

Labor & Employment Law Newsletter

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In this issue, we focus on ...

Dispute resolution

Editorial	4	Colombia	13
Albania	5	▶ Alternative mechanisms for labor dispute resolution in Colombia	
▶ Employment law dispute resolution in Albania		Denmark	14
Argentina	6	▶ Labor dispute resolution in Denmark	
▶ Dispute resolution in Argentina		France	15
Australia	7	▶ Recent improvements in French dispute resolution	
▶ Social media now prominent in employment disputes		Germany	16
Belgium	8	▶ Changes in practice regarding labor dispute resolution	
▶ General rules of dispute resolution		Greece	17
Brazil	9	▶ Dispute resolution in Greece on individual and on collective level	
▶ Labor dispute resolution in Brazil		Guatemala	18
Bulgaria	10	▶ Dispute resolution in Guatemala	
▶ Compensation cap for unlawful termination		Hong Kong SAR	19
Chile	11	▶ The statutory framework of dispute resolution	
▶ Possible changes to the subcontracting regime		Italy	20
China, mainland	12	▶ Labor disputes in Italy	
▶ Labor dispute resolution in mainland China			

Japan	21	Romania	29
▶ Overview of the legal proceedings to resolve employment disputes		▶ Procedural aspects related to the settlement of individual labor disputes in Romania	
Lithuania	22	Serbia	30
▶ Labor dispute resolution		▶ Judicial and non-judicial resolution of labor disputes	
Mexico	23	Slovak Republic	31
▶ Labor dispute resolution in Mexico		▶ Labor dispute resolution	
Netherlands	24	Spain	32
▶ Dispute resolution after legislative changes		▶ Non-judicial solutions to Spanish labor disputes	
New Zealand	25	Sweden	33
▶ Resolving employment relationship problems in New Zealand		▶ Dispute resolution	
Norway	26	United Kingdom	34
▶ Employment dispute resolution in Norway		▶ The rise of conciliation and decline of tribunal claims: are fees the force behind the changing dispute resolution landscape for employment matters?	
Peru	27	EY labor & employment lawyers in the News 2015	35
▶ The new labor process: aspirations and reality			
Poland	28	Contact	38
▶ Litigating instead of settling labor disputes			

Editorial



As the working world becomes yet more globalized, companies are experiencing an increase in the internationalization of labor & employment disputes.

Indeed, more and more companies are finding themselves obliged to defending themselves in lawsuits in foreign countries brought by employees, works councils and unions. Often the claims are based on the legal concept of coemployment or joint employment as a result of the matrix organization common in many groups of companies. Therefore, multinational companies are no longer safe from being dragged before the courts of a foreign country with which they thought they had no ties.

In this context, and given the diversity of country specific judicial system, employers need to be aware of labor & employment dispute resolution around the world.

We focus in this issue of the EY labor & employment law newsletter on the issue of dispute resolution with respect to human resource disputes.

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Albania



Employment law dispute resolution in Albania

In Albania, when dismissed employees sue their former employers, they most often cite unjustified termination of contract, followed by noncompliance with termination procedures provided in the Labor Code, as well as termination for illegal causes. In most cases, the courts rule in favor of the employees because they are considered the “weak” party in need of protection and because unemployment has a tremendous social impact on the country.

The Labor Code establishes a mandatory procedure for terminating an individual employment contract, even in cases of immediate termination. The employer must organize a meeting with the employee, providing at least 72 hours’ written notice, to discuss the reasons for termination. The notice of termination must be given to the employee from 48 hours to 1 week after the meeting. Most employers in Albania do not follow the procedure, risking having to pay the employee two months’ salary, in addition to other compensation outlined by the Labor Code.

The code provides for mandatory minimum notice when either the employer or the employee terminates an indefinite-term employment contract. No prior termination is allowed under definite-term employment contracts.

Immediate termination of the employment contract by either the employer or the employee is permitted with “justified reasons.” Under the Labor Code, “justified reasons” include all circumstances that preclude, under the “good faith” principle, a request to the party that has unilaterally terminated the contract to continue the employment relationship. Other justified reasons include cases when employees

are in heavy breach, with fault, of their contractual obligations or continually commit small breaches of relevant contractual obligations even after the employer has notified them of the breaches. The employer should keep evidence of at least two written breach notifications to support its case in court.

If the immediate termination is not justified, the employer may have to compensate the employee with up to 12 months’ salary. In addition, the court will normally rule that the employer must pay the employee:

- ▶ The salary that the employee should have accrued during the notice period or, in a definite-term employment contract, the salary for the period until termination
- ▶ The salary corresponding to days of annual leave not given or taken
- ▶ Any seniority bonus
- ▶ Two months’ salary for failure to observe the mandatory termination procedure

Termination for illegal causes – also known as unreasonable causes – is legally invalid. Under the Labor Code, termination by the employer is considered to be based on illegal causes if the employee:

- ▶ Had genuine complaints arising from the contract
- ▶ Fulfilled a legal obligation
- ▶ Was let go for reasons related to characteristics such as race, color, gender, age, civil status, family obligations, pregnancy, religious or political beliefs, nationality and social status
- ▶ Is required to exercise constitutional rights
- ▶ Participates in lawful labor organizations

Employees dismissed for illegal causes have the right to bring a claim against the employer to court within 180 days after the notice of termination expires. The employer is obliged to pay the employee compensation of up to 12 months’ salary and all other payments that apply to unjustified terminations.

In practice, lawsuits against employers in Albania are mainly related to unjustified termination rather than termination for illegal causes. In the latter scenario, the employee must prove the illegal causes to the court. In unjustified termination cases, employers must prove that they have duly observed the procedures and notice periods of the employment contract.

To avoid excessive liabilities for compensation to dismissed employees, employers are urged to take particular care in observing the notice period and termination procedure set by the Labor Code. They are also encouraged to document any notifications of breaches so they can support their case for justified termination in court.

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Argentina



Dispute resolution in Argentina

Argentina has several methods of conflict resolution that offer simpler, faster and more economic alternatives to filing a lawsuit.

Here is a summary of the most important methods.

Mediation: a procedure through which an impartial third party, called a mediator, helps the parties in conflict by proposing solutions.

Argentine **Law No. 26,589**, as supplemented, establishes a mandatory mediation system as a precursor to any lawsuit, promoting direct communication between the parties. The exceptions include criminal cases, constitutional rights protection actions, injunctions, probate and voluntary proceedings, insolvency proceedings and bankruptcy.

The mediator must be registered with the Mediators Registry of the Argentine Ministry of Justice, and the parties must have legal counsel. If no agreement is reached, a written record is kept and the claimant is allowed to initiate legal proceedings.

Conciliation: the mandatory pretrial proceedings through which all labor claims are made so the parties can directly resolve a claim in collaboration with a third party, called the conciliator.

Law No. 24,635 created the **Mandatory Labor Conciliation Instance**, which takes place before any lawsuits can be filed with SECLO (the Argentine Compulsory Conciliation Service) over claims related to conflicts of laws within the jurisdiction of labor courts.

If a conciliation agreement is reached, all parties sign a written record to be approved by the Ministry of Labor, Employment and Social Security. If no agreement is reached, a legal action may be filed.

In addition, collective bargaining agreements may create an optional labor conciliation service for some claimants, such as SECOSE (the Optional Labor Reconciliation Service for Trade and Services), which covers employees governed by the commercial category.

Arbitration: a system in which the parties agree to subject one or more disputes that have arisen or may arise over a certain legal relationship, whether contractual or not, to one or more arbitrators.

The arbitration agreement was established under the **New Argentine Civil and Commercial Code** approved by **Law No. 26,994**.

The arbitration agreement is binding and establishes that disputes subject to arbitration are not part of the legal courts' jurisdiction.

Arbitration is international if the parties reside in different countries or if the dispute is international. Argentine **Law No. 24,322** approves the Inter-American Convention on International Commercial Arbitration, through which parties agree to subject to arbitration the disputes that may arise over a commercial business.

Collective bargaining: a method that allows workers to obtain better employment conditions than they could through individual bargaining by reducing the power imbalance between workers and their employers.

Collective bargaining may not result in collective bargaining agreements. Collective bargaining is subject to **Article 14bis** of the Argentine Constitution, providing that trade unions have the following guarantees: "performing collective bargaining agreements and seeking conciliation and arbitration," the provisions arising from **Laws 14,250, 23,929 and 24,815** governing collective bargaining agreements, and **Law No. 23,456** regulating the procedure for carrying out collective bargaining procedures.

Finally, **International Labour Organization Agreement No. 98** establishes the workers' collective bargaining rights, and **ILO Agreement No. 154** introduces guidelines on the scope of bargaining agreements.

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Australia



Social media now prominent in employment disputes

Employment disputes often hinge on interactions between employees. Since the introduction of social networking sites such as Facebook, Twitter and LinkedIn, the number of ways these interactions can occur has increased exponentially. As a result, social media now flavors many employment disputes that come before Australian courts and tribunals. Although there are several unanswered questions about the legal implications of social media in the workplace, a number of recent decisions in Australia have begun to build the framework of how social media can affect claims of bullying, harassment, misconduct and unfair dismissal.

What it means to be “at work” continues to expand

Employers have long known that the workplace can extend beyond the four walls of the office. The workplace includes an off-site end-of-year party just as much as a Monday morning conference call in the boardroom. Social media could now extend the workplace even further. For example, do employees have to be in the office during business hours for their social media activity to become relevant to their employment? A full bench of Australia’s federal Fair Work Commission (FWC) recently considered this question in a claim by employees who said they were being bullied “at work.” (Australian legislation requires bullying to occur “at work” before the FWC can intervene). In *Bowker et al. vs. DP World Melbourne Ltd. et al.* (FWCFB 9227, 2014), unreasonable behavior was alleged, some of it occurring in Facebook posts. The employers said that, for the posts to be relevant to the claim of bullying, they had to have been written and uploaded by employees while they were at the employers’ place of business,

performing work. The full bench disagreed, finding that it was enough for an employee to access the content on Facebook while at work, even when the content may have been initially posted outside of work. The reasoning centered on the ongoing nature of behavior on social media. The full bench said such behavior “continues for as long as the comments remain on Facebook.”

Employees must be mindful of their social media presence

Given the broad reach of social media content, which can be accessed anywhere and anytime, employees must be mindful of their online activities to minimize the risk that their behavior will affect their employment and damage the reputation of their employer. For example, a journalist is in a dispute with his former employer, the Australian broadcaster SBS, alleging that he was unlawfully terminated after he posted a series of controversial tweets about Australia’s national war memorial public holiday, Anzac Day. In another example, the FWC recently found that, under Australian legislation, an action as seemingly innocuous as “unfriending” a fellow employee on Facebook can contribute to a finding of bullying. In *Roberts vs. VIEW Launceston* (FWC 6556, 2015), “unfriending” formed part of what was considered repeated unreasonable behavior toward another worker that also created a risk to health and safety. The FWC found that “unfriending” demonstrated “a lack of emotional maturity” so as to constitute a finding of bullying.

Boundaries do exist

Although social media remains in some respects an enigma, in the context of employment disputes, recent cases demonstrate that courts are gradually defining which social media activities are relevant for judicial consideration. In *Rani vs. Limitless Ventures* (FWC 6429, 2015),

the FWC held that the fact that an employee “liked” complaints against her former employer on Facebook did not necessarily indicate that she “had set out to damage her employer’s corporate reputation.” That action was deemed irrelevant to whether she had engaged in misconduct warranting dismissal.

How to navigate the digital age

Since social media is here to stay, employers should:

- ▶ Have an up-to-date social media policy, it must detail what is considered acceptable use of social media (in and out of the workplace) in light of anti-bullying and harassment laws, and work health and safety legislation
- ▶ Ensure that any monitoring of an employee’s social media activity complies with applicable workplace surveillance laws and policies
- ▶ Consider an employee’s social media activity thoughtfully and properly to ensure any response to questionable content is appropriate under the circumstances

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Belgium



General rules of dispute resolution

A dispute between an employer and an employee can be resolved via judiciary (Labor Court) or alternative non-judiciary (mediation and arbitration) methods.

Labor Court

Belgium has a civil law system, with a Labor Court in every judicial district (nine in total). Each chamber of the court consists of a professional judge, the president and two nonprofessional judges, known as assessors, one of whom is an employer representative and the other an employee representative. The burden of proof lies, in principle, with the party making allegations, but there are several exceptions in which the employer will have the burden of proof.

If the value of the case is less than €250,000, the parties can bring the case to the labor tribunal free of charge, providing a low threshold for the employee to go to court. Of course, this does not include litigation costs, which have to be paid after the judgment.

The Labor Court has full jurisdiction over individual labor disputes between employees and employers, as laid down in the Judicial Code, without any minimum or maximum value attached to the conflict. The parties are not obligated to try to resolve the conflict via mediation or arbitration before going to court. In case of a collective conflict such as a strike, obviously the employer and the employees' representatives (union, delegation), as well as the permanent representatives of the union will try to resolve the issue via negotiations and mediation with the support of the Federal Ministry of Employment, following certain procedures covered by a collective bargaining agreement.

If the parties disagree with the judgment of the labor tribunal, it is possible to appeal, by a written request, before the Labor Court of Appeal within a month of the date on which the judgment's notice has been delivered to the parties. The composition of this court is the same as the Labor Court's.

