i.e. age, family situation, length of service, professional skills); and (2) try to reassign potentially redundant employees. Redundancy procedures will differ depending on the number of employees to be dismissed over a 30-day period. An employee who is made redundant is entitled to severance pay and compensation in lieu of the notice period and holiday benefits.



## POST-TERMINATION

### Confidentiality and restraint of trade

At the end of the employment relationship, most duties end. Many employers therefore choose to include express contractual terms protecting confidential information and restricting what an employee can do post-termination (e.g. non-solicitation clauses). To be valid, such clauses must comply with certain conditions (e.g. a non-compete must be limited by geography and duration).

### References

Employers are not obliged to provide employees with a reference at the end of the employment. However, the employer may be liable if it provides information that is inaccurate or unrelated to the employee's professional competencies to a potential future employer.



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Employment Law in  
**Germany**

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## ON HIRING

### Employment status

Only individuals who qualify as “employees” (*Arbeitnehmer*), not “freelancers” (*freier Mitarbeiter*), will benefit from the protection of German employment law. Further, different tax and social security obligations apply to employees and freelancers. Qualification as an employee is not based on contractual terms, but how work relations operate in practice. “Legal representatives” of the employer, such as managing directors of limited liability companies and members of the board of a stock corporation, generally do not have employee status.

### Employment contracts

Employment contracts do not need to be in writing. However, statutory law requires the main terms and conditions of employment to be recorded in writing within one month after the commencement of employment. As a result, it is advisable and common for the employment contract to be in writing.

### Practicalities

Employers must (1) hold a company registration number, issued by the Federal Labour Office; (2) register all employees with statutory health insurance; (3) register employees of certain economic sectors (e.g. of the construction and restaurant industries) immediately with the data authority of the statutory pension insurance; (4) register electronically all employees with the relevant tax authority; (5) register all employees with the trade association/accident insurance; and (6) ensure that all employees from non-EU countries have valid residence titles.



## DURING EMPLOYMENT

### Remuneration

Employees must be paid at least the national minimum wage, which (as at 2016) is €8.50 per hour. Subject to the sector (e.g. banking) and/or the employee’s position, there may be regulatory restrictions on remuneration. Otherwise, remuneration is usually regulated in the employment agreement, a collective bargaining agreement with trade unions or, to some extent, works council agreements.

### Remuneration in credit and financial service institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions in Germany. In particular, for employees of major financial institutions identified as material risk takers there are rules which require: (1) deferral of at least 40% (60% for senior management) of variable remuneration for not less than three years; (2) at least 50% of variable remuneration must be linked to the company’s sustainability and where possible should be share-based; (3) awards of variable remuneration must be subject to clawback if an individual participated in, or was responsible for, conduct which resulted in significant losses to the company or failed to comply with internal or external rules on fitness or conduct; and (4) a cap on variable remuneration of 100% of fixed remuneration (or 200% if shareholder approval is obtained with prescribed super majority) – this rule applies to employees of major financial institutions identified as material risk takers and to all employees of any credit or financial service institutions.

### Tax and social security contributions

Employers must withhold part of the employee’s remuneration for income tax purposes to be paid to the tax authorities on the employee’s behalf. Even though the employee is primarily liable for income taxes, the employer is jointly liable for income taxes not withheld from the salary payments and paid to the tax authorities.

The employer must also withhold and pay social security contributions (unemployment, health care and nursing, pension insurance) and pay them together with the employer’s contribution to the social security. In addition, the employer must pay accident insurance.

### Pensions

In addition to the state pension scheme within the social security system, many companies operate their own pension scheme. Employer-financed schemes are voluntary, but employees have the right to participate in an employee-financed scheme.

### Working time and holiday

An employee’s maximum daily working hours must generally not exceed eight hours and the maximum weekly working hours should generally not exceed 48 hours on average over 12 months. However, the eight-hour working day may be extended for short periods subject to certain legal conditions. In addition, collective bargaining agreements may provide for longer or shorter working hours (subject to the average 48-hour limit). It is not open for an employee to contract out of the statutory limits. Employees are entitled to 24 days’ paid annual leave (based on a six-day working week) or 20 paid days (based on a five-day working week) (pro rated for part-time employees), in addition to public holidays.

### Sickness absence and sick pay

Employees who are unable to work due to illness or injury and have at least four weeks’ continuous employment are entitled to full pay during the first six weeks of each period of illness. Thereafter, the employee is entitled to sick pay from the state health insurance fund. As a general rule, this is payable for up to 78 weeks within a three-year period where an employee suffers from the same illness and, without limitation, where the employee suffers from alternate illnesses.

### Family and carer entitlements

Pregnant employees are entitled to maternity leave commencing six weeks prior to the expected date of childbirth and ending eight weeks after childbirth. The period after childbirth is mandatory leave, whereas the employee can waive the right to go on leave before childbirth. Further, employees (whether the mother or father, as well as adopting parents) are entitled to take parental leave from birth until the child’s third birthday (although the employee and employer can agree to transfer up to 24 months of parental leave to some time prior to the child’s eighth birthday). The employee can split parental leave into three separate periods. During parental leave the employee is either completely released from work (in which case remuneration is replaced with a statutory payment for up to 14 months) or can work part-time (up to 30 hours per week, in which case remuneration will be payable). There are limits on dismissing parents in connection with parental leave.

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation, which includes, in principle, collecting, processing and using data only if it is necessary for the conclusion, the execution or the termination of the employment relationship. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Discrimination of employees in the hiring process and during the course of their employment is prohibited if on the grounds of race or ethnic origin, sex, religion or world belief, disability, age or sexual identity. This encompasses direct discrimination, indirect discrimination and harassment. Employees can claim financial damages and non-pecuniary damages, e.g. damages for pain and suffering, if they have been discriminated against by the employer.

### Whistleblowing

There are no specific provisions in place in Germany on how to handle “whistleblowing” by employees. It has to be assessed on a case-by-case basis whether the disclosure of information about the employer by an employee constitutes a breach of his fiduciary duties and justifies disciplinary measures (up to and including dismissal). However, this will not be the case if the employee acted in order to comply with his civic obligations.

### Disciplinary measures

In the event of breaches of contractual duties by the employee, the employer may warn the employee by issuing a written warning notice. Such notice has both a reprimanding and a warning function and is, in principle, a precondition for the unilateral termination by the employer based on conduct-related reasons.

### Information/consultation requirements and co-determination

The interests of employees working at a particular location may be represented by several bodies (to the extent established at that location), the most important of which is the works council. The works council has several general duties, including ensuring that laws are complied with, and has general information and consultation rights. It will also have binding co-determination rights in relation to certain matters (such as policies relating to the order and conduct of employees) which cannot be implemented without the works council's consent.

### Business transfers

On the sale of a business or a service provider change, the employment of employees assigned to the business/services may automatically transfer to the buyer or new provider of services. Either the previous employer or the new owner must inform the employees about the date, the reason, the legal, economic and social consequences of the transfer for the employees and the prospective measures in relation to the employees prior to the transfer by way of an information letter. Employees have additional protection from dismissal “because of the transfer” and changes to the employees' terms and conditions can only be made in limited circumstances.



## TERMINATION

### Notice periods

Employees are entitled to at least a statutory minimum notice period, starting at four weeks and increasing with length of service to a maximum of seven months. Collective bargaining agreements may provide for longer as well as shorter notice periods. Additionally, the employer and the employee may agree longer and, under special circumstances, shorter notice periods. If validly agreed in the employment contract, the employer can place the employee on “garden leave” for all or part of the notice period, but with payment of the contractual salary being continued. A “payment in lieu of the notice period” is not recognised under German law unless the employee agrees to it as part of an exit package.

### Reasons for termination

Termination of employment has to be socially justified, meaning that it has to be based on one of (1) employee-related reasons, e.g. long-term illness; (2) conduct-related reasons; (3) operational grounds, e.g. redundancy. An employer who dismisses an employee by reason of redundancy must carry out a fair social selection process to minimise the risk of an unfair dismissal or discrimination claim. If a works council has been established, the employer must notify the works council in advance of any dismissal of an employee or the dismissal will be void. Termination without notice is only possible if there is good or just cause that makes it unreasonable for the terminating party to be bound by the employment relationship even for the notice period. A termination without notice must be declared within two weeks of the terminating party becoming aware of the facts justifying the termination.

### Protection against dismissal

Employees who have been employed for a period exceeding six months by an employer which employs in general more than 10 employees at the respective site have protection against unfair dismissal. Further, if the employer has no justified reason for termination, the termination is void and the employee may claim reinstatement. However, in practice, a significant number of dismissal disputes are settled either before or out of court by concluding a settlement, which usually includes a commitment by the employer to pay the employee a severance for the loss of employment. Certain categories of employees (e.g. pregnant employees) as well as members of certain employee representatives (e.g. works council members) enjoy further special protection against dismissal, meaning that prior approval from the respective state authorities is required or that they generally cannot be dismissed without notice but only where the strict legal requirements of termination without notice are fulfilled.



## POST-TERMINATION

### Confidentiality and restraint of trade

At the end of the employment relationship most duties end. Many employers therefore choose to include contractual terms protecting confidential information and restricting what an employee can do post-termination (e.g. non-compete or non-solicitation clauses). Whereas a valid post-contractual confidentiality clause generally only requires an interest of the employer in the continued non-disclosure of the relevant information, post-contractual non-compete clauses are subject to stringent and complicated restrictions. For instance, the employer must undertake to pay the employee non-compete compensation of 50% of the last contractual remuneration or it will be unable to enforce the clause. If no compensation is agreed, the non-compete clause is null and void. Further, the employer cannot enforce a non-compete clause if and to the extent to which the restriction does not serve his legitimate business interests and the non-compete clause cannot be for longer than two years following the date of termination.

### References

In the event of termination of the employment for whatever reason, and regardless of whether the employee or the employer terminated the employment relationship, the employee is entitled to a written reference which must comply with certain formal requirements. If there is a significant change in the ongoing employment or other legitimate reasons, the employer must provide the employee with an interim letter on request.



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Employment Law in  
**Italy**

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## ON HIRING

### Employment status

Individuals providing services will benefit from different rights depending on whether they are classified as subordinate employees, self-employed workers or agents. The employment status will depend on the arrangements between the individual and the employer; however, self-employed workers or agents could be reclassified as subordinate employees based on the actual way they are managed by the employer.

### Employment contracts

Employers must provide employees with written particulars of employment (mainly including job title, place of work, wages, hours of work, holiday entitlement, probationary period and notice) within 30 days of the employment starting date. There is no obligation to provide an employee with a written contract of employment, but the majority of employers recognise the value in tailoring terms and conditions of employment in a written contract.

### Collective agreements

It is common practice (although not mandatory) for employers to apply a national collective agreement (“NCA”). The NCAs are sector-specific and provide for a very wide range of terms and conditions of employment, including minimum salary, annual holiday, notice period, duties, job levels and disciplinary sanctions.

### Practicalities

Employers must (1) be registered with the Italian social security authority (*INPS*) and with the Italian insurance authority for accidents at work (*INAIL*); (2) check that employees have the right to work in Italy; (3) comply with any obligations relating to health and safety in the workplace; and (4) comply with all relevant filings when hiring, terminating or changing employees’ employment contracts.



## DURING EMPLOYMENT

### Remuneration

There is no national minimum wage, but employees are entitled to receive a salary which is proportionate with the quantity and quality of their work. If an NCA is applied, employees must be paid at least the minimum wage provided for under the NCA. Depending on the sector and/or the employee’s position, there may be regulatory restrictions on remuneration.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions in Italy. In particular, for employees identified as material risk takers there are rules which require: (1) deferral of at least 40-60% of variable remuneration for not less than three years to five years subject to performance adjustment during that period (in banks and investment firms); (2) at least 50% of remuneration to be in non-cash instruments (in banks and investment firms); (3) a cap on variable remuneration of 100% of fixed remuneration (or 200% if provided for by the firm’s by-laws and if shareholder approval is obtained with a prescribed super majority) for banks and certain investment firms; and (4) awards of variable remuneration to be subject to clawback for individuals who have (i) participated in, or been responsible for, conduct which resulted in significant losses to the firm; or (ii) failed to meet appropriate standards of fitness and probity; and (iii) acted with fraud or gross negligence to the detriment of the firm. Minor banks and investment firms are exempted from applying some of the above limits.

### Pensions

Employees must be enrolled into the mandatory state pension scheme by the employer and both the employer and employee are required to make mandatory contributions into such scheme. In addition, NCAs usually provide for defined contribution supplemental pension funds (with contributions paid by both the employer and the employee).

### Working time and holiday

An employee’s normal working week is equal to 40 hours and the maximum weekly working hours must not exceed on average of 48 hours per week over a four-month period. NCAs can provide for a shorter normal working week. Employees are entitled to rest breaks of (1) at least 10 minutes when working more than six hours; (2) 11 hours every 24 hours; and (3) 24 hours in each seven-day period. Employees are also entitled to at least four weeks’ paid holiday (NCAs can provide for a longer period of holiday entitlement) plus 12 public holidays.

### Sickness absence and sick pay

NCAs provide for a period of time off as a result of illness or injury, during which employees are entitled to keep their job. Employees are also entitled to statutory sick pay in the proportion and for the period set out in the applicable NCA.

### Family and carer entitlements

Statutory maternity leave is five months (two months before the expected date of childbirth and three months after childbirth), with statutory maternity pay for the same period. If the mother does not take maternity leave (due to death, infirmity or exclusive custody of the father), the father is entitled to take paternity leave with statutory paternity pay for the same period. Similar leave entitlements apply on adoption. In addition, both parents can take parental leave for up to six months each (with an overall limit of 10 months together) until the child is 12 years old.

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation, which includes processing data in a proportionate manner and for legitimate reasons. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Discrimination by employers in the course of employment is prohibited if on the grounds of age, sex, race, disability, sexual orientation, religion, political opinion, membership of a trade union, pregnancy, marital status and personal opinion. This encompasses direct and indirect discrimination and harassment (engaging in unwanted conduct related to one of the above protected characteristics). Further, men and women must receive equal pay when the duties they are required to perform are the same or of equal value.

### Whistleblowing

There is no specific legislation protecting employees because they have made a disclosure about wrongdoings by their employer. However, specific protection is in place for employees of the Public Administration.

### Employment disputes

A set procedure applies to employers who deal with disciplinary matters against employees. The procedure broadly requires that (1) the employer inform the employee in writing of the misconduct he/she is alleged to have committed; (2) the employee has the right to file a defence, within five days; and (3) sanctions can be applied only once the term, granted to the employee for his defence, has lapsed. If the employer does not comply with the procedure, the sanction is null and void.

### Consultation requirements

Employers must inform and consult trade unions and employees' representatives in certain cases, mainly including business transfers and collective redundancies.

### Business transfers

On the sale of a business or part of a business, the employment of employees assigned to the business/part of a business will automatically transfer to the buyer. The employer must inform and consult with trade unions and employees' representatives about the transfer. Employees cannot be dismissed only on the basis of the business transfer and changes to the employees' terms and conditions under individual employment contracts are not allowed.



## TERMINATION

### Notice periods

The length of notice period is set out in the applicable NCA, based on the employee's length of service. In the absence of an NCA, there are statutory minimum notice periods ranging from two months to four months based on length of service. The parties may agree to substitute all or part of the notice period with payment in lieu.

### Reasons for termination

An employee's employment can only be terminated fairly for a justified objective reason (a company-related reason which relates to the production activity, or the work organisation, including redundancy), justified subjective reason (an employee-related reason normally referred to as misconduct, or a serious breach of the employee's contractual obligations) and just cause (same type of reason as the justified subjective reason, but of such seriousness so as to prevent the continuation of the employment and allow summary dismissal).

### Unfair dismissal

Employees who believe they have been unfairly dismissed can bring a claim before the Employment Court. If the claim is successful, the employer can be ordered to reinstate or re-engage the employee or to pay damages, depending on the company's size, the date of hiring of the employee and the reason grounding the dismissal.

### Redundancy

Collective redundancies occur when an employer, employing more than 15 employees, proposes to make at least five employees redundant in a 120-day period. In this event, the employer needs to comply with a prior collective consultation process with the employees' representatives and the trade unions.



## POST-TERMINATION

### Confidentiality and restraint of trade

At the end of the employment relationship most duties end. Many employers therefore choose to include express contractual terms protecting confidential information and restricting what an employee can do post-termination (e.g. non-compete or non-solicitation clauses). Italian law requires post-termination non-compete agreements to be in writing and be limited to a specific subject matter, duration and territory. They must also provide for a fair consideration (on top of salary) to be paid to the employee as compensation for the non-compete obligation.

### References

There are no specific duties concerning references.



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Employment Law in  
**Luxembourg**

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## ON HIRING

### Employment status

Individuals providing services will benefit from different rights depending on whether they are classified as employees or consultants. The employment status will be fact-specific and depend on the actual arrangement between the individual and the entity receiving the services. The general rule is that a consultant is in business in his own right whereas an employee is subordinate to his employer and thus subject to his direction and control. In the event of a dispute, only the Courts are able to determine this issue conclusively.

### Employment contracts

Employers must provide employees with written particulars of employment (setting out the basic terms and conditions of employment including identities of the parties, starting date, job title, place of work, wages, hours of work, holiday entitlement, notice, etc.) no later than the first day of employment. There are some collective bargaining agreements in Luxembourg and where such agreements are in place, the terms may be incorporated into the employment contract.

### Practicalities

Employers must (1) declare the vacant position to the National Employment Administration (*Agence pour le développement de l'emploi*); (2) check that employees have the right to work in Luxembourg; (3) if relevant, carry out any checks (criminal record, etc.); (4) sign the employment contract; (5) declare the employee to the social security authorities; and (6) arrange for a medical examination to check that the employee is fit for the performance of the duties as referred to under his employment contract.



## DURING EMPLOYMENT

### Remuneration

Employees must be paid at least the national minimum wage which as at 2016 stands at €2,307 per month for a full-time qualified employee.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions in Luxembourg. In particular, for employees identified as material risk takers there are rules which require: (1) deferral of at least 40-60% of variable remuneration for not less than three years to five years; (2) at least 50% of remuneration to be in non-cash instruments; (3) a cap on variable remuneration of 100% of fixed remuneration (or 200% if shareholder approval is obtained with a prescribed super majority); and (4) awards of variable remuneration to be subject to clawback for individuals who have (i) participated in, or been responsible for, conduct which resulted in significant losses to the firm; or (ii) failed to meet appropriate standards of fitness and probity.

### Pensions

If employers set up a pension scheme, eligible employees must be enrolled into the pension scheme and both the employer and the employee are required to make mandatory minimum contributions into the scheme, provided that the pension scheme requires such contributions to be made by the employees.

### Working time and holiday

An employee's maximum weekly working hours must not exceed an average of 40 hours (or 48 hours in case of overtime). Employees are entitled (1) to several short rest breaks if their working day is over six hours; (2) 11 hours of rest in each working day; and (3) 44 hours of rest in each seven-day period. Employees are also entitled to at least 25 days of paid leave (pro rated for part-time employees) plus 10 days of public holidays per year.