From a labor law perspective, the statute of limitations is five years for any claim during the employment contract up to one year after the termination of the contract. The review period may be longer if the noncompliance is sanctioned with a criminal penalty, also taking into account the concept of "continuous infringement."

Alternative dispute resolution

Alternative dispute resolution (ADR) procedures to resolve employment issues were not popular for a long time. In 2005, a new law reorganized alternative ways to resolve conflicts. Mediation and arbitration can be used for individual labor conflicts. However, legal practices are hard to change, and few courts propose this alternative. A valid non-compete clause requires:

1. Mediation

Since 2005, any dispute that a settlement agreement can terminate may be submitted to mediation. The mediator is a neutral third party who acts as a facilitator and encourages the rapprochement between the antagonistic positions of the two parties. The mediator, who has to be accredited by the Federal Public Service Employment, Labour and Social Dialogue, works out an acceptable outcome. The agreement itself is not enforceable, but can be ratified by a judge.

There are two categories of mediation:

- ▶ **Voluntary mediation** where parties can, whether or not during a judicial procedure, rely on a mediator of their choice
- ▶ **Court-instigated mediation** where the judge designates the mediator, at the request of the judge or parties and within their agreement

2. Arbitration

Under Belgian law, it is not possible to insert an arbitration clause in the employment agreement with the purpose of bringing the case to an arbitrator if a future conflict arises, unless the employee earns at least €66,406 gross per year and is in charge of the daily management of the company. However, once the dispute or conflict arises, the parties can agree to bring it to arbitration. Any dispute that arises out of a contractual (labor) relationship and that can be terminated by a settlement agreement may be submitted to arbitration.

The most important arbitration institution in Belgium is the CEPANI in Brussels. A third party hears the case presented by each party and makes a ruling, which has *res judicata* (i.e., cannot be appealed against) and is enforceable. Arbitration has the advantages of speed, confidentiality and lower costs.

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Brazil



Labor dispute resolution in Brazil

Overcoming cultural barriers

In Brazil, dispute resolution arbitration is governed by Law No. 9.307 (1996), and the Constitution expressly authorizes its use in collective labor conflicts. Although alternative methods of dispute resolution are gradually gaining favor, Brazil has a cultural tradition of resolving conflicts in court.

For a better understanding of such resistance by representative entities, including unions, it is important to trace the origin of labor rights in Brazil and examine the historical events that preceded the passing of the labor legislation now in force.

In the early 1940s, Brazil was under a political regime whose main instrument of propaganda was the defense of employment and labor rights, supported by a growing urban population that was tired of abuses by the industries of the time. Since then, the Brazilian legislation has undergone several changes but has never lost its employee protection aspect.

In the late 1980s, after a 21-year anti-communist military dictatorship in which some fundamental rights were suppressed, the new Constitution was issued. One of its main tenets was the right to bring every conflict to justice.

With a Constitution that guaranteed such rights and a legislative tradition of employment protection, the critics of labor alternative dispute resolution maintain that it is an effort to privatize the judiciary, and fear it might replace the labor courts.

Additionally, several Brazilian authors argue that the problem with arbitration is how the referee is chosen. They say the referees might not be impartial because they will be “at the service of capital” – in this case, at the service of the companies that choose them.

The main difficulty for those who defend alternative dispute resolution lies in convincing all involved that it will not suppress any rights and does not mean that lawyers, judges and courts are no longer needed.

The use of arbitration to settle conflicts involves freedom of choice, and it has the advantage of letting stakeholders participate in the decision-making process.

Despite the obstacles to using arbitration to resolve collective labor disputes, the method possesses democratic value; promotes conflict pacification; and, most important, is expressly authorized by the Brazilian Constitution and is encouraged by the International Labour Organization.

The speed of the proceedings is an incontrovertible fact. A labor case that typically takes five to seven years in the judiciary could be resolved in three to five months through arbitration.

Arbitration helps realize the principle of timely delivery of justice. It represents legal pluralism and, therefore, the very maintenance of democratic rule of law. Arbitration may not solve every problem, but it can certainly aid in the noble task of pacifying social conflicts.

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Bulgaria



Compensation for unlawful termination

The Bulgarian Labor Code provides the procedure for resolving employment disputes. Although employment disputes are tied to the occurrence, existence, performance and termination of the employment relationship, they very often arise when the employment relationship no longer exists.

Time limitation of employment disputes

Employment disputes may be initiated within statutory limitation periods, which depends on the type of dispute and may vary from two months to three years. The most important disputes, regarding the revocation of unlawful termination of the employment contract, have to be initiated within two months after terminating the employment. If the claim relates to payment of salaries and other compensations, the employee is allowed to seek them within three years as of the moment from which the monetary compensation is due.

These limitation periods are not monitored by court. They are considered only in cases when the other party contends the statutory limitation period for submitting the claim has expired.

Governing jurisdiction

Unlike other legal disputes, employment disputes are to be heard by the Regional Courts of Bulgaria, as arbitration agreements are illegal.

Because of the importance of employment relationships, and the significant consequences of their terminations for the employee, employment disputes are often examined by courts under the "expedited procedure." The expedited procedure itself includes shorter deadlines for scheduling and adjudicating the case.

Employment disputes are rarely reviewed by the Bulgarian Supreme Court. Most of them are finally resolved within two-instance proceedings and a third instance review is rather an exception. Most employment disputes finish within a two-year timescale.

In cases of unlawful termination, the burden of proof lies with the employer to substantiate that the termination was legally performed.

Unpaid labor proceedings

Employees do not pay State fees and other expenses incurred in the employment dispute. This rule applies regardless of whether the employee is appellant or defendant in the proceedings, and regardless of the court instance. When an employee loses the court case, the fees and expenses incurred are borne by the State budget. However, in these cases, the employee is obliged to pay the remuneration of the counterparty's lawyer.

Mediation

The Bulgarian mediation legislation explicitly provides that employment disputes may be successfully resolved under the mediation procedure. The mediation is generally not limited in time. However, it raises questions in regard to the statutory limitation periods for employment disputes. It is hardly possible for the parties in the employment relationship, arguing over unlawful termination, to conduct the mediation procedure and observe the statutory limitation period for submitting unlawful termination claims before court, in case the mediation fails. This is probably why mediation is not a widespread method of employment dispute resolution.

"Back to work" court decision

Admittedly, most of the employment disputes relate to termination of the employment contract and its legality.

Most often, employees claim that they should be reinstated back to work. When this claim is upheld, the compensation for unlawful termination is due for the entire period in which the dismissed employee was unemployed, but is ultimately capped at six-month gross remuneration of the employee.

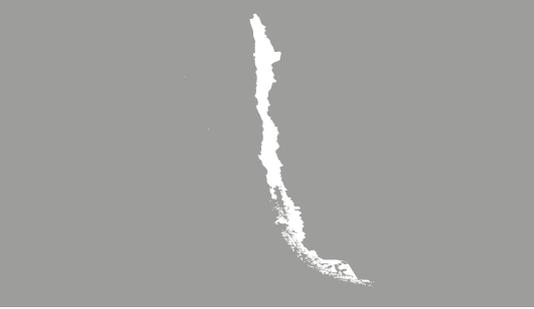
Protection of certain categories of employees

Based on their social vulnerability, certain categories of employees are protected from being dismissed on some termination grounds, which are discretionary on the employer (disciplinary dismissal, staff reduction, decrease of workload, lack of qualities, etc.) Mothers of children younger than three years, and pregnant women, occupational rehabilitees, employees suffering from serious illnesses specified by law and employees' representatives all benefit from this protection.

In order to dismiss them, the employer has to obtain the explicit permission of the Labor Inspectorate for the termination of employment. In defense of the employees, such permissions are often denied. Employment termination of a protected employee without the Labor Inspectorate's permission is to be revoked by court without any additional consideration on the merits of the case.

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Chile

Possible changes to the subcontracting regime

Along with labor reform involving collective bargaining, other important issues may be subject to legislative changes in Chile, including the subcontracting regime, whose characteristics, scope and requirements could be modified.

The subcontracting regime is an important method of organizing and outsourcing services that is expressly regulated in the Chilean Labor Code. It is based on the existence of a service agreement between a main company and a contractor company, under which the first one entrusts the second with a service. Employees of the contractor perform the service as part of the contractor, but for the main company.

The law establishes a system of joint and several liability for the main company on labor and social security obligations for the contractor company's employees. The main company can be limited to subsidiary liability if it has exercised its right to obtain information on the compliance status of those obligations.

The current legislation sets no limits on the types of services that can be provided through subcontracting, so the main company faces no legal impediment to outsourcing work, tasks or services in its own line of business. This criterion has been recognized by the Chilean labor authority (*Dirección del Trabajo*).

But limits on the types of services that can be outsourced are among the possible changes being considered. On 6 August 2015, a bill was introduced in the National Congress of Chile that would prohibit a main company from subcontracting activities in its own line of business. The main company could outsource only incidental or unrelated activities, such as cleaning, security, catering, and facility and equipment maintenance.

Another part of the subcontracting regime that might change is a regulation that allows two or more companies to be declared a single employer, as long as the main company and the contractor company have common business management and complementary businesses.

Potential legislative changes might limit the possibility of outsourcing certain activities through contractors, establish new regulations for how they can proceed with the main company, and set new rules for determining who employs the workers and the responsibility of the companies involved.

Despite the initial possibility of including this discussion in the labor reform debate, the bill with new regulations for the subcontracting regime is being addressed separately in the Chilean Congress.

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China, mainland



Labor dispute resolution in mainland China

Chinese labor law provides four primary approaches for resolving a labor dispute between an employer and an employee:

- ▶ **Consultation** to settle the dispute directly
- ▶ **Mediation** by a competent organization
- ▶ **Arbitration** by a labor dispute arbitration committee
- ▶ **Litigation** in the people's court

Of the four, consultation and mediation are not compulsory. If the parties do not use consultation or mediation, if either method fails, or if a settlement has been reached but is not honored, either party can apply for arbitration within the statutory time limit. Arbitration is a mandatory step before litigation. The parties cannot initiate litigation in the people's court unless the arbitration application is refused, or either party is dissatisfied with the arbitration award, and it is not within the categories for immediately final awards.

Consultation

Either party can request consultation, which usually occurs at the start of a labor dispute. It generally consists of two modes:

- ▶ One party consults with the other independently.
- ▶ One party requests that a trade union or another third party hold consultation with the other party to reach a settlement.

Mediation

According to the Labor Dispute Mediation and Arbitration Law, which took effect on 1 May 2008, these organizations are authorized for mediation:

- ▶ The enterprise's labor dispute mediation committee
- ▶ The grassroots people's mediation organizations established in accordance with the law

- ▶ Any organization in a township or neighborhood with an established labor dispute mediation function

After an agreement is reached, if one party fails to perform its obligations within the stipulated time, the other party may apply for arbitration. If a mediation agreement is related to outstanding compensation, medical expenses for a work-related injury or severance pay, and if the employer fails to meet the obligation, the employee can request a payment order from the people's court.

Arbitration

Time limit: according to the Labor Dispute Mediation and Arbitration Law, the time limit for applying for arbitration is one year from the date when parties know, or should know, that their rights were violated.

When a dispute arises from a delay in payment of compensation during the employment relationship, an employee's arbitration application is not subject to the one-year limit. If the relationship is terminated, the employee must initiate the application within one year of the termination date.

Jurisdiction: the labor dispute arbitration committee where an employment contract is being performed, or where the employer is located, has jurisdiction over a dispute. If the contract is being performed in one place and the employer is located in another, and if the parties apply to committees in both places, the committee where the contract is being performed has jurisdiction.

Burden of proof: both parties are responsible for submitting evidence to support their claims, but employers bear a much heavier burden of proof. If an employee cannot provide evidence because it is under the control of the employer, the arbitration tribunal may require the employer to produce it within a specified time. If the employer fails to do so, it will face adverse consequences.

Litigation

If the arbitration award is not within the categories for immediately final awards and either party disagrees with it, the aggrieved party can initiate litigation in a people's court within 15 days after the award is issued. There is a two-tier litigation process – a trial in the court of first instance and a final appeal to the appellate court. If neither party initiates litigation within 15 days, the award rendered in arbitration is legally binding.

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Colombia



Alternative mechanisms for labor dispute resolution in Colombia

According to the National Administrative Department of Statistics in Colombia, a judge can take about 300 days to issue a decision in a labor and employment case in the ordinary jurisdiction. That figure does not account for a second instance, so the duration could eventually increase.

Given that time frame and the expense involved, it is advisable in some cases to use alternative mechanisms available in Colombia's legal framework.

Colombian labor laws provide two main alternatives to resolve a dispute before it enters the ordinary jurisdiction. One is the private labor transaction, an agreement between the parties (usually the employer and the employee). The other is the labor conciliation, an efficient procedure before the Ministry of Labour or a labor judge.

Article 2469 of the Colombian Civil Code defines the private labor transaction as a "contract in which the parties give an extrajudicial end to a pending litigation or forestall an eventual one." Because of its nature, the agreement does not require any kind of permission.

But Article 15 of the Colombian Labor Code does set limits. The settlement:

- ▶ Must apply only to disputable and uncertain rights
- ▶ Must not contain negotiations over minimum rights, certain rights and undisputable rights

If the transaction violates those restrictions, the agreement is invalid. The Labor Code establishes in Article 15 that "the transaction is valid for labor issues, except in the case of certain and undisputable rights," including salary, social security and fringe benefits.