### Sickness absence and sick pay

Sick employees are protected against dismissal. On the first day of sickness, the employee must notify the employer (orally or in writing) of the absence and the reason for it and will then have temporary protection for the first three days of absence. On the third (calendar) day at the latest, the employee must provide the employer with a medical certificate stating the nature of the incapacity and the likely duration of his absence. The employee is then protected against dismissal during the period of absence specified in the medical certificate up to a period of 26 weeks in the case of continuous absence. Failure to provide a medical certificate results in loss of protection. All employees, irrespective of their length of service, are entitled to receive statutory sick pay (*indemnité pécuniaire de maladie*) for up to 52 weeks.

### Family and carer entitlements

Employees are entitled to statutory maternity leave of eight weeks before the expected date of childbirth and eight weeks after the birth (subject to adjustment if childbirth occurs early or late), with statutory maternity pay for the same period. This may be increased to 12 weeks if the employee is breastfeeding or in the event of premature or multiple birth. There are similar leave entitlements on adoption. Statutory paternity leave and pay is two days. In addition, subject to compliance with certain legal requirements, it is possible for each parent to take parental leave of six months (full-time) or 12 months (part-time) until the child is five years' old.

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation, which includes processing data in a proportionate manner and for legitimate reasons. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Discrimination by employers and by employees in the course of their employment is prohibited if on the grounds of age, sex, race, disability, sexual orientation, religion or belief, maternity or pregnancy or gender reassignment. This encompasses direct and indirect discrimination, harassment (engaging in unwanted conduct related to one of the above protected characteristics) and victimisation (treating someone less favourably because they have done something under discrimination legislation such as made allegations of discrimination). Further, men and women must receive equal pay for work that is equivalent or of equal value.

### Whistleblowing

Employees are protected from being dismissed or subjected to retaliation of any sort or to a detrimental modification of their employment contract because they have made a disclosure about particular “wrongdoings” (as defined by the Labour Code) by their employer.

### Consultation requirements

There are some legal information and consultation obligations, which mainly arise in the case of business transfers and collective redundancies. From November 2018, companies employing more than 150 employees must agree all decisions that are particularly important for the employment conditions of the employees with staff representatives.

### Business transfers

On the sale of a business or a service provider change, the employment of employees assigned to the business/services will automatically transfer to the buyer or new provider of services. The employer must inform and consult with the staff delegation, or if none, with the employees about the transfer. The transfer itself does not constitute a valid reason to dismiss employees. Moreover, resignations due to the changes to the employees' terms and conditions based on the transfer will be treated as dismissal by the employer and can be challenged before the Labour Courts.



## TERMINATION

### Notice periods

Employees are entitled to receive a statutory minimum notice period of two months, which increases with length of service to up to six months. The employment contract or applicable collective bargaining agreement can specify a longer notice period. The notice that must be given by employees is half of that required by the employer. Shorter notice periods can apply if employment is terminated during a probationary period. The employer can put the employee on a period of “garden leave” for all or part of the notice period but cannot make a payment in lieu of notice.

### Reasons for termination

An employee's employment can only be fairly terminated with notice for personal or economic reasons (provided the reasons are real and serious), or with immediate effect for serious misconduct. The employer must also follow a particular process, which will depend on the type of dismissal (i.e. with notice or immediate effect).

### Unfair dismissal

Employees who believe they have been unfairly dismissed can bring a claim in the Labour Courts, subject to meeting eligibility requirements. If the claim is successful, the employer can be ordered to reinstate the employee or to pay compensation.

### Collective redundancy

An employer who intends to dismiss, for reasons which do not relate personally to the employees, at least seven employees over a period of 30 days or at least 15 employees over a period of 90 days must carry out a collective redundancy procedure. This will include a consultation process regarding the establishment of a social plan.



## POST-TERMINATION

### Confidentiality and restraint of trade

At the end of the employment relationship most duties end. Many employers therefore choose to include express contractual terms protecting confidential information and restricting what an employee can do post-termination (e.g. non-compete). Such clauses are only enforceable insofar as they go no further than is reasonably necessary to protect the employer's legitimate business interests.

### References

There are no specific duties concerning references but it is mandatory for an employer to provide a work certificate to an employee who requests it. This certificate must be neutral and not include any pejorative statement about the employee.



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Employment Law in

# The Netherlands

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## ON HIRING

### Employment status

Individuals providing services will benefit from different rights depending on whether they are classified as employees, temporary workers or independent contractors. The employment status will be fact-specific and will depend on the actual arrangement between the individual and the entity receiving the services.

### Employment contracts

Employers must provide employees with particulars of employment (setting out the basic terms and conditions of employment including job title, place of work, wages, hours of work, holiday entitlement, and notice). There is no obligation for this to be in a written contract of employment, but most employers recognise the value in tailoring terms in a written contract. There are a number of collective labour agreements in the Netherlands and, where such agreements are in place, the terms may be mandatory or incorporated into the employment contract.

### Consecutive fixed-term employment agreements

An employer is allowed to enter into a maximum of three consecutive fixed-term employment agreements with a total maximum duration of 24 months, before the employment agreement is considered to be for an indefinite period of time. The interval between agreements which results in the duration starting again will be six months.

### Probationary period

Any probationary period must be specified in writing and the duration must be the same for both employer and employee. The statutory maximum probationary period is (1) two months for an indefinite term employment agreement; (2) one month for a fixed-term agreement for a period of less than two years; and (3) two months for a fixed-term agreement covering a period of two years or more. Probationary periods are not allowed in fixed-term agreements of six months or less.

### Practicalities

Employers must (1) be registered with the Dutch tax authority; (2) check that employees have the right to work in the Netherlands; (3) if relevant, carry out good conduct checks (criminal record) or regulatory checks; and (4) take precautions to protect the health and safety of staff and insure against liability for personal injury or disease sustained by employees.



## DURING EMPLOYMENT

### Remuneration

Employees must be paid at least the national minimum wage (as at July 2016, €1,537.20 per month for full-time employees aged 23 years or older, with a different rate for younger employees). Depending on the sector and/or the employee's position there may be regulatory restrictions on remuneration.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions. In particular, for employees identified as material risk takers there are rules at some institutions which require deferral of at least 40% of variable remuneration for not less than three years to five years, and at least 50% of remuneration to be in non-cash instruments. For all employees and other workers who work for Dutch financial institutions, a 20% cap on bonuses applies, albeit that an average of 20% is also permitted for those employees and other workers whose remuneration is not governed by a collective labour agreement, as long as the bonus does not exceed 100% on an individual level. Employees and other workers who work for a Dutch financial institution, its subsidiary or a branch outside the Netherlands but inside the European Economic Area are subject to a 100% cap, and those outside the European Economic Area are subject to a 200% cap with shareholder approval. Some financial institutions and holding companies are exempted. Clawback is mandatory for all employees and other workers.

### Pensions

Employers are not obliged to offer a pension scheme to their employees. However, all employers whose companies fall within the scope of application of a mandatory industry-wide pension fund must (with limited exceptions) have their employees participate in that fund. Furthermore, collective labour agreements can oblige employers to offer a pension scheme. For all pension schemes the pensionable salary (as at 2016) capped at €101,519 per year, although a so-called voluntary net pension scheme is possible for pensionable salaries above that cap. It is common practice to have employees pay 30% to 50% of the pension premiums.

### Working time and holiday

An employee's maximum weekly working hours must not exceed an average of 55 hours (calculated over a period of four weeks), or a maximum of 60 hours per week. Over a period of 16 weeks, the maximum working time may not exceed an average of 48 hours per week. Employees are entitled to rest breaks of (1) 30 minutes when working more than 5.5 hours; (2) 45 minutes when working more than 10 hours; (3) 11 hours in each working day (may be reduced to eight hours once every seven days); and (4) 36 hours in each seven-day period. Employees are also entitled to paid leave of at least four times weekly working hours in addition to nine public holidays. Further, all employees aged 23 and older are entitled to a paid holiday allowance of at least 8% of their regular base salary, which is paid on top of their regular base salary.

### Sickness absence and sick pay

Employees who are unable to work due to illness or injury are entitled to continued payment of at least 70% of salary (or, during the first year, the minimum wage if that is higher) during the first two years of incapacity for work (or until termination of employment). The amount is capped at the maximum daily wage (€202.17 as at 2016), but this cap is often removed in employment agreements. If the employee refuses to perform suitable work or in some way obstructs recovery, he/she is not entitled to continued payment of wages. During the first two years of illness, the employer has a statutory obligation to support the employee's return to work and may not give notice to terminate employment.

### Family and carer entitlements

Female employees are entitled to pregnancy leave and maternity leave amounting to a total of (as a main rule) 16 weeks. Employees are entitled to adoption leave of four consecutive weeks in a 26-week period. During pregnancy leave, maternity leave or adoption leave, the employee is entitled to social security benefits. In addition, employees (both male and female) have the right to unpaid parental leave to care for their children below the age of eight.

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation, which includes processing data in a proportionate manner and for legitimate reasons. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Discrimination by employers and by employees in the course of their employment is prohibited if on the grounds of age, sex, race, disability, sexual orientation, religion or belief, maternity or pregnancy or gender reassignment. This encompasses direct and indirect discrimination, harassment (engaging in unwanted conduct related to one of the above protected characteristics) and victimisation (treating someone less favourably because they have done something under discrimination legislation such as made allegations of discrimination). Further, men and women must receive equal pay for work that is equivalent or of equal value.

### Works councils

Works councils have extensive statutory information, consultation and approval rights. Every business which generally employs at least 50 employees must have a works council and the works council has a right to advise (*adviesrecht*) on intended important decisions of the company in respect of the organisation of the company. The works council also has a right of consent (*instemmingsrecht*) in respect of decisions related to significant changes to various employment terms and conditions.