Employers and employees can also settle their differences through the labor conciliation.

An authorized authority – a labor inspector or a labor judge – will help the parties negotiate. This authority is responsible for ensuring that the negotiations do not address minimum rights, certain rights and undisputable rights, which could invalidate the conciliation.

The labor conciliation:

- ▶ Is a voluntary and alternative mechanism
- ▶ Can be used to prevent labor litigation or to finish it

Both the private agreement and the labor conciliation have proved to be efficient mechanisms to help the employee and the employer avoid the time and expense of ordinary labor litigation.

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Denmark



Labor dispute resolution in Denmark

A discussion of dispute resolution in Denmark requires some understanding of the Danish labor model.

“Flexicurity”

The Danish model is a hybrid. The labor market is as flexible as that of the United Kingdom, but Danish employees also enjoy a Scandinavian degree of security. Flexicurity, considered one of the key advantages of the system, consists of three elements: flexible recruitment and termination, an active labor market policy on the duty and right to participate in welfare-to-work programs, and a relatively high level of accessible unemployment benefits.

The ease with which employers can recruit and dismiss is the most likely reason that Denmark is among a group of countries, along with the US and the UK, that benefit from a high degree of flexibility. In this context, the standard indicator is the average period of continuous employment with the same employer. That figure is almost 50% longer in Sweden than in Denmark, probably because of strong dismissal protection in Sweden.

Sources of Danish employment law

Unlike some other European countries, Denmark does not have a general labor statute conferring certain minimum rights on employees. Legislation is fragmented in the sense that many individual statutes are applicable, depending on the nature of the employment relationship.

For example, the Danish Salaried Employees Act applies only to salaried employees (white-collar workers). And specific statutes cover seamen, vocational trainees, civil servants and agricultural workers.

Collective agreements are one of the most important sources of law, covering as much as 75%-80% of the Danish labor market. The remaining 20%-25% is covered by individual employment contracts and legislation.

Naturally, the third source of law is the individual employment contract, which varies widely. Danish law rarely requires the use of specific forms, but the contract must not deviate from mandatory legislation or applicable collective agreements.

Dispute resolution

Employment disputes are resolved in two systems:

- ▶ The ordinary Danish courts
- ▶ Arbitration and the Danish Labour Court

The Danish Labour Court consists of representatives from both employer and employee organizations and qualified judges.

In the ordinary courts, the employee and the employer must either appear in person or be represented by counsel. If the case is appealed, the proceedings normally take several years.

Proceedings before the Danish Labour Court and an industrial arbitration tribunal are rather informal, with no counsel required.

Disputes are resolved faster before an arbitration tribunal or the Danish Labour Court. But only rulings from the ordinary courts can be appealed.

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France



Recent improvements in French dispute resolution

Early in 2015, the French Government announced a series of measures to favor employment, including modifications to employment dispute resolution rules. After several months of debate before the National Assembly and Senate, the Law for Growth, Activity and Equal Economic Opportunities (known as the Macron law, after the Minister of Economy who proposed it) took effect on August 7, 2015.

The Macron law not only improves employment dispute resolution rules but also adds two new options for alternative dispute resolution.

General context

Labor courts in France are composed of four magistrates who are elected every five years: two chosen by employers and two by employees. Decisions are based on a majority vote. If there is a tie, the case is reheard up to 12 months later, with an additional judge from the court of general jurisdiction.

Before a labor court decides a case at the judgement hearing, the parties must attend a conciliation hearing during which they are encouraged to reach an amicable resolution. However, these hearings rarely result in a settlement.

New employment dispute resolution rules

A streamlined court:

According to the new law, during the conciliation hearing, parties in dismissal cases may agree to have their case heard by a reduced court of only two judges: one chosen by employers and one by employees. The reduced court will render decisions within three months.

Faster justice:

During the conciliation hearing, if the nature of the case requires it or if the parties request it, the matter can be directly heard by a 5-judge court; four labor court magistrates and an additional judge from the court of general jurisdiction. The purpose of this change is to avoid having the case heard twice if the chance for a tie-breaker seems inevitable, thus accelerating the proceedings.

Guidelines and ceilings for damages:

When a court decides that a termination is wrongful, the employee is awarded damages that may vary depending on factors such as age, salary and years of service. There was no statutory ceiling or scale to calculate the damages.

The French Government proposed introducing two new measures in the Macron bill: a ceiling on damages and recommended guidelines to allow courts to award damages based on various criteria.

Labor judges are therefore encouraged to rely on the recommended guidelines, (to be published shortly by administrative decree) to help them better assess damages in wrongful dismissals. They will likely be based on the employee's years of service, age and employment situation.

The judges may decide not to apply the guidelines; but it can become binding if both parties request its application during litigation.

The proposed ceilings were based on the employee's years of service and the number of employees in a company. The latter point was challenged and deemed unconstitutional. The French Constitutional Court ruled that a ceiling itself is lawful but said it cannot be based on the size of the company, because that has no bearing on the damage caused to the employee.

The Government has announced that the ceilings will be the subject of a forthcoming law that will likely further modify the labor court system.

New alternative dispute resolution opportunities

The Macron law makes two new alternative dispute resolution options available to employers and employees.

First, employers and employees can agree to mediate a potential dispute before any court hearing.

Second, employers and employees can now agree not to litigate before the courts for a set amount of time and will instead seek an amicable resolution to any future dispute. Such agreements apply only to future litigation, and each party must be represented by a lawyer when entering into them.

Both of these options have been available since the publication of the Macron law on August 7, 2015.

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Changes in practice regarding labor dispute resolution

In 2013, about 60% of employment lawsuits brought before German labor courts of first instance were resolved by court settlement, according to official figures. That is the highest number since the “shift of balance” in 2005, when, for the first time, more than half of all employment-related lawsuits were mutually settled. As court decisions become less frequent, such lawsuits are increasingly settled by other means, with a growing variety of paths to conciliation.

For 13 years, it has been a statutory duty not only for the local labor court but also for the regional court to seek an amicable settlement of each case before proceeding to a contentious court hearing. Basically, any trial in front of German labor courts starts with conciliation efforts and negotiations.

Apart from that, experience shows that the demand for guided dispute resolution is increasing as more parties strive for conciliation rather than confrontation.

The law has reacted to this demand with the national implementation of EU Directive 2008/52/EC and with new statutory regulations for alternative dispute resolutions.

Common to all solutions is that the parties participate voluntarily and seek to settle conflicts on their own, preferably by mutual agreement. No party can be compelled to take part, and each party has the right to leave the proceedings at any time, without reason, and to declare that the proceedings failed.

Communication, and the individual interests of the parties, receive special emphasis in these proceedings. But in most cases, discussions or attempts at dialogue have preceded court trials, which are often the result of an escalated conflict where self-regulating endeavors have failed. Opting for conflict resolution proceedings might then seem like a step backward. But the proceedings still provide a way out of the conflict, and help revive communication between the parties.

The structure of such proceedings is not regulated by law, and the process varies.

The Labour Court Act, for instance, allows the judge in charge of a trial, at first instance or appeal, to delegate the case during the conciliatory hearings to a “conciliation judge.” The conciliation judge can use all methods of conflict resolution and apply a broad mix of classical judicial and mediative negotiation elements.

The judge can give advice on the legal situation, even suggesting solutions, and can interview the parties individually. All professional judges can act as conciliation judges, but in this special situation, they are not allowed to give a ruling.

These proceedings are limited to the original trial’s topics and claims, and are thus somewhat restricted. But one advantage is that the conciliation judge represents a formal court, so a mutual agreement reached in these proceedings can be enforced by the same means as any court decision.

Another conflict-solving instrument is extrajudicial mediation, which is regulated by the Mediation Act. The parties can stop court proceedings and pursue out-of-court conflict resolution at any time. With the help of a qualified mediator, this method aims to settle all conflict-related topics, not just those that were the focus of the pending trial. The mediator has no decision-making power but merely leads the parties through the process. The outcome is documented in a “conclusion agreement.”

Unlike conciliation judges, mediators cannot recommend any solution, even if it might be preferable from their point of view. It is their duty not only to be neutral but also to appear neutral, considering the contrary interests of the parties. Mediators thus bear a heavy responsibility in observing the principles of procedural – but not legal – justice.

A main advantage of this kind of conflict resolution, which is well established in business practices in the form of arbitration boards, is that it leaves less “scorched earth” and might act as a basis for fruitful collaboration in future employment relationships.

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Greece



Dispute resolution in Greece on individual and on collective level

For conflicts arising between employers and employees throughout the employment relationship, the Greek labor law provides for several alternative dispute resolution mechanisms either in an individual or collective level. However, it should be noted that in practice, especially as regards disputes of individual nature, the parties usually rely on standard litigation proceedings in order to solve their in between conflicts.

As regards employment law relationships of individual nature, it should be noted that as per law, the employee may not waive his minimum legal employment rights e.g., minimum legal salary etc. (article 679 of the Greek Civil Code). However, a settlement between the employer and the employee is permissible either in case of disputes that do not refer to minimum legal rights or when the outcome of the litigation is extremely doubtful for the parties (Athens Supreme Court, Decision no 578/1980). If such an optional extrajudicial settlement is not achieved, then the parties may follow the alternative procedures described below.

Said procedures are not limited specifically to employment law disputes but are also available for all kind of private law disputes. In this context, according to article 208 of the Code of Civil Procedures, the Judges of all Courts of Peace have the duty to attempt settlement between the parties before the first hearing of every case. Furthermore, they are entitled to refer the case to another Magistrate, even from another prefecture, if they believe that this would be appropriate for the likelihood of a successful resolution.

In addition, according to article 233 of the Code of Civil Procedure employment law

disputes that are qualified for settlement by means of a compromise and that are heard with both parties present can be resolved through a court settlement, which is initiated and facilitated by the Judge hearing the case.

Furthermore, according to the provisions of article 214 A of the Code of Civil Procedure, after the submission of a lawsuit and until a final decision is reached, litigants may attempt to reach through negotiation efforts and regardless of the standing stage of the trial an extrajudicial settlement.

As an alternative, according to article 214 B of the Code of Civil Procedure both parties can recourse to judicial mediation, prior or after litigation is initiated before the Court of First Instance or the Court of Appeal.

Based on the above it is clear that the current Code of Civil Procedure contains several overlapping alternatives of dispute resolution as regards employment law.

As regards employment law relationships of collective nature, mediation and arbitration procedures by the Organization of Mediation and Arbitration are in force.

The Organization of Mediation and Arbitration (hereinafter OMED) was established by the law for enshrining "Free Collective Bargaining" (Law 1876/1990) and its main purpose is to help the social partners under negotiation to conclude collective labor agreements through mediation, when the negotiations cannot lead to an acceptable, by both parties, solution. In case mediation process does not lead to a desirable effect, the next step is arbitration.

The main levels of collective bargaining in Greece are: national level, covering the entire economy and all employees working within the Greek jurisdiction; industry or occupation level, covering specific

industrial sectors or specific occupations; and company level covering the workforce of specific companies. The legislation on who is entitled to collective bargaining introduces flexibility at company level. More specifically, in certain cases, groups of employees (association of employees), rather than unions, may sign company level collective labour agreements. Initial evidence shows that said agreements signed by associations of employees resulted in significant cut on wages.

As regards the duration of a collective labour agreement, recent legislation sets a minimum length of one year and a maximum of three.

The importance of collective bargaining in Greece decreased after 2009 due to legislative measures which were decided in the context of restricting the negative effects of the financial crisis.

More specifically, the minimum wages on national level, instead of being agreed by a national collective bargaining agreement, are set by law.

In addition, in the event the parties do not reach an agreement during the stage of direct negotiations or during the stage of mediation, then an arbitration procedure may be initiated only if both social partners agree on that. In practice, employer's federations usually do not agree for the negotiation to be submitted to an arbitrator and thus in many cases collective bargaining does not result in a collective labour agreement.

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Dispute resolution in Guatemala

The alternative dispute resolution (ADR) consists of a set of procedures for employers and employees with differences and competing interests, in order to find intermediate points of agreements that allow them to overcome differences without causing further damage.

Professionals from various disciplines developed the ADR procedures, most notably those in psychology, sociology, anthropology, communications and labor law.

The General Labor Inspectorate is the administrative body where parties in conflict are encouraged to reach a settlement. If no agreement is reached, the party can demand its right of action before a competent court once the labor court party knows the facts in the conflict.

Within this body of labor law in Guatemala, normal operations in procedural disputes, with rules set forth by the legal system and procedures in their respective codes, can be very inconsistent.

Labor disputes are common, using legal procedures such as strikes or even illegal seizures of productive units. Procedures in both the General Labour Inspectorate and the labor courts are cumbersome, and the worker often obtains a favorable verdict.

One method of resolving disputes is mediation, through which the parties in conflict extrajudicially achieve a solution with the help of a neutral third party, who uses his or her own powers of reasoning, initiative and persuasion. The Guatemalan Labor Code does not regulate mediation more broadly because it resolves labor disputes where this conflict occurs frequently, allowing a swift, extrajudicial and economical solution. Mediation also allows the subjects to find a much more direct solution without resorting to a court, which would consume more time and money.

Another method is reconciliation, a voluntary process. The parties negotiate to resolve their differences, supported by a neutral third party, who runs and guides the settlement through direct proposals. This is included in Articles 377, 378, 379, 380, 381, 382, 384, 385, 386, 387, 389, 391, 393, 394, 395 and 396 of the Labour Code of Guatemala.