### Transfer of undertaking

On the transfer of an “undertaking”, all the rights and obligations resulting from employment agreements transfer by operation of law from the transferor to the transferee. A “transfer” occurs where there is a transfer of an economic unit which continues its identity. An “economic unit” is defined as a whole of organised resources, destined to carry out an economic activity. Continuation of identity is characterised by (1) the continuation of the same activities (by the acquiring party); and (2) continuity of the way in which the work of the unit is organised, its operating methods or the operational resources available to it. The employer must consult the works council about the transfer, or inform the employees if no works council is present. Employees have additional protection from dismissal because of a transfer of undertaking and changes to the employees’ terms and conditions can only be made in limited circumstances.



## TERMINATION

### Advance warning of renewal or non-renewal

An employer has to warn an employee in writing at least one month before the expiry of a fixed-term employment agreement whether the agreement will be renewed and, if so, under what conditions. This only applies to employment agreements with a duration of six months or more. If the employer fails to do so it must pay the employee one month’s salary (or a pro rated amount if insufficient warning is given).

### Notice periods

Employees are entitled to receive at least a statutory minimum notice period, starting at one month and increasing with length of service to a maximum of four months from an employer, although the employment contract can specify a longer notice period. Where there is termination by mutual consent, the employer may pay the employee in lieu of, and/or put the employee on a period of “garden leave” for, all or part of the notice period, if this is agreed.

### Summary dismissal

Both the employer and the employee are entitled to terminate the employment agreement with immediate effect, and without paying the transition fee, when faced with circumstances in which they cannot reasonably be expected to continue the employment relationship, such as gross negligence in the performance of duties, disclosure of trade or professional secrets or theft. If the employee disagrees with the summary dismissal, he/she can ask the court to nullify the summary dismissal within two months. Alternatively, an employee could accept the dismissal and claim damages based on not taking into account the notice period and claim fair compensation.

### Reasons for termination

An employee’s employment can only be unilaterally terminated due to a “reasonable ground” (which includes redundancy and performance) and if reappointment to another suitable position is not possible. In case of a unilateral dismissal, the reason for the dismissal will determine whether the employer should seek court rescission or a dismissal permit: if the dismissal is based on redundancy or long-term illness (longer than two years), the employer must request a dismissal permit from the Employee Insurance Agency and may not approach the court. Conversely, the court may be approached if the dismissal is based on e.g. inadequate performance, a culpable act or omission, a disturbed employment relationship or frequent absence due to illness.

### Transition fee

An employee who has been employed for at least 24 months is entitled to a transition fee (1) in case of a unilateral dismissal after having received a permit to give notice; (2) in case the employment agreement is terminated by the court at the request of the employer; or (3) in case a fixed-term employment agreement is not extended. The transition fee is capped at the higher of €76,000 (in 2016) or one year’s salary. Only in exceptional circumstances can the court award a higher amount than the transition fee (e.g. serious culpable negligence or acts of the employer). Until 2020 the transition fee is higher for employees aged over 50 who have been employed for at least 10 years.

### Collective dismissal

If an employer proposes to dismiss at least 20 employees within a period of three months, the employer is subject to consultation, notification and information obligations towards the works council, the trade unions and the Employee Insurance Agency (*UWV*).



## POST-TERMINATION

### Confidentiality and restraint of trade

At the end of the employment relationship most duties end. Many employers therefore choose to include express contractual terms protecting confidential information and restricting what an employee can do post-termination (e.g. non-compete or non-solicitation clauses).

A non-competition clause must (1) be agreed upon in writing and signed by both parties; and (2) the employee must be at least 18 years of age at the time of signing. Further, a non-compete clause is void if it is included in fixed-term employment agreements, unless such a clause contains a clear justification based on articulated, substantial business interests.

### References

There are no specific duties concerning references, except in regulated environments such as financial services. However, once an employer agrees to give a reference it owes certain duties to both the employee and the recipient of the reference.



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Employment Law in  
**Poland**

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## ON HIRING

### Employment status

Individuals providing services will benefit from different rights depending on whether they are classified as employees or parties to civil law contracts, which is determined based on the intent of the parties and the legal relationship between them. The scope of employers' obligations will also depend on whether the parties enter into an employment contract or civil law contract (which are generally more flexible as the Polish Labour Code does not apply to such contracts).

### Employment contracts

The employment contract must be executed in writing in Polish and one counterpart must be delivered to the employee. The contract regulates basic terms and conditions of employment including the parties, type of contract, date, type of work, place of work, wages, and hours of work. This is the legally required minimum, but employment contracts may include other matters such as holiday leave, termination conditions and bonuses. The contractual terms cannot be less favourable for employees than terms set in the Polish Labour Code.

### Practicalities

Employers are obliged to (1) register their employees with the tax and social security authorities; and (2) ensure that all employees from non-EU/EEA countries have a valid work permit.



## DURING EMPLOYMENT

### Remuneration

Employees must be paid at least the national minimum wage which, as at 2016, is PLN 1,850 per month, for full-time employees. Wages must be paid regularly, at least once a month.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions. In particular, for employees identified as material risk takers there are rules which require: (1) deferral of at least 40% (60% for certain brokerage houses and banks) of variable remuneration for not less than three years to five years; and (2) at least 50% of remuneration to be in non-cash instruments (for banks and significant brokerage houses). There is no cap on variable remuneration and no requirement for provisions on post-vesting clawback.

### Pensions

Eligible workers must be enrolled into a national pension scheme and the employer is required to make minimum monthly mandatory contributions into the scheme.

### Working time and holiday

As a general rule, working time may not exceed eight hours per day and an average of 40 hours per average five-day working week. However, if justified by the type and the organisation of work, the employer can apply different working-time systems, which are more flexible. Overtime work is acceptable, but must be paid. Employees are entitled to rest breaks of (1) 15 minutes when working more than six hours (included in the working time); (2) 11 hours in each working day (subject to working-time systems); and (3) 35 hours in each seven-day period. Employees are also entitled to at least 20 days (if the employee has been employed for less than 10 years) or 26 days (if the employee has been employed for more than 10 years) paid holiday per year, plus up to 13 public holiday days (pro rated for part-time employees).

### Sickness absence and sick pay

Employees who are unable to work due to illness and meet certain conditions (including providing a medical report) are entitled to statutory sick pay for up to 182 days per year.

### Family and carer entitlements

Statutory maternity leave is 20 weeks, of which not more than six weeks may be used before the expected date of birth. Maternity pay is payable for the full period of maternity leave, with the amount dependent on the employee's salary. After statutory maternity leave, parents are entitled to paid parental leave lasting up to 32 weeks, which can be shared between the parents and can be taken as different periods of leave up to the child's sixth birthday. Additionally, fathers are entitled to up to two weeks' paternity leave.

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation, which includes processing data in a proportionate manner and for legitimate reasons. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Discrimination by employers and by employees in the course of their employment is prohibited if on the grounds of age, sex, race, disability, sexual orientation, religion or belief, maternity or pregnancy or gender reassignment. This encompasses direct and indirect discrimination, harassment (engaging in unwanted conduct related to one of the above protected characteristics) and victimisation (treating someone less favourably because they have done something under discrimination legislation such as made allegations of discrimination). Further, men and women must receive equal pay for work that is equivalent or of equal value.

### Mobbing

Employers should do their utmost to prevent “mobbing”, meaning any action or behaviour relating to an employee or directed against an employee consisting of persistent and long-lasting harassment or intimidation of an employee resulting in his or her decreased evaluation of professional capabilities.

Employees suffering from illness as a result of mobbing can pursue a claim against their employer for compensation. Employees who are victims of mobbing may also terminate the employment contract for cause.

### Employment disputes

Claims arising out of employment relationships fall within the jurisdiction of the labour court. In particular, employees may appeal against notices of termination (within seven days) and from dismissals for cause (within 14 days). Proceedings before the labour court are less formal than normal civil procedures.

### Consultation requirements

Statutory consultation obligations are mainly conducted with trade unions recognised by the employer. In particular, the employer must consult when it intends to (1) terminate, by notice, an indefinite period employment contract where the employee is represented by a trade union; (2) dismiss a pregnant employee; (3) organise work in the form of telework; (4) establish workplace regulations; (5) transfer an employing establishment (see business transfers below); and (6) make collective redundancies.

### Business transfers

On the transfer of an employing establishment (or its part) to another employer (this can encompass both share and asset transfers), the employment relationship automatically transfers to the new employer on the existing terms and conditions. The employer must inform any trade unions about the transfer. In the event that no trade union organisations operate at the establishments, the existing and the new employer must give notice in writing to their employees of the expected time of a transfer, its reasons and consequences. Employees have additional protection against dismissal because of a transfer.



## TERMINATION

### Notice periods

Employees are entitled to receive at least a statutory minimum notice period from the employer, starting at two weeks and increasing with length of service to a maximum of three months. The employment contract may specify a longer notice period. Statutory periods may be shortened in the case of bankruptcy or liquidation of the employer. During the notice period the employer can require the employee to take accrued but untaken annual leave. The employer may also exempt an employee from the obligation to perform work until the expiry of the notice period, but in such a situation the employee retains the right to full remuneration and all other terms of employment. The concept of payment in lieu of notice is not recognised, but the parties can mutually agree to waive the notice period for payment.

### Termination of employment by mutual agreement

When both an employer and an employee intend to terminate the employment contract, they may enter into a termination agreement. Such an ending is favourable for both parties, as it is possible to provide termination conditions different from those set forth in the Polish Labour Code (e.g. the employer may choose to pay a sum of money to the employee in lieu of notice).

### Dismissal for “cause”

In certain situations an employer may terminate the employment contract without notice. This includes (1) serious violation of the employee's basic duties; (2) if the employee commits an offence that renders further employment impossible; (3) loss (through the fault of the employee) of the licence/certificate necessary to perform the employee's duties; or (4) a prolonged period of the employee's incapacity to work by reason of illness. The employee is also entitled to terminate the employment contract without notice in certain circumstances, such as where the employer has seriously breached its basic duties.