When an issue likely to cause a strike or lockout occurs, stakeholders in a workplace – whether in the case of employers or of non-unionized workers – prepare and sign a statement of claims. This statement of claims must appoint three delegates who understand the causes and intricacies of the conflict. These delegates are therefore legitimate in negotiating signing agreements with the

stakeholders or in signing ad referendum agreements, which clarify points of previous agreements passed between stakeholders.

Another method is arbitration, in which the parties submit their differences to a neutral third party who resolves the conflict through a binding decision, called a *Laudo Arbitral*, issued by a court of arbitration.

Currently, arbitration is not commonly used in labor law because it is burdensome or onerous to the parties, unlike in the civil and commercial law, where it is quite useful and accepted, as it regulates Decree 67-95 of the Congress of the Republic of Guatemala (the Civil and Commercial Code's Arbitration Act).

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Hong Kong SAR



The statutory framework of dispute resolution

The main pieces of labor legislation in the Hong Kong special administrative region (SAR) of China include:

- ▶ Employment Ordinance
- ▶ Minimum Wage Ordinance
- ▶ Employees' Compensation Ordinance
- ▶ Occupational Safety and Health Ordinance

Others include the Labour Relations Ordinance, the Factories and Industrial Undertakings Ordinance, the Contracts for Employment Outside Hong Kong Ordinance, the Employment of Children Regulations and the Trade Union Ordinance.

Although legal proceedings can be costly and time-consuming, certain employment-related disputes need to be litigated in court, including personal injuries, non-monetary claims and other matters that fall outside the jurisdiction of the Minor Employment Claims Adjudication Board (MECAB) and the Labour Tribunal.

Labour Department conciliation

Parties in a dispute can consult the free and voluntary conciliation service from the Labour Relations Division of the Labour Department to understand their rights and obligations under the Employment Ordinance.

A conciliation officer appointed by the department will try to help the parties reach a settlement that is contractually binding. The officer may also arrange any payments that may be involved.

Parties must attempt conciliation before commencing proceedings at the MECAB or the Labour Tribunal. Conciliation is also a prerequisite for trade disputes under the Labour Relations Ordinance.

MECAB and Labour Tribunal

After a conciliation certificate has been issued, the parties can file claims with the

MECAB or the Labour Tribunal, depending on the nature of the claim, to seek resolution.

The MECAB handles cases involving not more than 10 claimants and not exceeding HK\$8,000 per claimant, while the Labour Tribunal handles cases involving more than 10 claimants and exceeding HK\$8,000 per claimant.

Claimants in a MECAB or Labour Tribunal hearing cannot be represented by lawyers.

Monetary disputes

Here are the procedures for settling monetary disputes at the Labour Tribunal.

Step 1: the claimants outline the particulars of the claim, in writing, to the Labour Tribunal.

Step 2: a tribunal officer has the power to investigate the claim, interview the defendant, and ask them to prepare a defense and witness statements.

Step 3: the parties provide each other and the tribunal officer with copies of their statements and supporting documents.

Step 4: if the parties do not wish to settle, the tribunal officer prepares a summary of facts stating the allegations, the issues resolved and the outstanding disputes for a presiding officer.

Step 5: at the first hearing, the presiding officer explains the issues and the relevant laws, then invites the parties to negotiate a settlement.

Step 6(a): if the parties do reach a settlement, the terms will be documented and signed by both parties. The presiding officer may then make binding orders based on the terms.

Step 6(b): if the parties cannot settle, the presiding officer may order the parties to submit further documentary evidence and witness statements to each other and the tribunal officer within a specified period, pending a formal trial.

Step 7: at the trial, the presiding officer will hear each party's case and:

- ▶ Allow the claimant and the defendant to question each other and their witnesses
- ▶ Order the parties to provide further evidence or to call other witnesses, then adjourn the hearing to a later date
- ▶ Deliver a judgment at the end of the hearing or at a later date

Claims commonly lodged by employees at the Labour Tribunal include:

- ▶ Wages due for work done
- ▶ Pay for statutory holidays, annual leave or rest days
- ▶ Severance pay or long-service payment
- ▶ End-of-year payment, double pay or annual bonus

Claims commonly lodged by employers at the Labour Tribunal include:

- ▶ Wages in lieu of notice of resignation
- ▶ Termination of contract of employment

Appeal to the courts

An application for a review of the Labour Tribunal's judgment may be filed within seven days from the date of the written award. Alternatively, an appeal can be lodged with the court of first Instance or the High Court, but only on the grounds that the award or order is erroneous in a point of law or outside the jurisdiction of the Labour Tribunal. The court may remand the matter to the tribunal for a rehearing or clarifications.

After the court of first Instance delivers a judgment, either party can apply to the Court of Appeal for leave to appeal within seven days of the judgment. The Court of Appeal can grant leave only if the case concerns a question of law of general public importance.

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Labor disputes in Italy

The Italian labor litigation system is primarily ruled by Articles 409-447 of the Italian Civil Procedure Code.

Labor litigation may involve individual or collective disputes. Individual disagreements may concern employment relationships (both private and public), agency relationships, collaboration on a continuing basis, agricultural workers and social security matters. Self-employed workers fall outside the jurisdiction of labor judges, belonging instead to the civil courts.

Disputes are handled by judges from the ordinary judiciary who specialize in labor and social security matters. Lay judges are not involved in labor judgments.

Disputes over employment relationships are assigned to the court in the district where the relationship started or where the company or branch is located. Disputes concerning agents or collaborators go to the court in the district where the agent or collaborator resides.

The rules for addressing labor disputes follow certain guiding principles: the need for a written application by the claimant, the adversarial principle, oral proceedings, the legal burden of proof, the direct and personal approach of the judge with the litigants, and the relevant power of the judge to investigate the truth by virtue of his position.

The court's decision is enforceable immediately. To challenge the decision and suspend its effects, parties can seek

redress from the Court of Appeal. They can also proceed to a higher level of appeal by asking the Supreme Court to intervene – but only for issues related to the legitimacy of the process and its judgments.

Given the complexity of the Italian process, the development of an efficient system of alternative dispute resolution is crucial, and it has repeatedly been the focus of intervention by the Italian legislature.

The parties can resolve the dispute in private through a settlement agreement. In most cases, workers waive their rights and claims in exchange for a payment from the employer. The law gives the employees six months to challenge the contract, after which all possible further claims lapse.

To keep the transaction from being challenged, the parties may sign the agreement before sites considered “protected” by Italian law.

Before taking the matter to the labor court, a party who intends to claim a right arising from a working relationship may attempt conciliation at a special board at the Territorial Labour Office – a process known as administrative conciliation.

As an alternative, the worker can try to reach a settlement with the employer with the assistance of unions, through the trade union conciliation. This is not subject to any specific legal procedure and is regulated by the collective agreement.

The parties may also come to an agreement even if the matter has already reached the courts, closing the trial with conciliation rather than a court judgment.

Under the recent Italian Legislative Decree 23/2015, employers can also reach an out-of-court settlement by offering a payment to a dismissed employee who might challenge the termination. Such an offer must be made within 60 days of termination, and the amount must be based on the employee's seniority with the company. If the former employee accepts the sum, the employment relationship ends and its termination cannot be challenged.

Another method of alternative labor dispute resolution is arbitration. The parties, instead of going before a court, may agree to use special optional arbitration to resolve their dispute if it is allowed by the national collective labor agreement.



Overview of the legal proceedings to resolve employment disputes

Civil litigation

In the most formal process for resolving employment disputes, the courts can make a final decision without the parties' agreement. In civil litigation, a court formed from professional judges presides over the proceedings and decides the case, with no jury. The proceedings take place in open court. Generally, a final judgment takes about one year, however, the parties may settle the case before.

If the jurisdiction is international, an employee can file an action with a Japanese court where the workplace in the relevant employment contract is located, even when the employer has no legal entities in Japan. Any agreement requiring an employee to file an action only with a foreign court is generally invalid.

Under the Code of Civil Procedure of Japan, remedies sought by final judgments are set by plaintiffs and courts, and defendants have no power to change them as long as the remedies are legally permissible. As a consequence, in wrongful termination cases where an employee is seeking reinstatement and back pay, the courts have only two options: dismiss the case (if the employer prevails) or order that the employee be reinstated with back pay (if the employee prevails).

Labor tribunal proceedings

Labor tribunal proceedings took effect in 2006 with the aim of resolving employment disputes amicably and promptly. They represent a combination of conciliation and formal litigation.

Each dispute is examined by a labor tribunal commission consisting of one professional judge and two lay members with specialized knowledge of, and experience in, employment relationships. The proceedings are not public, and they have only three hearing sessions over three or four months. Formal litigation has no such limitation on hearing sessions. During the sessions, the commission encourages the parties to move toward an amicable settlement based on their view of the case. When that is not possible, the commission makes a judgment that is intended to be a flexible resolution reflecting the facts and both parties' situations. If one party challenges the judgment, it ceases to be binding, and the case is automatically sent to a court as formal litigation. Similarly, if the commission concludes the case without giving a judgment, the case is also sent to a court as formal litigation.

Labor tribunal proceedings have become very popular with employees because of their speed. Employees who want to resolve disputes amicably tend to use labor tribunal proceedings rather than formal litigation.

Alternative dispute resolution. A couple of alternative procedures, provided by both the

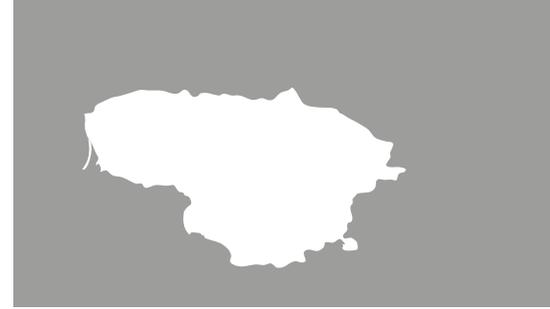
Government and private organizations, take place outside the courts. Each Prefectural Labor Bureau offers mediation proceedings where a mediator – typically a lawyer or a university professor with specialized knowledge in employment issues – tries to resolve employment disputes through an agreement of the parties.

Arbitration. Arbitration may also be available to resolve employment disputes. It should be noted, however, that under the Arbitration Act of Japan, an employer and an employee cannot agree to let arbitrators settle any future disputes that may arise.

Disputes with labor unions. The Labor Union Act of Japan prohibits employers from engaging in “unfair labor practices” related to unions. For example, employers cannot dismiss employees for belonging to a union. A union affected by such practices can file a petition with the Regional Labor Relations Committee to seek a corrective order.

Employers are generally unlikely to be able to choose which proceedings will be used to resolve employment disputes. But understanding the general characteristics of these proceedings is helpful in dealing with employment disputes properly. We are more than happy to assist employers with the types of proceedings described in this article.

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Labor dispute resolution

Individual disputes

According to Article 287 of the Labour Code, pre-trial labor dispute resolution is mandatory in individual employment disputes. However, the employee shall directly address the claim to a court when disputing a work suspension, questioning the legality of termination of employment and in other cases prescribed by Lithuanian laws.

The Labour Disputes Commission, operating under the State Labour Inspectorate, examines pre-trial disputes, which must be brought to the commission within three months of the event at issue, in the region where the employer is registered. This commission consists of three members: the representative of the employer, the representative of the employee and the commission chairman, appointed by the inspectorate. The dispute shall be resolved within one month, although the term may be extended for another month.

One of the parties should submit the claim to the commission, including the grounds and relevant evidence. The respondent is notified about the dispute within seven days of the day the commission receives the claim. The commission chairman has the right to ask for additional documentation at his or her discretion. Both parties to the dispute are invited to examine the application, and have the right to present their claims and additional evidence. If the parties were notified in a proper manner, the dispute will proceed even if one of them is absent, since the decision may be adopted without the presence of the absent party (provided there is no justification for not being there). If the party misses the term for submitting

the claim to the commission, it may be barred from initiating the proceedings in the court thereof unless the court decides otherwise.

The commission's decisions may be appealed within one month by submitting a claim to the relevant district or regional court. The court shall examine the case within 60 days of receiving the claim. In practice, however, especially in complicated cases, the terms are longer. Because employees in labor disputes are exempted from the stamp fee, they tend to be very litigious. Lithuanian courts generally take an employee-friendly approach when examining labor disputes, although recent practice indicates that is changing.

The remedies available to employees depend on the claim. They may vary from specific performance to compensation of monetary damages. If the employee was dismissed unlawfully, the employer may be obliged to reinstate them and pay compensation amounting to the average salary of the employee for the entire period from the dismissal to the court decision.

Collective disputes

According to Article 68 of the Labour Code, a "collective labor dispute" is defined as a disagreement between the employees, or their representatives, and the employer or its representatives about the conclusion, non-implementation or improper implementation of collective agreements that violates the collective interests and rights of the employees. It must be noted that in Lithuania collective dispute resolution is rarely used in practice.

Collective disputes are decided by the Conciliation Commission or the Labour Arbitration, or, if one of the parties to the dispute requests it, by a mediator.

Collective disputes may be brought by:

- ▶ A trade union functioning in the enterprise
- ▶ The joint representation of trade unions functioning in the legal entity
- ▶ The organization of trade unions in the respective sector of economic activity (where the staff meeting has transferred the function of employee representation and protection to that organization)

- ▶ The labor council

Employees may declare a strike when:

- ▶ A collective dispute is not settled.
- ▶ The decision adopted by the Conciliation Commission or the Labour Arbitration that is acceptable to the employees is not performed or is improperly performed.
- ▶ A collective dispute is not resolved through a mediator.
- ▶ The agreement reached during the mediation process is not implemented.

The employer may challenge the strike in court. If the court declares the strike invalid, the strike has to cease immediately. It is important to note that if the court declares a strike as unlawful, the trade unions may be obligated to pay compensation for any damage caused.

The strike ends after the trade union and employer reach an agreement or when a court declares the strike unlawful.



Mexico



Labor dispute resolution in Mexico

In Mexico, labor conflicts are defined as any “disputes that occur within labor relationships” – a wide range that includes breach of an individual labor agreement and collective disputes with unions.

Under Article 123 of the Mexican Constitution, any differences or conflicts between “capital and work” are submitted to a labor board for analysis and resolution. The board is made up of an equal number of representatives for employees, employers and the Government.

The process generally begins when an employee, a group of employees or a union files a lawsuit or claim. After receiving the suit, the labor board notifies the defendant and schedules an initial hearing, and the parties are invited to reach an agreement. Those negotiations can in no way violate employees’ rights under the law. If the parties cannot reach an agreement, the plaintiff ratifies the claim, and the defendant submits a response to the suit. The parties then submit evidence for review by the court and present their arguments. After that, the court issues an arbitral resolution known as a laudo. The party that disagrees with the laudo can initiate a constitutional proceeding called an amparo.

In Mexico, labor disputes are handled by federal and local labor boards, depending on the jurisdiction.

Federal labor boards have jurisdiction over matters related to:

- ▶ Certain industries, including textile, electricity, filmmaking, rubber, sugar, mining, metal and steel
- ▶ State-owned companies or decentralized entities of the Government
- ▶ Private entities engaged in activities that require a contract or a federal license
- ▶ Conflicts that affect two or more states within Mexico
- ▶ Collective bargaining agreements enforceable in more than one state
- ▶ Employer obligations on training, security and cleanliness in the workplace

Local labor boards handle non-federal matters (e.g., disputes involving service companies).

Labor disputes can be legally resolved at the conciliatory stage if the parties reach agreement. Aiding the process is a third party, the conciliator, who is appointed by the Secretary of Labor and Social Welfare or through a decision by the competent labor court.

To be valid and legally binding, all direct settlements must be in writing and must contain the facts that justified them, as well as the rights and obligations of each party. Such agreements must be ratified before the labor board, which will not approve them if they contain any waiver of employees’ rights.

In some cases, the parties do not reach a settlement but do not wish to be involved in a jurisdictional process. They may ask to have a third party facilitate a settlement process and help resolve the labor dispute. That third party may be a conciliator. In Mexico, the conciliatory activity is performed by a government body called the Unidad de Funcionarios Conciliadores (Conciliation Officers Unit).

The Mexican Federal Labor Law contemplates only one instance in which a third-party arbitrator not related to, or appointed by, the labor courts is permitted – in strike-related matters. The parties in dispute can voluntarily approach a third party to reach a settlement to which the parties will be bound. Article 469 of the Federal Labor Law establishes that union strikes may be terminated by arbitration resolution issued by the individual or committee chosen by the parties in dispute.

Advantages of the conciliatory process include avoiding:

- ▶ A formal trial involving a series of steps and multiple courts, including the Supreme Court of Justice
- ▶ The delays common to trials in Mexico

In general, labor disputes are resolved by labor courts, except when arbitrators are used in the instances previously described.

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Netherlands



Dispute resolution after legislative changes

Dutch dismissal law changed substantially on 1 July 2015 because of the new Dutch Work and Security Act. The law is intended to reduce dismissal procedures, with the goal of cutting costs for employers and employees, and decreasing the workload for subdistrict courts and for the Dutch Labor Office. Although it is too soon to determine whether the act meets this objective, we will examine how it should be accomplished.

Unilateral dismissal procedures

Employers in the Netherlands can unilaterally terminate an employment agreement if “fair grounds” exist and if reassignment to a suitable position within a reasonable time frame is impossible or unreasonable. The employer may need to offer the employee training or schooling to fill that suitable position.

For dismissal for economic reasons or in cases of long-term disability, the employer must request permission from the Dutch Labor Office to give notice to terminate the employment agreement. If permission is granted, the employer can give notice by observing the notice period. Procedural time may be deducted from the notice period, provided that a minimum of one month remains.

For dismissal for personal reasons, the only possibility is to ask the subdistrict court to dissolve the employment agreement. Personal reasons include inability to work regularly because of illness; unsuitableness for the job (provided the employee had the opportunity to improve); culpable acts or omissions by the employee; refusal to carry out work on the grounds of serious

conscientious objections; a disrupted employment relationship; and other circumstances when employment cannot reasonably continue. The subdistrict court will dissolve the employment agreement only if it believes that reasonable grounds exist. The termination date will take into account the applicable notice period. Procedural time may be deducted from the notice period, provided that a minimum of one month remains. In some circumstances, the court can grant financial compensation to the employee.

Unlike with the previous legislation, parties can appeal and even initiate a procedure at the Supreme Court when they disagree with the decision of the subdistrict court or the Labor Office.

Regardless of the proceeding, the employee is generally entitled to transitional compensation if the employment relationship has lasted at least two years. The standard transitional compensation is one-third of a month's salary per year of service for the first 10 years, and one-half of a month's salary per year of service after that. The maximum gross transitional compensation is €75,000, or an annual gross salary if that amount is higher.

Termination by mutual consent

Under the new Dutch Work and Security Act, employers need to demonstrate more than ever that they have fair grounds for dismissal and that no other suitable position is available. If they fail to do so, the employment relationship will continue. To avoid the possibility that the subdistrict court or the Labor Office will refuse to terminate the employment relationship – and to avoid lengthy and expensive legal proceedings – parties can seek a mutual agreement on termination.

The most common method of termination by mutual consent is reaching a termination agreement. However, since 1 July 2015, employees can also provide a written statement agreeing to the termination after the employer has given notice.

In both cases, the act introduced a “reflection period.” For two weeks, employees have the opportunity to change their minds and revoke their consent. The reflection period is extended to three weeks if the employer does not inform the employee in writing of the right of revocation (within two days after the parties enter into the termination agreement or within two days after the date of the employee's written statement). It is recommended that employers include a clause in the termination agreement that addresses the reflection period. Employees can revoke their consent only once in six months. In both options, employees generally do not lose access to unemployment benefits.

Conclusion

In dismissal cases, a termination agreement is an attractive option for both employers and employees. Employers can avoid lengthy legal proceedings where the outcome is uncertain. As a result of the legislative changes, employees have a stronger negotiation position, especially when the employer cannot substantiate fair grounds.

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New Zealand



Resolving employment relationship problems in New Zealand

In New Zealand, the process for resolving disputes between employers and employees is largely set out in the Employment Relations Act of 2000 (ERA). The ERA encourages prompt and inexpensive dispute resolution by promoting mediation as the primary problem-solving mechanism in employment disputes, thereby reducing the need for judicial intervention.

The act also encourages employers and employees to resolve disputes in the first instance. It requires all employment agreements to have an “employment relationship problems” clause that refers to informal resolution as the first step. The clause must also inform employees of their right to raise a “personal grievance” with their employers under the ERA.

Personal grievances

The ERA facilitates a legal process where an employee, with any length of service, can pursue a personal grievance against an employer on the following grounds:

- ▶ Unjustifiable dismissal (unless the employee is subject to a 90-day trial period)
- ▶ Unjustifiable action by the employer that places the employee at a disadvantage
- ▶ Discrimination
- ▶ Sexual or racial harassment
- ▶ Duress connected with membership in a union or other employee organization
- ▶ Failure by the employer to provide adequate protection to specific employees (including cleaners and caterers) during a restructuring

Personal grievances are not limited to dismissals. Employees can bring a grievance when the employer has committed an unjustifiable action that places them at a disadvantage.

The courts have applied unjustified disadvantage provisions to a wide range of circumstances, including demotion, failure to follow a proper suspension process and failure to consult.

An employee has 90 days to raise a personal grievance, starting from the date when the alleged action occurred or came to the employee’s notice, whichever is later. Once an employer has been notified, it must respond to the employee within a reasonable time frame.

Sexual and racial harassment and discrimination issues can be litigated in either an employment or a human rights forum. The employee chooses the forum, each of which has advantages and disadvantages on costs, likely awards and timing.

Mediation

If the parties cannot resolve a grievance informally, they are encouraged to use mediation services provided for free by the Ministry of Business, Innovation and Employment (MBIE). An MBIE mediator will facilitate confidential discussions between the parties to help resolve the grievance. If the parties agree to settle, the mediator will sign the terms of settlement, making them final, binding and enforceable.

Employment Relations Authority

If the parties do not wish to mediate or if mediation is unsuccessful, either party can refer the issue to the Employment Relations Authority by filing a statement of problem. This relatively informal body adopts an investigatory approach to resolving employment disputes, holding an investigation meeting to consider the evidence of both parties before making a determination. These meetings follow a loose adversarial format. Written briefs of evidence are usually submitted to the authority, and then counsel (or the employee, if self-represented) can cross-examine the other party’s witnesses. The authority member can also ask questions.

After the investigation meeting, a determination is issued that is binding on the parties, subject to any appeal.

Employment Court

A party that disagrees with the authority can bring all or part of the dispute before the Employment Court, which operates in a similar adjudicative manner to New Zealand’s High Court. The Employment Court can operate as an appellate court, or it can hear the whole matter afresh (including all the evidence) – a hearing de novo.

Court of Appeal and Supreme Court

Dissatisfied parties may then apply for leave to appeal any judgment of the Employment Court to the Court of Appeal and, if unsuccessful, the Supreme Court. The grounds for appealing to the Court of Appeal are restricted to questions of law of general or public importance, or to any other reason that the court thinks should be submitted. If a party wishes to bypass the Court of Appeal and go directly to the Supreme Court, the applicant would need to show evidence of “exceptional circumstances” that justify such an action.

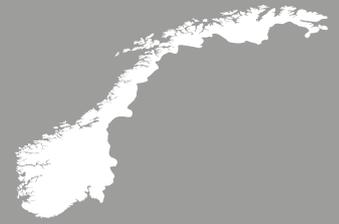
Exclusive jurisdiction

The Employment Relations Authority and the Employment Court have exclusive jurisdiction to deal with most employment matters. However, related matters concerning contractors, directors and shareholders are usually dealt with through New Zealand’s normal civil court process, proceeding through the District (or High) Court, Court of Appeal and Supreme Court.

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Norway



Employment dispute resolution in Norway

The ordinary courts in Norway have jurisdiction to hear employment disputes, including mediation before the court. However, most disputes are resolved before this stage through the Dispute Resolution Board and negotiation mechanisms set forth in chapter 17 of the Norwegian Working Environment Act. Once a dispute has arisen, the parties may also agree to out-of-court mediation.

1. Dispute Resolution Board

Disputes concerning working hour arrangements (night work, flexible working arrangements, reduced working time, overtime work); entitlement to leave of absence (pregnancy, parental leave, child's sickness, care of close relatives, educational leave, military service, public office); and preferential rights of part-time employees may be brought before a Dispute Resolution Board.

These disputes cannot go before the ordinary courts until the Board has reviewed them and made a decision.

2. Negotiations

In a dispute about the lawfulness of a termination or summary dismissal; a breach of the provisions on preferential rights; or the lawfulness of a temporary appointment, hiring or suspension, the employee is entitled to demand negotiations with the employer. The same applies if the employee claims compensation on these grounds.

A demand for negotiations must be made in writing and presented no later than two weeks after:

- ▶ The notice of termination was received
- ▶ The date the employer rejected a claim from an employee about preferential rights to a new post

- ▶ The date an employee terminated employment in connection with a dispute over the lawfulness of a hiring or temporary appointment
- ▶ The date a suspension is revoked

Negotiations must be held as soon as possible and no later than two weeks after the demand was made.

If no negotiations are held and the employee initiates legal proceedings or informs the employer that such proceedings will be initiated, the employer is entitled to demand negotiations. The time limit for demanding negotiations is two weeks from when the employer was informed of the legal proceedings.

Disputes that are subject to the negotiation rules do not need to be brought to the Conciliation Board before proceedings can begin in the ordinary courts.

3. Legal proceedings

An employee can initiate legal proceedings before the ordinary courts if the dispute concerns the lawfulness of a termination or summary dismissal; a breach of the provisions on preferential rights; or the lawfulness of a temporary appointment, hiring or suspension.

The time limit for initiating legal proceedings is eight weeks from the conclusion of negotiations or – if no negotiations were held – from the dates described in item 2. There is no time limit for bringing legal proceedings if the dispute concerns the lawfulness of a temporary appointment, hiring or suspension. The same applies if the notice of termination or summary dismissal does not meet the formal requirements. If the employee's claim is limited to damages, the time limit is six months.

If legal proceedings are initiated in a dispute over the lawfulness of a termination or summary dismissal, employees have a prima facie right to remain in their posts

until a legally enforceable judgment is delivered or a court orders otherwise. They have the right to perform ordinary work tasks and to receive wages and additional benefits until the parties have reached an agreement or the case has been legally and finally settled. However, employers can ask a court to order that employees must vacate their posts after the notice period expires.