### Unfair dismissal

When terminating employment contracts for “cause”, or any contracts entered into for an indefinite period of time, the employer must give the reason for the termination and, where the employee is represented by a trade union, must consult with the trade union. If the employer violates provisions regulating termination of employment contracts, the employee may sue for compensation or reinstatement on the former terms and conditions.

### Redundancy

An employer who dismisses an employee by reason of redundancy must carry out a fair redundancy selection to minimise the risk of an unfair dismissal or discrimination claim. This includes fairly selecting the employee for redundancy and consulting with the employee. An employer with at least 20 employees which proposes to make a certain number of employees redundant within a 30-day period also needs to carry out a collective consultation process.



## POST-TERMINATION

### Confidentiality and restraint of trade

At the end of the employment relationship most duties end. Many employers therefore choose to include express contractual provisions protecting confidential information and restricting what an employee can do post-termination (e.g. non-solicitation clauses). There are no limits on the duration of such provisions, save that the duration must not be excessive, and the employee must be paid at least 25% of his/her salary while the provisions are operative. It is common practice to enter into a separate non-compete contract providing that, in exchange for the compensation, an employee must not conduct any competitive activities for a certain period of time.

### References and certificate of employment

On termination of the employment, the employer must immediately and unconditionally issue the employee with a certificate of employment. This provides information on the period and type of work performed, positions occupied, the manner of termination/circumstances of expiry and other information necessary to establish employee's rights. There are no specific duties concerning references and it depends on mutual arrangements between the employer and employee as to whether references are to be provided.



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Employment Law in  
**Portugal**

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## ON HIRING

### Employment contracts

In general, written employment contracts are not legally required, except in relation to promissory contracts, fixed-term contracts, part-time contracts, contracts with foreign employees, contracts under a commission of services and contracts for the temporary assignment of employees. Employers are obliged to provide employees certain particulars in writing (e.g. place of work, anticipated duration of the contract, amount of pay and pay intervals, working times, etc.). Collective labour agreements are common in most sectors.

### Practicalities

An employer will be liable for any damage caused by an employee during the course of their employment, even if such damage was caused in violation of the employer's instructions. A company with which the employer has a reciprocal participation, domination or group relationship can be jointly and severally liable.



## DURING EMPLOYMENT

### Remuneration

There is a national minimum wage which applies to all full-time employees, irrespective of age and experience (as at 2016, the rate is €618.33 per month). Collective bargaining agreements are common in most sectors and may provide for a higher minimum wage.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions. In particular, for employees identified as material risk takers there are rules which require: (1) deferral of at least 40-60% of variable remuneration for not less than three years to five years; (2) at least 50% of remuneration to be in non-cash instruments; and (3) awards of variable remuneration to be subject to clawback in the event of subdued or negative financial performance. There is no cap on variable remuneration.

### Pensions

Both employers and employees contribute to social security which covers pensions and other social protection schemes. Employers must contribute the equivalent of 23.75% of the monthly salary and the employee will have 11% deducted from their monthly salary. Some employers provide access, and contribute, to a supplementary pension scheme.

### Working time and holiday

In general, an employee cannot exceed the maximum working periods of eight hours a day or 40 hours a week. However, alternative working time regimes can be set out in collective bargaining agreements. Employees are entitled to a minimum of 22 holiday days per calendar year, plus nine mandatory public holidays and two optional holiday days.

### Sickness absence and sick pay

Employees are entitled to time off work for illness. The state social security protection schemes will provide sick pay for 1,095 days at a rate equivalent to 55%-75% of an employee's salary, depending on the illness.

### Family and carer entitlements

Maternity leave is mandatory and is for 30 days prior to, and six weeks following, the birth. Paternity leave is also mandatory and is 10 working days in the 30 days following the birth, five of which must be taken consecutively. In addition, both parents are entitled to share a period of parental leave ranging from 120 to 180 days, which is paid at between 80% and 100% of salary.

### Data protection

Employees' data is protected under the European Data Protection directive. In addition, an employer cannot demand that a candidate provides information about their health, pregnancy or private life unless it is strictly required to assess a candidate's suitability for a role, and the employer provides a written justification.



## TROUBLESHOOTING

### Discrimination

An employer cannot discriminate, directly or indirectly, on the basis of parentage, age, gender, sexual orientation, marital status, family situation, genetic heritage, reduced work capacity, disability, chronic disease, nationality, ethnic origin, religion, political or ideological convictions or union affiliations.

### Whistleblowing

There is no express protection for employees who blow the whistle.

### Consultation requirements

Employees can choose to set up a works council which must be notified and consulted on decisions relating to: changes in criteria for determining promotion; change in the location of the business; change in the number of employees; terminations under a collective dismissal or individual dismissal procedure; and the company's winding-up or insolvency.

### Business transfers

In the event of a transfer of a part or all of an undertaking or business, existing employment contracts transfer automatically to the purchaser.



## TERMINATION

### Notice periods

The statutory minimum notice period ranges from 15 days to 75 days depending on length of service. There is no statutory minimum notice period for dismissal resulting from a disciplinary cause.

### Termination

Employers can unilaterally terminate an employment contract as long as they are not acting in a discriminatory way and comply with the required notice period; however, employers terminating a contract in this way will have to pay statutory severance pay. If, however, the dismissal is due to a disciplinary cause, employers must follow a strict procedure and the dismissal can be deemed unlawful in the absence of material grounds and/or failure to follow the procedural requirements correctly. Employee representatives and pregnant employees enjoy special protections from dismissal.

### Collective dismissal

Collective dismissal occurs as a result of the employer terminating, within a three-month period, at least two employees if the employer has fewer than 50 employees, or at least five employees if the employer has 50 or more employees. The employer must show that it meets one of the grounds for collective dismissal, and must consult with the employee representatives or the employees themselves. A representative of the Ministry of Employment must also be present at all consultations.



## POST-TERMINATION

### Confidentiality and restraint of trade

Post-termination restrictive covenants are common in employment contracts. Such restrictions must be set out in the written employment contract or the agreement which terminates the contract. Employees must receive compensation for the restrictions. Non-compete restrictions cannot last longer than two years (three years for senior employees).

### References

There are no specific rules concerning references.



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Employment Law in

# The Republic of Ireland

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## ON HIRING

### Employment status

Individuals providing services will benefit from different rights depending on whether they are classified as employees, self-employed or independent contractors. The employment status will be fact-specific and will depend on the actual arrangements between the individual and the entity receiving the services. The majority of statutory employment rights apply to employees only.

### Employment contracts

A written employment contract is not legally required; however, an employer must provide to an employee a written statement setting out certain particulars within two months of commencing employment, including job title, place of work and hours of work. An employer must also communicate the rate of pay; although, this can be done separately.

### Practicalities

Employers must (1) register with the Revenue Commissioners; (2) check that employees have the right to work in the Republic of Ireland; (3) if relevant, carry out criminal record or regulatory checks; and (4) take precautions to protect the health and safety of staff.



## DURING EMPLOYMENT

### Remuneration

Employees are entitled to receive the national minimum wage which, as at 2016, is €9.15 per hour.

#### Remuneration in financial institutions

Base pay is commonly supplemented with a range of benefits and variable remuneration which are subject to a range of restrictions. Notably, for employees identified as material risk takers: (1) at least 40-60% of variable remuneration must be deferred for not less than three to five years; (2) at least 50% of remuneration must be in non-cash instruments; (3) a cap on variable remuneration of 100% of fixed remuneration (or 200% with shareholder approval by a prescribed super majority); and (4) awards of variable remuneration must be subject to clawback, determined on criteria set by the company for individuals who have: (i) participated in, or been responsible for, conduct which resulted in significant losses to the firm; or (ii) failed to meet appropriate standards of fitness and probity.

### Pensions

Employers and employees make social insurance contributions to the government which are based on an employee's level of earnings. These contributions are used to fund various state benefits including state pensions. In addition, it is common for employers to provide access, and contribute, to supplementary pension arrangements.

### Working time and holiday

An employee's maximum weekly working hours must not exceed an average of 48 hours, subject to certain exemptions, calculated over a four-month period. There is also a right to minimum daily rest breaks. In addition to nine annual public holiday days, employees are entitled to a period of paid annual leave which amounts to the greater of: (1) four working weeks; (2) one-third of a working week per calendar month; or (3) 8% of the hours worked in a leave year, subject to a maximum of four working weeks. An employer may provide additional holiday entitlement; however, there is no obligation to do so.

### Sickness absence and sick pay

Employers do not have a statutory obligation to pay sick pay, although many employment contracts provide for contractual sick pay. Employees may be entitled to receive a payment from the state after six days of absence, subject to meeting social welfare qualification requirements.

### Family and carer entitlements

Maternity leave is up to 42 weeks. An employer is not obliged to pay employees whilst on maternity leave; however, the state makes a maternity pay contribution for the first 26 weeks of maternity leave and many employers provide an additional contractual entitlement. Female employees are entitled to adoption leave (40 weeks) and pay (24 weeks). Employees can also take parental leave (18 weeks per child) and carer's leave (13 to 104 weeks) provided they meet the statutory criteria.

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Discrimination by employers and by employees in the course of their employment is prohibited if on the grounds of age, gender, civil status, race, disability, sexual orientation, religious belief, family status or membership of the traveller community.

### Whistleblowing

There is statutory protection for whistleblowers in both the public and private sectors where they disclose what they reasonably believe constitutes wrongdoing in the workplace.

### Consultation requirements

Any business with over 1,000 employees in the European Economic Area (“**EEA**”) and at least 150 employees in two EEA states, must consult employees in relation to transnational matters affecting the business at EEA level. In addition, businesses in the Republic of Ireland with over 50 employees must consult with a works council, if one exists. While there is no legal obligation to consult with trade unions about significant transactions, there would be an expectation that they would be consulted about any significant workforce change.

### Business transfers

On the sale of a business or a service provider change, the employment of employees assigned to the business/services will automatically transfer to the buyer or new provider of services. The employer must inform and consult with employees about the transfer. Employees have additional protection from dismissal because of a transfer and changes to the employees' terms and conditions can only be made in limited circumstances.



## TERMINATION

### Notice periods

Employees are entitled to a statutory minimum notice period which ranges from one week (after 13 weeks' service) to eight weeks (after 15 years' service). Employees are required by statute to give one week's notice (regardless of the length of their service). A longer notice period, from employers and employees, may be specified in the employment contract.

### Reasons for termination

An employee's employment can only be fairly terminated for one of the following reasons: conduct, capability, redundancy, breach of statute and “some other substantial reason”. In addition, an employer must act reasonably and afford employees full and fair procedures in relation to any dismissal, including having regard to the Code of Practice on Grievance and Disciplinary procedures.

### Unfair dismissal

Employees who believe they have been unfairly dismissed can bring a claim against their employer, subject to meeting eligibility requirements, including having 12 months' continuous service. If the claim is successful, the employer can be ordered to reinstate or re-engage the employee or to pay compensation (up to two years' remuneration).

### Redundancy

Employers must implement redundancies fairly and for objective reasons, including by giving between two to eight weeks' notice (depending on length of service) to employees at risk of redundancy. There are special consultation procedures on collective redundancies which arise where an employer plans to dismiss, within any 30-day period, five employees where 21 to 40 employees are employed; 10 employees where 50 to 99 employees are employed; 10% of employees where 100 to 299 employees are employed; and 30 employees where 300 or more employees are employed.



## POST-TERMINATION

### Confidentiality and restraint of trade

Post-termination restrictive covenants are presumed unenforceable unless they go no further than is reasonably necessary and do not otherwise offend public policy. There is no maximum period for post-termination restrictive covenants, although a restriction of 12 months or longer is likely to only be justifiable in the case of senior employees.

### References

There are no specific duties concerning references, except in regulated environments such as financial services. However, once an employer agrees to give a reference it owes certain duties to both the employee and the recipient of the reference.



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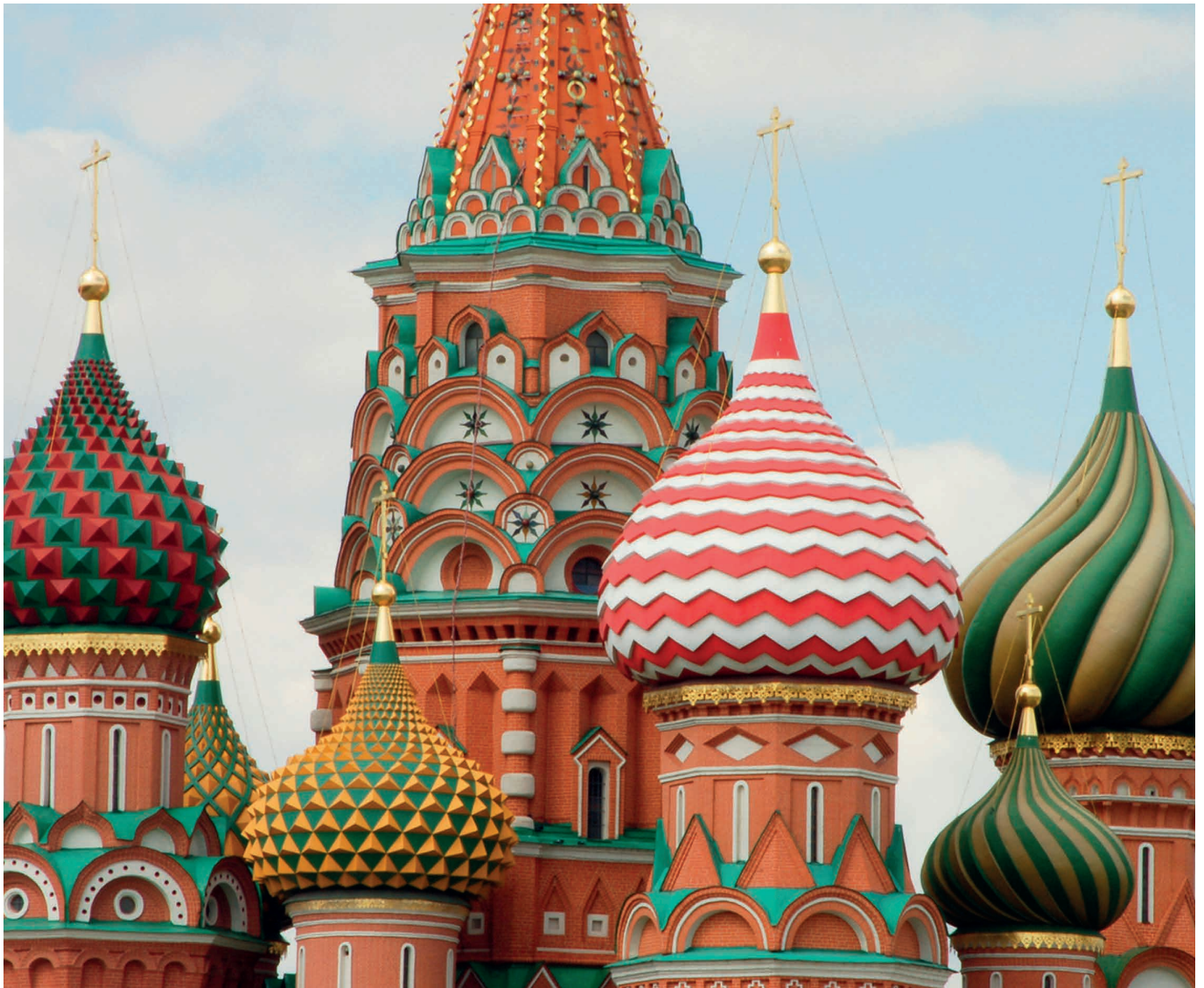
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Employment Law in  
**Russia**

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## ON HIRING

### Employment status

Individuals providing services will benefit from different rights depending on whether they are classified as employees or consultants. The employment status will be fact-specific and depend on the actual arrangement between the individual and the entity receiving the services.

### Employment contracts

A contract of employment must be in writing and should contain, among other details, the place of work, position, commencement date, expiry date (if applicable), salary, working time and time off (if different from the general rule). The employment contract can only lawfully be varied with the consent of both parties, although the employer can unilaterally vary the contract for certain organisational and technological reasons.

### Collective agreements

The employer and a trade union representing more than half of the employees within the organisation may enter into a collective agreement covering matters such as terms and conditions of employment and conditions of work. Collective agreements are legally binding and enforceable.

### Documents

Employers are required to keep certain official pro forma documents including: (1) labour books specifying details of the employment history for each employee; (2) a holiday schedule; (3) time recording files; and (4) business trip certificates. Employers are also obliged to adopt a number of written policies and procedures (such as, *inter alia*, a staff handbook, a fire safety policy and a data protection policy).



## DURING EMPLOYMENT

### Remuneration

Employees must be paid at least the national minimum wage (RUB6,204 per month for a full-time employee, as at 2016) but it is common for employer associations and trade unions to agree a higher rate of pay. Employers can only make deductions from wages if authorised by statute.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions in Russia. In particular, for employees identified as material risk takers there are rules which require, among other things, deferral of at least 40% of variable remuneration for not less than three years. There are certain provisions on the percentage of remuneration required to be in non-cash but they apply mainly to big listed banks. There are no clawback provisions but banks are required to ensure that deferred remuneration is subject to forfeiture, cancellation and adjustment mechanisms.

### Pensions

There are two types of pension provision: state pensions and private pensions. As a rule, individuals are eligible to receive the state pension if their employers have paid sufficient pension insurance contributions during their working life. State pension is the predominant pension provision in Russia and private pensions have not gained in popularity.

### Working time and holiday

An employee's maximum weekly working hours must not exceed an average of 40 hours (although, with exceptions, the employer can ask the employee to opt out of this limit). There are also restrictions on the amount of night work that employees can perform. There are no specific working time exemptions for senior managers. The minimum statutory annual paid holiday entitlement for employees is 28 calendar days, in addition to 14 public holidays.

### Sickness absence and sick pay

Employers are required to pay statutory sick pay to employees who are off work due to illness. The general rule is that payment must cover the whole period of the sick leave. The employees are required to produce a sick note to be entitled to the statutory sick pay.

### Family and carer entitlements

On average, statutory maternity leave is 140 calendar days with statutory maternity pay (subject to meeting certain conditions) paid for the entire duration. After maternity leave, the employee is entitled to take additional statutory leave until the child reaches the age of three. During such additional leave, the employee is entitled to childcare state benefit until the child is 1½ years old. Male employees are generally not entitled to paternity leave. However, a father may take leave until the child reaches the age of three if the mother waives her entitlement to such leave and returns to work before its expiry. There are similar leave entitlements on adoption.

### Data protection

Employers are likely to obtain, process and store personal data about employees and have an obligation to comply with the applicable data protection legislation.



## TROUBLESHOOTING

### Discrimination

Discrimination is broadly defined as an unfavourable treatment of a person in relation to his/her employment based on any grounds (such as, among other things, sex, age and race) that are not connected with his/her professional qualities and is unlawful. There are no specific concepts such as indirect discrimination, victimisation or harassment (which are likely to be covered by the general concept of discrimination). Separately, men and women must receive equal pay for work that is equivalent or of equal value.

### Whistleblowing

There are no laws which protect employees who blow the whistle.