Legal proceedings are time-consuming and costly, and both parties can appeal the decisions. Because of that, many disputes are resolved in out-of-court settlements.

4. Termination agreement and severance pay

Many termination disputes are resolved with a termination agreement that includes severance pay. Norway has no statutory requirements on severance pay. However, because of the risk related to the cost and length of legal proceedings and, not least, because both parties may have an interest in a soft exit, severance pay agreements are quite common. That is particularly true when there are doubts about the basis for termination or when there are doubts about satisfying the requirements of proof. The parties can enter into a termination agreement before or after the employee receives notice.

The chief executive officer of a company may waive his or her dismissal rights, including the right to challenge the lawfulness of a dismissal, in exchange for a prearranged severance payment. Other employees cannot waive their dismissal rights except in connection with an actual dismissal.

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Peru



The new labor process: aspirations and reality

A procedural labor law enacted on 5 January 2010 (Law No. 29497) established a new labor process model whose main objective was to resolve labor disputes promptly, creating an effective tool to help safeguard labor rights and defend access to justice.

Under the law, the duration of the ordinary labor process – the longest process in the new procedural system – should be six months on average. However, even though it has been only three years since the new model was implemented in the city of Lima, the underlying purpose of the change – to speed up the resolution of labor processes – has been all but forgotten.

According to statistics from the specialized labor courts of the Superior Court of Lima, an average of 3,200 labor-related claims are submitted every month. During that same time frame, only 600 labor-related lawsuits are resolved. A number of factors come into play here. Chief among them are poor infrastructure, labor conflicts, and an insufficient budget for adding new specialized courts and meeting halls. Nevertheless, we believe the biggest obstacle is the technical inability of those involved to handle labor processes.

The key modification to the Peruvian labor model was the incorporation of oral proceedings as a basic element of the process. The parties and the judge interact directly, bringing into one single hearing all the different stages of the labor process, including the admission and evaluation of evidence, the presentation of witnesses, and the sentence itself. Most importantly, the judge has direct access to the theory of the case brought forth by the parties.

Because the theory of the case is oral and brief by nature, lawmakers hope that it becomes the essential element that expedites the labor process. Indeed, if we consider the theory of the case to be a tool that litigation attorneys can employ to determine the relevant facts through which they will support their positions, the existence of evidence and the grounds on which their positions are based, then it should be the means by which lawyers determine whether to take the case to labor court or to propose an alternative means of dispute resolution.

We believe that the absence of this technical element – the adequate theory of the case – is one of the factors blocking a truly efficient labor process. In the claims filed by workers and in the defenses mounted by employers, neither side presents a coherent, factual and legal

case. That prolongs labor proceedings all the way to the Supreme Court when they could have been resolved more efficiently through a settlement. Many times, a well-developed theory of the case would have prevented time and resources from being wasted.

Likewise, some labor processes involve disputes that warrant a court ruling, but the parties present incoherent arguments and irrelevant supporting evidence. The judge then finds it difficult to understand the dispute, and requests more supporting evidence than is necessary, such as an expert's report and the declaration of witnesses. This protracts the case and increases the likelihood of error in the ruling, leading to formal appeals that further delay the final ruling.

To conclude, we believe that the rapid and effective resolution of labor lawsuits will become a reality only if attorneys are willing to consider the convenience of reaching a settlement or, if they do decide to initiate a labor process, to employ a properly constructed theory of the case.

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Litigating instead of settling labor disputes

In Poland, regulations on resolving employment disputes are set in the Polish Labour Code (PLC) and in the Code of Civil Procedure (CCP). According to the PLC, two methods can be used to resolve individual employment disputes – litigation and conciliatory proceedings – and the employee can choose only between the two. Separate divisions of courts are established to decide on labor law and social insurance cases in every level of the judiciary (district, regional and appeal courts, and a separate Chamber in the Polish Supreme Court). Claims in labor cases may be brought either before a court in a general jurisdiction relevant for the defendant's place of residence or registered office, or before a court relevant for the place the work is, or was, performed in or for the location of the work establishment.

Separate proceedings apply to cases related to labor and employment matters; the most important peculiarity is that a labor inspector is entitled to file and pursue claims on behalf of individuals. A plaintiff's consent is required for the labor inspector to participate in the proceedings, but not to file a claim. An employee or labor inspector may initiate the litigation procedure by filing, including:

- ▶ An appeal against termination of an employment contract
- ▶ A claim for reinstatement into work, for compensation or for conclusion of an employment contract
- ▶ Any other claim that is permissible under generally applicable provisions

To ensure that all individuals can pursue claims related to employment matters, the CCP allows an employee who is not represented by an attorney or a legal advisor to submit lawsuits and other legal remedies by oral argument. This is an exception from the general rule of using a written form in the litigation.

The CCP provides for special protection of an employee in relation to the proceedings. In litigation related to employment matters, the court is entitled to exercise control over certain legal actions (i.e., consider a settlement, withdrawal of a petition, objection or legal remedy, as well as waive or limit a claim to be inadmissible if such action is against the justified interest of an employee). When awarding payments to an employee, the court declares *ex officio* that the judgment is enforceable immediately in a part not exceeding the employee's monthly salary.

Moreover, according to the CCP, if an employee chooses one of the alternative claims available, and the claim is unjustified in the opinion of the court, the court may take another alternative claim into consideration *ex officio*. In other civil cases, the court may not adjudicate on an object not covered by a claim or award more than was claimed.

According to the PLC, the conciliatory proceedings are conducted before a case is brought to the court, and an employee may request an out-of-court settlement before a conciliatory council. This commission is appointed jointly by an employer and a trade union, or if there are no trade unions acting at the employer, the employer appoints the council upon consent of its employees.

The council conducts the conciliatory proceedings in teams consisting of at least three members. The council is obliged to make every effort to settle a dispute out of court within 14 days from the date an employee's request is filed. The protocol executed by the council will confirm when the proceedings have been completed.

If a settlement before a conciliatory council is not reached and an employee submits a request within 14 days, the commission should refer the case to the labor court. Employees may also apply to the labor court within 30 days from the date of a settlement to declare it ineffective if they consider that settlement as contrary to their interests.



Romania



Procedural aspects related to the settlement of individual labor disputes in Romania

According to the Romanian legislation, an individual labor dispute may arise when a certain right is not achieved, or a certain obligation resulting from individual or collective labor agreements or from the law is not fulfilled. Individual labor disputes may also arise in connection with the payment of damages caused when contractual obligations are breached, or improperly executed, or for the purpose of annulling an employment agreement, in full or in part.

Dispute resolution in a court of law

As a rule, the majority of labor disputes are settled in a court of law. Such disputes are subject to a special procedure with these characteristics:

- ▶ Court files concerning labor disputes are exempted from a judicial stamp duty.
- ▶ Labor disputes shall be settled with priority (e.g., terms between hearings shall not exceed 10 days).
- ▶ The employee acting as plaintiff has greater flexibility when choosing the territorially competent court to settle the case (e.g., the court from the employer's headquarters or the one from the employee's domicile).
- ▶ As a rule, the burden of proof lies with the employer. Once an employee files a claim against an employer, it is the duty of the latter to act in defense and prove that the employee's claim is unfounded.

In Romania, a labor trial follows two phases:

- ▶ The initial phase, which takes place in front of the court of first instance. In Romania, the competent court of first instance is the Tribunal.
- ▶ The second phase, which takes place in front of the Court of Appeal. This is the single means of appeal that may be

exercised in labor disputes. In Romania, the appeal phase takes place in the Court of Appeal.

Statute of limitations applicable to labor conflicts

When filing a labor dispute claim, employers and employees must observe the time limits expressly provided by law.

For example, challenges against a dismissal decision may be brought to a court of law within 45 calendar days from the date the dismissed employee acknowledged the act of dismissal. The same term applies when an employment agreement is amended or suspended based on the employer's unilateral action.

To recover damages in connection with how an employment agreement is executed or any undue amounts, the injured party may address a claim in court within three years from the date the damage was caused. The same term applies to labor conflicts concerning the disbursement of due and unpaid salary rights, which shall be calculated starting from the due date of such amounts.

Practical aspects to be considered

Decisions issued by a court of first instance with respect to a labor dispute are directly enforceable by the effect of law. Under such circumstances, if a court of law rules in favor of an employee acting as plaintiff, the employer acting as defendant must implement the court's decision irrespective of its action to challenge the decision of first instance through an appeal.

In practice, most Romanian courts of law encounter difficulties in implementing the priority principle due to excessive workloads. This may result in lengthy court trials that may last 12 to 18 months.

Amicable settlement by mediation – an alternative to dispute resolution in a court of law.

The parties involved in an employment relation have an alternative to litigation proceedings in a court of law, in which any party interested in settling its claims amicably may call for the services of a mediator.

This procedure is not binding by law, but, if chosen by the parties, it should be followed before the litigious option. The course of the statute of limitations applicable to a certain labor conflict is suspended until the settlement or closing of the mediation proceedings. In practice, this alternative is uncommon, and in a few cases, it proves to be efficient but adequate to resolve a labor conflict.

Recent decision of the Romanian High Court of Cassation and Justice

In February 2015, the High Court of Cassation and Justice ruled in an appeal that failure to include the term of the termination notice in a dismissal decision, shall not represent a reason for the decision to be annulled, under the condition that the employer actually granted the notice period to the dismissed employee.

This interpretation was given in consideration of the Romanian labor legislative background, providing that a dismissal decision may be subject to annulment in court if it does not mention the notice term. Under this legislative framework, Romanian courts proved to be inconsistent in practice, with some ruling in favor of the annulment while others argued that such decisions were valid.

The ruling of the High Court of Cassation and Justice is binding on all the Romanian courts.

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Judicial and non-judicial resolution of labor disputes

Serbian regulations allow for both judicial and non-judicial resolution of individual and collective disputes.

Judicial resolution

Law on civil procedure: The general rules of Serbian civil procedure, as well as rules of special procedure for employment relations, apply, including the following:

- ▶ The procedure is urgent
- ▶ Judgment is to be enforced within eight days
- ▶ Extraordinary legal remedy may be sought from the Supreme Court

These rules also apply to collective disputes. In addition, the judgment in a collective labor dispute becomes an integral part of the relevant collective agreement.

Labor law: An employee or a representative of the union (if authorized) can bring proceedings before a competent court against a decision that violates an employee's right within 60 days of the delivery of the decision or within 60 days after the employee becomes aware of the violation.

Employees who initiate a court case over a wrongful termination may request that a labor inspector determine whether the decision clearly violates their rights. The inspector can suspend the termination until the court procedure is finalized and can reinstate the employee while the court case is pending. The inspector's decision may be subject to appeal.

Non-judicial resolution

Labor law: The parties can choose an arbitrator to settle disputes if it is allowed under a general act and an employment contract. The employee can initiate proceedings within three days of receiving the decision in question. The arbitrator

is obliged to render a decision within 10 days from the submission of a request for dispute settlement. The arbitrator's decision is final and binding.

Law on Amicable Resolution of Labor Disputes: One or both parties can initiate an arbitration procedure before the Republic Agency for Peaceful Settlement of Labor Disputes requesting a resolution of either an individual or a collective dispute. If a court proceeding is already pending between the same parties and on the same factual and legal basis, the court will suspend it until the end of the arbitration procedure. The arbitrator should issue a decision within 30 days from the opening of the hearing. An appeal is not allowed, and the decision is legally binding and enforceable as of the day of submission to the parties.

The Law on Amicable Resolution of Labor Disputes also regulates the procedure for resolving collective disputes. One or both parties can institute a conciliation procedure before the Republic Agency for Peaceful Settlement of Labor Disputes. The conciliation committee gives a nonobligatory recommendation, which, if accepted, can be the basis for an agreement to resolve the dispute. The conciliation procedure is mandatory in labor disputes over the performance of public interest activities.

Anti-discrimination law: A person claiming discrimination can file a complaint with the Commissioner for Protection of Equality. The commissioner will propose mediation, provided that there is no pending court procedure, and will give an opinion on the existence of discrimination, as well as a recommendation to eliminate it. If the person to whom the recommendation is addressed does not eliminate the discrimination, the commissioner will issue a warning (not subject to appeal) and make the matter known to the media and the public.

Law on the Prevention of Harassment at Work:

Before starting a judicial procedure, an employee who accuses another employee of harassment should file a request with the employer to initiate proceedings for protection from the harassment. Upon receiving the request, the employer is obliged to offer the parties mediation. If mediation is unsuccessful, the employee can take the matter to court. If the employee accuses management of harassment, the employee can file a complaint to the court directly.

In practice, Serbian authorities tend to favor employees, sometimes even when there are no solid legal grounds. Reinstatement of employees is common during a pending court proceeding for unlawful dismissal. The competence of labor inspectors varies broadly, leaving room for different interpretations when they determine whether a termination clearly violates an employee's rights. In addition, although labor disputes should be resolved urgently, they often last for several years. That is why the practice of reinstatement is a crucial issue to weigh when employers consider dismissals.

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Slovak Republic



Labor dispute resolution

In the Slovak Republic, employment relationships are regulated by the Labour Code, which establishes the rights and obligations of employees and employers. The law anticipates three ways of dealing with disputes: court proceedings, arbitration and mediation.

Civil court proceedings

In general, civil court proceedings have the greatest authority in disputes between an employer and an employee. The Slovak Republic has no special labor courts, and disputes are typically heard and decided in general civil courts. Employees initiate most matters, usually citing unlawful termination, and often seek wages and severance payments. Employers can pursue claims for damages caused by employees or the invalidity of their immediate termination of employment.

In 2014, Slovak district courts ruled in 1,118 labor disputes. Court settlement was approved in 10.02% of the cases; 31.57% of claims were dismissed and 35.42% were recognized. The courts issued decisions within a year in only 363 labor disputes. In 2014, the average duration of a labor dispute was 35.46 months, compared with 12.04 months for other civil litigation, demonstrating the sluggishness of Slovak labor litigation.

Arbitration

Under the Labour Code, disputes between an employee and an employer arising from the employment relationship are heard and decided by courts. The law does not stipulate that the deciding authority must be a general civil court or say whether an arbitration tribunal is also acceptable. Although arbitration is not expressly forbidden, the ability to apply this process effectively in such cases is questionable because of the provisions of the Labour Code. Some maintain that authorities other than general courts cannot hear and decide labor disputes involving the individual rights of employees and employers. Those arguments are supported by case law in the Supreme Court of the Slovak Republic. Any award by an arbitration tribunal is potentially unenforceable.

In collective labor disputes, arbitration is subject to special regulation by the Act on Collective Bargaining. The parties try to settle with the assistance of an intermediary chosen by them. If this is unsuccessful, the dispute is decided by an arbiter chosen by the parties or appointed by the Ministry of Labour, Social Affairs and Family. If the parties are not satisfied with the arbiter's award, they can seek to void it in the regional court.

Mediation

In an individual labor dispute, the parties can agree to resolve their problem with the help of a mediator, a process regulated by the Act on Mediation. Advantages of mediation include that it is fast and informal, in contrast to civil court proceedings. The mediator is chosen by the parties from the registry of mediators. The method can be used before a court proceeding or even jointly with it. The resulting agreement is binding and enforceable. Mediation is used more often by international employers experienced at alternative dispute resolution.

Mediation is less widespread in the Slovak Republic than in the UK or the US, but the method's use may expand because of its many benefits. However, it is hard to persuade an employee or an employer to enter mediation when the issue is unlawful termination of employment. One reason is that if either party wants to make such a claim in court, the law says it must do so within two months of the employment termination.

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Non-judicial solutions to Spanish labor disputes

In most labor disputes, the parties have the possibility of reaching an extrajudicial settlement. The Spanish Labor Procedure Act establishes that parties must try conciliation or mediation as a prerequisite to a lawsuit. Both procedures involve the pursuit of a non-judicial solution to the dispute; the parties themselves agree to terms that can end the conflict. They may also agree to pursue arbitration, although it is not a frequently used alternative.

The high volume of labor litigation faced by Spanish judicial bodies during the economic crisis has led to legislation that promotes these alternatives, which ease the courts' workload and encourage consensus-based resolutions.

This article will briefly analyze alternatives to judicial resolution of labor disputes.

Conciliation and mediation

The International Labour Organization (ILO) defines conciliation and mediation as "procedures whereby a third party provides assistance to the parties in the course of negotiations, or when negotiations have reached an impasse, with a view to helping them to reach an agreement."

Although conciliation is mandatory when feasible, mediation comes into play mostly to resolve collective disputes – with the employees' representatives and the employees themselves on one side and the employer on the other. However, in circumstances when conciliation is mandatory, the parties can choose mediation instead.

The main difference between the two is the degree of intervention by the third party. The conciliator plays a more active role than the mediator, resolving the dispute by not just gathering the parties but also suggesting solutions and seeking material justice rather than an ordinary settlement.

The Spanish Administration offers public services whereby the parties involved in labor conflicts, such as dismissals or salary deferrals, can negotiate a solution before a public authority. Any settlement reached at this stage is as valid and enforceable as a court judgment. Only in limited circumstances can the parties appeal settlements reached in conciliation or mediation.

If the parties cannot reach agreement in conciliation or mediation, they can still settle their dispute on the very day of the trial. Legal reforms introduced in 2009 and 2010 allow the legal secretary to act as a mediator before the trial takes place. Some judges themselves act as mediators de facto when the parties fail to settle their dispute before the legal secretary. If no extrajudicial solution is reached, the case goes to trial, and the parties are bound by the court's decision. Appeals remain possible.

Arbitration

The ILO defines arbitration as "a procedure whereby a third party (whether an individual arbitrator, a board of arbitrators or an arbitration court), not acting as a court of law, is empowered to take a decision which disposes of the dispute."

The Spanish Workers' Statute views arbitration as an instrument for dispute resolution in a number of situations, including disputes related to the election of employees' representatives or those involving the interpretation of provisions contained in a collective bargaining agreement. Additionally, the statute says collective bargaining agreements may establish other situations in which labor disputes revert to arbitration. In arbitration, a joint committee with equal numbers of employees' and employers' representatives tries to find a consensus solution to the dispute.

The Spanish Labour Procedural Law includes provisions that try to ensure the enforceability of arbitration awards, which can be reviewed judicially only in limited circumstances (e.g., when the award either goes beyond, or fails to address, the specific questions raised by the parties).

Conclusions

The Spanish system offers several non-judicial alternatives to labor disputes. While conciliation plays a major role, additional efforts to widen the scope of mediation and arbitration would be desirable, since extrajudicial solutions lighten the judicial system's workload, provide faster outcomes, avoid uncertainty and contribute to the finding of consensus.

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Sweden



Dispute resolution

Background

The Swedish labor market is characterized by a relatively low level of legislation on matters outside the core of the labor law, employment protection and rights related to trade unions. There is a long tradition of allowing the parties – employers' associations on one hand and trade unions on the other – to resolve issues and negotiate conditions that otherwise may be subject to legislation. This is reflected in the Co-Determination in the Workplace Act, which grants the trade unions influence over decisions affecting their members and also states that the employer has an obligation to consult with the union if the union requests it. That obligation also applies before the employer makes certain decisions (e.g., layoffs and reorganizations). This tradition, and the unions' far-reaching right to influence, mean that most disputes start and end in direct negotiations between the employer and the trade union and are never tried in court. Although the unions have seen a decline in membership over the past 10 years, about 70% of employees in Sweden are still members. By comparison, about 30% of employers are members of an employers' association.¹

The Swedish Labour Court

The Swedish Labour Court is a special court in Stockholm that rules on labor disputes (i.e., any dispute that affects the relationship between an employer and an employee). The jury consists of representatives from both employers' associations and trade unions.

In cases where the employer is part of an employers' association, the court has exclusive jurisdiction, and the parties must take part in negotiations before the court can address the dispute. In these cases, the court constitutes the final instance. In others, a labor dispute is settled in the district court as the first instance and can be appealed to the Labour Court.

Each year, about 150 cases are tried before the court.

Alternative dispute resolution

An employer and an employee can agree to settle disputes in arbitration instead of court. The benefits of arbitration are primarily time and confidentiality.

On average, it takes one to two years for the court to issue a verdict after an employee or trade union disputes a termination or dismissal. Fairly often, employment remains in force during this time, and the employee keeps receiving

compensation and other benefits of employment. An arbitration proceeding, by contrast, is settled in three to six months. In addition, verdicts from the Labour Court or district court are public; arbitration awards are not.

In Swedish case law, the relationship between an employer and an employee has been compared with the relationship between a professional and a consumer (i.e., the parties' relative strengths are unequal). So arbitration agreements often stipulate that the employer will bear all or part of the cost of arbitration, regardless of the outcome. This is intended to lower the risk that the arbitration agreement will be adjusted or the arbitration clause will be considered void. (Arbitration clauses are quite common in employment agreements with key employees or management.)

Union arbitration boards

Some collective bargaining agreements in Sweden stipulate that certain categories of disputes will be settled in arbitration boards that consist of representatives from the parties to the collective bargaining agreements. Examples include disputes over the validity of a non-compete clause, and employee compensation for a patentable invention. Naturally, these verdicts are never known to the public.

¹ Swedish National Mediation Office, www.mi.se/files/PDF-er/ar_diagram_och_tabeller/ar__2014_diatab/yrkesverksamma.pdf, accessed October 2015.

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The rise of conciliation and decline of tribunal claims: are fees the force behind the changing dispute resolution landscape for employment matters?

Employment tribunal fees were introduced in 2013 to transfer some of the cost burden from the Government to those who actually use the system, and to incentivize earlier settlements (and discourage “vexatious” claims). Claimants now have to pay an issue fee when lodging a claim and a hearing fee once the case has been listed for a final hearing.

The decline in claims has been well-publicized. Since the fees were introduced, single claims have fallen from an average of 13,500 per quarter to around 4,500 per quarter – a decrease of 67%. The decline has occurred even though a fee remission system enables claimants with reduced financial means to obtain a reduction or waiver of the fees.

The startling decrease in employment tribunal claims is good news for employers – but now is not the time to be complacent.

The introduction of the fee system has clearly had a significant impact on the way employment disputes are resolved, effectively deterring a large number of potential claimants from going through the tribunal. However, the number of employment disputes referred to the Advisory, Conciliation and Arbitration Service (Acas) or Early Conciliation is actually on the rise. We will examine this changing dispute resolution landscape and what it means for employers in the UK.

Introduction of employment tribunal fees

In 2013, two tiers of fees were introduced based on the complexity of the case.

Simple claims involve an issue fee and a hearing fee of £390 in total, and more complex claims require total fees of £1,200.

Trade unions vehemently oppose the fees, describing them as a “barrier to justice.” In 2012-13, before the introduction of fees, 36% of claimants whose claims of unfair dismissal were decided at a hearing were successful. In the first half of 2014-15, well after the fees began, that figure was 40%. This suggests, say the unions, that the number of vexatious claims lodged before the introduction of the fee system was overstated. In contrast to the union view, is the suggestion that the increased success rate, albeit minor, indicates that fees are helping reduce vexatious claims.

The fee regime is under review, with the Government considering reductions. Whether lower fees would have a noticeable impact, and return the complaint rate to its previous high, remains to be seen.

Acas Early Conciliation

Another recent tribunal reform was the introduction of Acas Early Conciliation in 2014. It is now mandatory for parties to consider mediation through Acas before a claim proceeds to the tribunal. The number of disputes referred to Acas per quarter has significantly outstripped the number of claims brought to the tribunal, even before the introduction of fees. The new Acas procedures seem to have played a part in reducing tribunal claims by resolving disputes without litigation.

Employers also appear increasingly interested in resolving disputes away from the tribunal. One in three employers surveyed by the Chartered Institute of Personnel and Development (CIPD), the UK’s largest professional body of HR practitioners, reported using settlement agreements this year. And, importantly,

employers reported using them more since the tribunal fees began. The CIPD also reported that employers are increasingly using mediation – both formally and informally – to manage conflict.

The marked reduction in tribunal claims is not purely due to the introduction of the fee system. Unemployment rates are at historic lows, and, as the job market highlights, job security has increased since the low period after the 2008 financial crisis.

Despite the current landscape, employers should not be complacent. The economic cycle almost guarantees that, in due course, companies will need to review headcounts and make cuts. If dismissed employees cannot find new jobs quickly, they are much more likely to consider bringing tribunal claims, potentially using insured contracts or trade union membership to support them.

Future of employment dispute resolution

Employers may look back on the current low volume of claims as a golden period. As such, many employers would be well advised to use this time to review their internal grievance procedures and consider including formal mediation in any exit process. In addition to the cost and time benefits for both employees and employers, this would create and establish structures that both parties could use to resolve disputes without resorting to litigation.

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EY labor & employment lawyers in the News 2015

Argentina

Publications

- ▶ “Ganancias: cómo es el decreto vigente que ‘castiga’ a empleados y jubilados,” written by Javier Sabin and Paola Pecora for the magazine iProfesional on “Retenciones de Impuesto a las Ganancias,” February 2015
- ▶ “¿Viaja a la Argentina por negocios? Primero lea esto,” written by Javier Sabin for the magazine Clarín on “Emprendedores,” February 2015
- ▶ “Dime si eres autónomo, monotributista o estás en relación de dependencia y te diré cómo es tu carga tributaria,” written by Javier Sabin (among others) for iProfesional on “Carga Tributaria,” April 2015
- ▶ “Lanzan amplia fiscalización electrónica a empleados con sueldos brutos desde \$11.080,” written by Javier Sabin (among others) for the magazine Cronista Comercial on “Fiscalización Electrónica,” June 2015
- ▶ “La AFIP reconoció que están reteniendo mal el Impuesto a las Ganancias,” written by Javier Sabin (among others) for iProfesional on “Impuesto a las Ganancias,” September 2015
- ▶ “Tres alternativas de pago de remuneraciones al personal extranjero,” written by Javier Sabin and Vanesa Politis for Clarín on “Remuneraciones – Personal Extranjero,” August 2015
- ▶ “Por error de cálculo, miles de empleados pagaron Ganancias a pesar de no estar alcanzados por el impuesto,” written by Javier Sabin (among others) for iProfesional on “Impuesto a las Ganancias,” July 2015

Colombia

Publications

- ▶ “Rules that every employer must take into account when making a salary discount,” article written by Alejandra Fernández for the magazine Revista Actualidad Laboral y Seguridad Social, Bogotá, Colombia, April 2015
- ▶ “What you need to know about the special pension scheme for employees who develop high-risk activities,” written by Alejandra Fernández for the magazine Revista Actualidad Laboral y Seguridad Social, December 2015

Denmark

Teaching

- ▶ Julie Gerdes teaches sessions on employment and labor law in Denmark and is a frequent speaker on the topic

Publications

- ▶ Julie Gerdes provides a weekly update on employment and labor law news to the leading Danish national business newspaper, Børsen speaker on the topic

France

Recognition/positions

- ▶ **Who’s Who Legal 2015** – Roselyn Sands, Global/EMEIA Labor & Employment Law Leader listed for France as an “Extremely able employment practitioner whose impressive depth of experience makes her a first choice with clients”
- ▶ **AmCham France** – Roselyn Sands, Co-chair of the HR legal committee and frequent speaker
- ▶ **American Bar Association** – Roselyn Sands, Co-chair International Labor & Employment law committee
- ▶ **XBHR, Global Forum for Cross-Border Human Resources Experts** – Roselyn Sands is Founding Member & Executive board member
- ▶ **International Forum on Employment Law** – Roselyn Sands is Steering committee member & recurrent Speaker

Publications

Article Liaisons Sociales – January 2015:

“Liaisons Sociales Magazine Supplément – Accélérer la performance de l’entreprise à travers le monde”

Bloomberg BNA’s Fourth Edition of its “International Labor and Employment Laws – Chapter on “Employment and Corporate Law issues Applicable in Restructuring of Companies in the EU”

Roselyn Sands, Global/EMEIA Labor & Employment Law Leader is the author of several publications.