### Employment disputes

Employees have the legal right to strike and, where an employee takes part in official industrial action, it will be automatically unlawful to dismiss him/her for taking such action. The Russian Labour Code contains detailed guidance on how employers should deal with disciplinary matters against employees. Employers are generally required to investigate any disciplinary issues, meet with the employee and allow the employee to provide a written explanation regarding any such issues. It will be automatically unlawful to dismiss an employee in violation of these disciplinary process requirements.

### Consultation requirements

Employers must inform and consult trade unions or elected employee representatives in certain cases, including redundancies. However, these requirements do not normally apply in the case of business transfers.

### Business transfers

On the sale of a business as an ongoing concern (which only covers privatisation, nationalisation or similar changes of the form of ownership or by reason of the transfer of an undertaking in the terms of Russian civil legislation), the employment of employees assigned to the business will automatically transfer to the buyer on their existing terms without breaking their continuity of service. Otherwise, there is no specific automatic transfer of employment.



## TERMINATION

### Notice periods

The notice period will depend on the reason for termination. The notice given by the employer is subject to a statutory minimum of (1) at least three days' notice for those who are being dismissed by reason of being recognised as unsuitable for the job before the expiry of the probationary period; (2) at least three days' notice for those whose employment is being terminated by reason of expiry of a fixed-term employment contract; or (3) at least two months' notice for those who are being made redundant. The notice given by an employee is subject to a statutory maximum, which will override any longer contractual notice period. In the event of redundancy, the parties can agree a payment in lieu of notice.

### Reasons for termination

There are several ways in which employment can be terminated, including: (1) voluntary resignation by the employee; (2) dismissal on the limited grounds set out in the Russian Labour Code; and (3) automatic termination for reasons outside the parties' control, such as death of the employee.

### Wrongful dismissal

If the employer terminates the contract in breach of the law, the employee can bring a claim for wrongful dismissal. Such a claim must generally be brought within one month of receipt of the dismissal or labour book (which is sent to the employee on dismissal). If the court makes a finding of wrongful dismissal, it can order (1) reinstatement; (2) payment of salary and benefits for the period between dismissal and reinstatement; and (3) compensation for injury to feelings (which is usually low).

### Redundancy

An employee's dismissal will be due to redundancy if the dismissal is wholly due to the fact that the employer decided to abolish his/her position or reduce the number of employees who are working in a given position. A fair redundancy process must be followed and, depending on the number of employees proposed to be made redundant, the employer may need to consult with elected employee representatives. In Moscow there is also an obligation to notify the Moscow Trade Union Federation where the proposed redundancy constitutes a mass redundancy in the terms of the Moscow Tripartite Agreement for a given year.



## POST-TERMINATION

### **Confidentiality and restraint of trade**

The concept of post-termination restrictions is unknown to Russian employment law and it is highly unlikely that such covenants would be enforceable.

### **References**

There are no specific laws in relation to references. However, the provision of references is subject to the general requirements of Russian data protection law, as well as general statutory requirements regarding slander and defamation.



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Employment Law in  
**Spain**

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## ON HIRING

### Employment status

Individuals may be engaged as employees or independent consultants. There are three different types of employment status: (1) permanent employment for an indefinite period, whether part-time or full-time. The terms and conditions must comply with minimum statutory legal provisions and provisions included in any applicable collective bargaining agreement (“CBA”); (2) senior management contracts, which are subject to fewer legal constraints than those of ordinary employees and, as a general rule, give greater scope for agreeing specific conditions in relation to their employment and its termination; and (3) temporary employment for a specific period of time, whether part-time or full-time (allowed in limited cases).

### Employment contracts

Contracts can be made verbally or in writing, save in certain circumstances (e.g. temporary contracts) where a written contract is required. However, it is advisable and market practice to execute a written employment contract setting out the basic terms and conditions of employment including job title, place of work, wages, hours of work, holiday entitlement, etc.

### Practicalities

Employers must: (1) be registered with the Spanish tax and social security authorities; (2) notify the relevant hiring to the Public Employment Service within 10 days of signing the contract; (3) provide the workers’ representatives (if any) with a copy of all contracts to be made in writing (except for senior management contracts); and (4) take precautions to protect the health and safety of staff and insure against liability for personal injury or disease sustained by employees.



## DURING EMPLOYMENT

### Employee representation

Employees are represented by labour unions at national, geographical or sector level. At company level, employees are represented before the employer by a works council or “personnel delegates”, which are not mandatory and whose main function is to monitor compliance with employment provisions.

### Collective bargaining agreements

CBAs regulate minimum employment terms and conditions that are binding on the parties. They may exist at a national, geographical or sector level (negotiated between labour unions and the employers’ association) and at a company level (negotiated between the company’s workers’ representatives and the company’s representatives). CBAs at a company level have preference over national, geographical or sector CBAs in certain employment aspects.

### Remuneration

Employees must be paid at least the national minimum wage distributed in 14 annual instalments (which, as at 2016, is €9,172 per year). The minimum wages are usually enhanced by the applicable CBA.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions. In particular, for employees identified as material risk takers there are rules which require: (1) deferral of at least 40-60% of variable remuneration for not less than three years; (2) at least 50% of remuneration to be in non-cash instruments; and (3) a cap on variable remuneration of 100% of fixed remuneration (or 200% if shareholder approval is obtained with a prescribed super majority). The Bank of Spain may, in exceptional circumstances and on a firm by firm basis, require post-vesting clawback.

### Pensions

Subject to certain requirements generally linked to the length and amount of contribution, contributory employees and their dependants are entitled to (1) public healthcare; (2) sickness benefit which is aimed at compensating the employee for loss of earnings during the disability period; (3) total or partial permanent disability benefit; (4) death and survivor benefit; (5) maternity and paternity benefit; (6) unemployment benefit; and (7) public pension. These might be enhanced by the applicable CBA or the employer.

### Working time and holiday

Maximum weekly working hours must not exceed 40 hours, calculated on an annualised average basis. Employees are entitled to rest breaks of (1) at least 15 minutes when working more than six hours; (2) 12 hours in each working day; and (3) 36 continuous hours in each seven-day period. Employees are also entitled to at least 30 calendar days’ paid leave plus 14 public holiday days per year. These rates might be enhanced by the applicable CBA.

### Sickness absence and sick pay

Employees who are unable to work due to illness or injury for three or more consecutive days and meet certain conditions are entitled to public sick pay. CBAs often require sick pay to be topped up by the employer to full salary.

### Family and carer entitlements

Statutory maternity leave is 16 weeks, extendable by two weeks in the event of disability of the child or multiple childbirth, with statutory maternity pay for the same period. This is often enhanced by employers to full salary. Statutory paternity leave is 15 consecutive days, extendable in the event of multiple childbirth by two further days per child, with statutory paternity pay for the same period. There are similar leave entitlements, to both adopters, on adoption.

### Data protection

Employers are likely to obtain certain employees’ personal data linked to professional purposes and have an obligation to comply with the applicable data protection legislation, which is very restrictive in Spain. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Any type of discrimination in hiring, during employment or on termination by employers and by employees is prohibited if on grounds of age, sex, race, disability, sexual orientation, religion or belief, political ideology, membership of a union, maternity or pregnancy. An employee who is a victim of discrimination or harassment is entitled to claim compensation for damages against the employer if it is proved that the employer has not acted diligently in order to avoid a discrimination or harassment situation. Further, men and women must receive equal pay for work that is equivalent or of equal value.

### Whistleblowing

Employees are protected from being dismissed or subjected to a detriment because they have made a “protected disclosure” about particular “wrongdoings” by their employer. A dismissal that is held to be on whistleblowing grounds will be invalid.

### Employment disputes

In the majority of employment-related disputes, the employee must file a conciliation claim before initiating litigation. The employer and employee are then called to a conciliation hearing before a government body called the Mediation, Arbitration and Conciliation Service (*Servicio de Mediación, Arbitraje y Conciliación*). This hearing is not judicial and is aimed at reaching a settlement agreement between the parties and avoiding litigation. If no agreement is reached at the conciliation hearing, the employee may file a claim before the relevant employment courts.

### Consultation requirements

There are relatively few statutory consultation obligations. These mainly arise in the case of collective redundancies or collective substantial modifications of employment conditions.

### Business transfers

On the transfer of a business, employees providing services exclusively or mainly at that business will automatically transfer under their existing terms and conditions of employment (including pension commitments, social security obligations, additional social welfare, etc.). No consultation period is required in relation to the transfer of a business, unless measures are proposed in respect of the employees. Both companies involved in the transfer will be jointly and severally liable for a three-year period for any employment obligations arising prior to the transfer and which are still pending or have not been duly fulfilled, and for a four-year period in relation to social security obligations.



## TERMINATION

### Procedure

Termination of employment is a formal process under Spanish law. Termination needs to be formally notified to the employee stating the grounds leading to the termination. Upon notification, employees have 20 working days to file a claim challenging the dismissal.

### Notice periods

There is a 15-day notice period in the event of redundancy, which may be substituted for payment in lieu. During this notice period, the employee is entitled to paid leave of six hours per week to seek new employment. There is also a 15-day notice period applicable to fixed-term contracts which last more than one year. The notice period for senior executives varies from three to six months (from both the employee and employer). Notice periods do not apply to dismissals based on disciplinary grounds.

### Unfair dismissal

Employees who believe the termination of their employment was unfair can file a dismissal claim with the employment courts (subject to going through the conciliation process outlined above). This could result in the termination being declared fair, unfair or null and void. If the dismissal is deemed to be unfair, the employee is entitled (at the employer's choice) to either (1) be reinstated at the company; or (2) receive statutory compensation for unfair dismissal (calculated based on length of service and capped at 42 months' salary). Employers generally choose to pay severance instead of reinstating an employee. If termination is declared null and void because it was based on discriminatory grounds or the employee was terminated without reason and has special protection against dismissal (e.g. pregnant women), the employee is automatically reinstated and the employer is obliged to pay the salary accrued between the termination date and the date of the declaration.

### Redundancy

Redundancies are defined as terminations not based on causes attributable to the employee but on economic, technical, organisational or production-related grounds. The redundancy process is very formalistic and requires the payment of a statutory redundancy pay (equivalent to 20 days' salary per year of service up to a maximum of 12 months' salary) on notification of the redundancy, otherwise the dismissal will be deemed unfair. In collective redundancy situations (i.e. where, over a 90-day period, (1) more than five employees are dismissed and the activity of the company ceases entirely; (2) 10 employees are dismissed at companies employing fewer than 100 employees; (3) 10% of the workforce is dismissed at companies employing between 100 and 300 employees; or (4) 30 employees are dismissed at companies employing 300 employees or more), a consultation process must be followed.



## POST-TERMINATION

### Confidentiality and restraint of trade

At the end of the employment relationship most duties end. Many employers therefore choose to agree contractual terms protecting confidential information and restricting what an employee can do post-termination in terms of employment (i.e. non-compete or non-solicitation clauses). Non-compete clauses are only enforceable if they are properly compensated and if the limiting period does not last more than two years.

### References

There are no specific duties concerning references.



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Employment Law in  
**Sweden**

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## ON HIRING

### Employment status

Individuals providing services will benefit from different rights depending on whether they are classified as employees or consultants. The employment status will be fact-specific and will depend on the actual arrangement between the individual and the entity receiving the services. A consultancy contract may be deemed to constitute an employment relationship if the terms and conditions are similar to those normally included in an employment arrangement.

### Employment contracts

There are no formal requirements for employment contracts, which may be entered into verbally or in writing. However, the employer must provide employees with written particulars of the employment setting out all material terms and conditions within a month of the commencement of the employment if the period of employment is longer than three weeks.

### Practicalities

Employers have to (1) be registered with the Swedish Companies Registration Office and the Swedish Tax Authorities before hiring employees and starting their business; and (2) follow applicable laws, collective bargaining agreements and provisions in the employment contract, which includes taking precautions to protect the health and safety of staff and insuring against liability for personal injury or disease sustained by employees. Generally citizens from non-EU/EEA countries must apply for work and residence permits before entering the country.



## DURING EMPLOYMENT

### Remuneration

There is no statutory minimum wage. However, collective bargaining agreements generally include provisions on wages.

### Remuneration in financial institutions

It is common to supplement base pay with a range of benefits and variable remuneration which are subject to a range of restrictions in Sweden. In particular, for employees identified as material risk takers there are rules which require: (1) deferral of at least 40-60% of variable remuneration for not less than three to five years; (2) at least 50% of deferred remuneration to be in non-cash instruments (for senior management of large organisations); and (3) a cap on variable remuneration of 100% of fixed remuneration (for credit institutions and securities companies). There is no requirement for post-vesting clawback.

### Pensions

In addition to a statutory pension, most employees are entitled to a supplementary pension based on their individual employment contract or applicable collective bargaining agreements.

### Working time and holiday

Regular working hours in Sweden cannot generally exceed 40 hours per week. However, employees can work overtime up to a maximum of either 48 hours during a four-week period or 50 hours during a calendar month, subject to an annual limit of 200 hours of overtime (generally 150 hours if the employer is bound by a collective bargaining agreement). Employees are entitled to a minimum of 25 days' annual leave each year as well as holiday pay earned during the qualifying year. Employees are entitled to carry forward up to five days to the next holiday year. Collective bargaining agreements may contain additional provisions in relation to annual leave. White-collar employees are normally entitled to 30 days' annual leave as compensation for not receiving any additional remuneration for overtime work. In addition, employees are entitled to 13 public days, nine of which may occur on weekdays and four "de facto" public holidays, three of which may occur on weekdays.

### Sickness absence and sick pay

An employee who has been employed for at least one month or worked for 14 consecutive days is entitled to sick pay of 80% of salary for two weeks (including weekends), with the exception of the first day of sick leave, which is unpaid. After 14 days the employee will receive sick pay from the Swedish Social Insurance Office (Sw. Försäkringskassan). This element of sick pay is generally 80% of the employee's salary per month; however, an employee whose salary exceeds SEK332,200 per annum will not receive a percentage of any salary exceeding this amount. Enhanced sick pay provisions can be agreed in collective bargaining agreements.

### Family and carer entitlements

An employee is entitled to parental leave, regardless of the employee's length of service, until the child is 18 months of age or (in the case of adoptions) 18 months from the day the child came into the care of the employee. However, statutory leave benefits are only available for 16 months (divided equally between the parents, although a certain number of days can be transferred between parents). During the remaining two months, the employee is not entitled to statutory leave benefits but their job is protected. An employee is entitled to reduce working time by up to 25% until the child is eight years old or has finished his/her first year of school, whichever is the later. In addition, an employee can take temporary parental leave in order to take care of a sick child until the child is 12 years old.

### Data protection

Employers that obtain, process and store personal data about employees have an obligation to comply with the applicable data protection legislation, which includes processing data in a proportionate manner and for legitimate reasons. Employees have the right to request details of their personal data held by the employer.



## TROUBLESHOOTING

### Discrimination

Discrimination by employers against employees in the course of their employment is prohibited if on the grounds of age, sex, transgender identity or expression, ethnicity, religion or belief, disability, sexual orientation or gender reassignment. This encompasses (1) direct and indirect discrimination; (2) inadequate accessibility (i.e. a person with a disability is disadvantaged through a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability); (3) harassment; (4) sexual harassment; and (5) instructions to discriminate. Further, men and women must receive equal pay for work that is equivalent or of equal value.

### Whistleblowing

There is no statutory protection for whistleblowers, although employees who report internal misconduct are protected through a range of alternative mechanisms such as those contained in the Swedish Constitution. There may also be additional protections in collective bargaining agreements. There are currently proposals to introduce regulations enhancing the protection for whistleblowers.

### Employment disputes

Employment disputes are normally brought before the Swedish Labour Court although they can, in some cases, be brought before the ordinary district courts. The employer and the employee can agree that disputes will be dealt with by an arbitral tribunal, in which case the employer usually pays the costs.

### Consultation requirements

Before an employer takes any decision regarding significant changes in its activities or in working or employment conditions, it must consult with any trade unions to which it is bound by a collective bargaining agreement, or, in the absence of a collective bargaining agreement, trade unions that have the employer's employees as members. Consultation must be finalised before any binding decision is made so that the views raised in the consultation can form part of the basis for the employer's decision. Although unions cannot veto a redundancy, failure to consult can result in damages being awarded against the employer.

### Business transfers

On the transfer of a company, business or part of a business, all employees will automatically transfer to the new employer on the same terms and conditions of employment unless the employees object to the transfer. The only terms and conditions which will not transfer are benefits in respect of old age, pension, invalidity and survivor benefits. The new employer can agree to uphold any pension benefits applicable to the transferring employees at the time of the transfer (which is in line with market practice). A consultation (as described above) must be carried out.



## TERMINATION

### Notice periods

All employees are entitled to receive statutory minimum notice, which varies depending on an employee's length of service and age. This ranges from one month for employees with less than two years' service to six months for those employees with 10 years' service. Notice must be in writing and delivered personally to the employee. Individual employment contracts may provide for longer notice periods, while collective bargaining agreements may provide for longer or shorter notice periods. During the notice period employees are entitled to receive their salary and other employment benefits. Unless agreed in the contract, there is no right for the employer to place the employee on garden leave, or make a payment in lieu of notice.

### Unfair dismissal

There are only two valid reasons when an employer will have "just cause" to dismiss an employee: (1) serious conduct related reasons (typically reasons related to misconduct by the employee); or (2) redundancy due to shortage of work.

An employee who has been wrongfully dismissed may initiate legal proceedings against the employer claiming wrongful dismissal and damages. The employment continues and the employee is entitled to salary payments and other benefits during the period of the court proceedings. If the employer cannot prove it had "just cause", it will be liable to compensate the employee for its legal costs as well as damages of: (1) between six to 16 months' base salary (if employed for less than five years); (2) 24 months' base salary (if employed for five years but less than 10 years); or (3) 32 months' base salary (if employed for 10 years or longer). In addition, for any breach of provisions of the Employment Protection Act, the employer would be obliged to pay general damages, which generally range between SEK80,000 and SEK130,000 per employee.

### Redundancy

Redundancy constitutes a lawful ground for dismissal. However, before determining whether there is a redundancy situation, the employer must look for any vacant positions for which the relevant employee is sufficiently qualified. In the event of a partial reduction of the workforce, employees must be selected for redundancy in accordance with a "list of priority" which is generally based on the employees' length of service, unless otherwise stated in an applicable collective bargaining agreement. An employer with fewer than 10 employees may remove two employees of special importance to the business from the list of priority to retain such employees regardless of length of service. If five or more employees are made redundant at the same time, a certain procedure must be followed, which includes notifying the Swedish Public Employment Service. The employer must consult with any trade unions before a final redundancy decision is made.



## POST-TERMINATION

### Confidentiality and restraint of trade

Employment contracts commonly include express contractual terms protecting confidential information (which normally apply for an unlimited period of time) and restricting what an employee can do post-termination (e.g. non-compete or non-solicitation clauses). Restrictive covenants are likely to be enforceable only if they are narrow in scope and apply for a limited period of time. An employee must be compensated for any restrictive period during which a post-employment non-compete is in force.

### References

An employee is entitled to an employment certificate confirming the employee's position and length of service. However, collective bargaining agreements may require an employer to provide more details about the work performed by the employee.



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