- ▶ French chapter in **International Employment Laws** (Matthew Bender & Co.)
- ▶ **Redundancy Law in Europe and Age Discrimination** (Wolters Kluwer)
- ▶ **Littler Mendelson Guide to International Employment and Labor Law**
- ▶ the French Chapter of the **International Employment Law Juris, Third edition**
- ▶ International Employment Lawyer
- ▶ IBA and ABA labor and employment law newsletters

Article American Bar Association – French correspondent for The International Employment Lawyer:

- ▶ March 2015 – The French proposed “Macron law” for economic growth: a summary of the key changes affecting employment Recent legal developments in France
- ▶ June 2015 – Recent legal developments in France
- ▶ October 2015 – French dispute resolution – recent improvements

American Bar Association – Section of Labor & Employment Law:

- ▶ Employment and Corporate Law Issues Applicable in Restructuring of Companies in the European Union – Chapter update – April 2015

Conferences

EY France events:

- ▶ **January 2015:** “Retour sur la Jurisprudence déterminante de 2014 et les nouveautés législatives prévues pour 2015” presented by Marie-Pascale Piot and Laurent-Paul Tour
- ▶ **April 2015:** “Mythes et réalités sur le temps de travail en France en 2015. Actualité sociale: Projets de lois Macron et Rebsamen et autres actualités” presented by Marie-Pascale Piot and Anne-Elisabeth Combes
- ▶ **July 2015:** “Lois Macron et Rebsamen – comment bien se préparer aux nouveautés concernant le droit du travail, l’épargne salariale et les plans d’actionnariat salarié” presented by Colin Bernier and Marie-Pascale Piot
- ▶ **October 2015:** “Détachement, expatriation, localisation: quelles stratégies, quels enjeux, quels risques ?” presented by Xavier Delaunay and Giani Michalon
- ▶ **December 2015:** “L’uberisation” de la force de travail/internal & external workforce: quels sont les nouveaux enjeux ?” presented by Marie-Pascale Piot and Laurent-Paul Tour

International events:

American Bar Association – 2015 Europe Forum – March 2015

- ▶ Employment Law in Europe: towards a European “Federal” Law? presented by Roselyn Sands
- ▶ Employment Issues in today’s European Union: what are pitfalls lurking for employers seeking to locate or expand within EU? presented by Roselyn Sands

EY labor & employment lawyers in the News 2015 (contined)

XBHR Conference 2015 – February 2015:

- ▶ Role of HR in terms of change, adversity and uncertainty, presented by Roselyn Sands
- ▶ Insourcing & Outsourcing of employees services, presented by Roselyn Sands

Littler Latin America Event – March 2015:

- ▶ Global Compliance & Cross-Border, presented by Roselyn Sands

International Bar Association – Labor & Employment and Discrimination Conference – April 2015:

- ▶ Reformation in France: workplace reforms born from the new economic reality – what are the trends and lessons learned? presented by Roselyn Sands

International Employment Law Forum – April 2015:

- ▶ Client relationships and the Global Practice of employment Law - Managing the provision of legal services for multinational employers, presented by Roselyn Sands

Ahead of Tax EY Event – May 2015:

- ▶ Strategic workforce planning: BEPS and beyond, presented by Roselyn Sands

Workshop EY Italy – Event on RI2020 – June 2015:

- ▶ Comparative Collective Bargaining in Europe – Italy, Germany & France, presented by Roselyn Sands

- ▶ **EY Human Capital Conference – October 2015** “The contingent workforce – Are you aware of the traps to avoid?,” Joint presentation made with Karsten Umnuss and Roselyn Sands

Teaching

- ▶ Roselyn Sands teaches at various schools, including the Institut de Sciences Politiques; the University of Paris Law School, in both its Human Rights Master of Laws program and its International Human Resources Program; and the INSEEC Business School of Paris
- ▶ Laurent Tour is a regular speaker at ESSEC business school, addressing labor & employment law matters. Laurent also teaches at Institut Magellan’s MBA and Masters degrees (HR Management and Global Mobility), focusing on the legal and payroll aspects of employee compensation

Germany

Conferences

- ▶ “The contingent workforce – are you aware of the traps to avoid?” joint presentation with Roselyn Sands, Global/EMEIA Labor & Employment Law Leader at the Human Capital Conference in Chicago, October 2015

Italy

Conferences

- ▶ “30% club growth through diversity,” Stefania Radocchia, Milan, 26 October 2015
- ▶ “Forum HR 2015, banks and human resources,” Stefania Radocchia, ABI, Milan and Rome, 9-10 June 2015
- ▶ “HR & Talent Forum,” Stefania Radocchia, Sole 24 Ore, Milan, 19 May 2015
- ▶ “The main innovations of the Jobs Act,” Stefania Radocchia, Maria Teresa Iannella, Cristina Colangelo, Michele Faioli and Matteo Pollaroli, Milan, Rome, Treviso
- ▶ “Fiscal and social security aspects of settlement agreements – the settlement agreements and the attempt for settling a dispute,” Maria Teresa Iannella, Convenia, Rome, 2 February 2015
- ▶ “The legislative decrees implementing Jobs Act reforms,” Maria Teresa Iannella and Matteo Tamborini, Confindustria Nord Sardegna, 27 March 2015
- ▶ “Normative and administrative simplification reforms,” Matteo Pollaroli, Convenia, Milan, 10 February 2015
- ▶ “Jobs Act reform of employment relationships and labor market,” Matteo Pollaroli, Convenia, Milan, 2 February 2015
- ▶ “The agreement with companies in crisis,” Matteo Pollaroli, Convenia, Milan, 2 February 2015
- ▶ “The amendments of part-time employment contracts,” Matteo Pollaroli, Convenia, Milan, 22 April 2015
- ▶ “New flexibility and productivity within the labor market,” Matteo Pollaroli, Convenia, Milan, 18 June 2015
- ▶ “The new rules on employment contracts implementing Jobs Act reforms,” Matteo Pollaroli, Convenia, Milan, 25 September 2015
- ▶ “The new industrial relations after Jobs Act reforms,” Matteo Pollaroli, Convenia, Milan, 10 October 2015
- ▶ “Collective bargaining agreements at territorial or company level, so-called ‘proximity agreements’ and management of the redundancy procedures and transfer of a going concern,” Matteo Pollaroli, Convenia, Milan, 29 October 2015
- ▶ “Administrative liabilities according to Legislative Decree No. 231/01 and the management of the criminal company risks,” Matteo Pollaroli, Convenia, Milan, 11 December 2015
- ▶ “Regulatory limits to remuneration policies: Consob, IVASS and Banca di Italia,” Matteo Pollaroli, Convenia, Rome, 24 June 2015
- ▶ “The legislative decrees implementing Jobs Act reforms – changes of tasks and duties of the employees,” Matteo Pollaroli, Convenia, Rome, 17 April 2015
- ▶ “Paritarism, labor law reform and activation in the labor market,” Michele Faioli, Regione Lazio and Minister for Labor Affairs, Rome, November 2015
- ▶ “TTIP, ISDS, jobs – multinationals and new global trade,” Michele Faioli, Festival della Diplomazia, Rome, 22-30 October 2015
- ▶ “The quest for a new labor chapter in the mega treaties,” ISLSSL 21st World Congress, Michele Faioli, ISLSSL/SIDTSS, Cape Town, 15-18 September 2015
- ▶ “Crisis, Europe and labor reforms,” Michele Faioli, Verona, 16-17 July 2015
- ▶ “TTIP and labor Issues,” Michele Faioli, Labour Law Research Network, Amsterdam, 25-27 June 2015
- ▶ “Labor law vs. varieties of liberalization: colloquium for young scholars,” Michele Faioli, University of Milan, 15-17 May 2015
- ▶ “Collective bargaining developments in a time of crisis,” Michele Faioli, Pázmány Péter Catholic University – International Conference, Budapest, 11-12 June 2015
- ▶ “SERI Clusters 2015 – Jobs Act, pension reforms, workplace representation,” Michele Faioli, University of Rome, January, February and March 2015

EY labor & employment lawyers in the News 2015 (continued)

The Netherlands

Conferences

- ▶ Suzanne Bos and Nicky ten Bokum presented "HR in control," about cost reduction and the Dutch Work and Security Act, in October 2015
- ▶ Suzanne Bos presented "Reed Business: Personnel and Payroll Expertise Day," about the first experiences of the Dutch Work and Security Act, in September 2015
- ▶ Suzanne Bos (HVG) and Jan-Bertram Rietveld (EY) presented a webinar on 9 December 2015 on the Wet aanpak schijnconstructies, an act that protects employees who perform work for third parties

Publications

- ▶ An online tool was developed for employers to check whether their employment agreements comply with the Dutch Work and Security Act

New Zealand

Conferences and broadcasts

- ▶ Broadcast on Television New Zealand, Q&A on equal pay by Christie Hall, August 2015
- ▶ Broadcast on Television New Zealand, drug and alcohol policies by Christie Hall, August 2015
- ▶ Seminar on EY Remuneration Survey on increasing director liabilities by Christie Hall, September 2015
- ▶ People Watch Seminar Series on equal pay by Christie Hall, October 2015

Publications

- ▶ "'She'll be right' is no way to make job safer," written by Christie Hall and Zena Razoki, The New Zealand Herald, July 2015
- ▶ "Strategies for the new workplace," written by Christie Hall and Zena Razoki, The New Zealand Herald, August 2015
- ▶ "Enforcement of employment standards legislation bill," written by Christie Hall and Zena Razoki, People Watch (an EY New Zealand online publication), October 2015
- ▶ "Are performance reviews dead?" written by Christie Hall, Renee Yoon and Una Diver, People Watch (an EY New Zealand online publication), October 2015

Romania

Seminar

On 1 October 2015, EY Romania, in collaboration with the Women in Business NGO, organized a seminar analyzing the practical aspects of managing working relations. The seminar, organized at EY headquarters, targeted female entrepreneurs interested in learning about legislation applicable to employment relations in Romania. Miruna Enache, Partner; Nicoleta Gheorghe, Manager; and Anca Atanasiu, Senior Lawyer, welcomed the participants and offered insights from our employment law practice. During the three-hour event, participants were particularly interested in information about maximum working time and rest periods; limitations on background checks of potential candidates; cases when an employer may conclude limited-term employment agreements; and the importance of internal regulations implemented at the employer's level. The participants embraced suggestions for improving their businesses and expressed a desire to participate in such events in the future.

Spain

Recognition

- ▶ Partner Raúl García was listed in The Best Lawyers in Spain in the practice area of labor and employment law

Teaching and conferences

- ▶ Raúl García and Manuel Fernández-Fontecha teach in the master's program at the Instituto de Empresa for bar preparation, 2015-16
- ▶ Raúl García teaches at CESMA Business School
- ▶ Raúl García was a lecturer at the EY Spain-China Forum: New Bridge for Investments on 12 November 2015
- ▶ Eva Sainz teaches in the master's program for specialists in labor law at the Centro de Estudios Financieros
- ▶ Eva Sainz and Sofía Rey regularly participate in conferences on the social security consequences of expatriation for Red Expat

Publications

- ▶ Marta Salamanca is a candidate for the Best Young Labor Lawyer in Spain, awarded by the Foro Español de Laboralistas. Article: "Decálogo de la empresa socialmente responsable"

- ▶ Juan Pastor, "El incierto futuro del despido colectivo en España tras la Sentencia de 13 de mayo de 2015 del TJUE," Diario La Ley, No. 8560, pages 11-13, 12 June 2015

Newsletters

- ▶ Real Decreto Legislativo 2/2015 por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores
- ▶ Nuevo régimen de las Sociedades Laborales, Ley 44/2015, de 14 de octubre, de Sociedades Laborales y Participadas
- ▶ Umbrales mínimos en la definición de despido colectivo
- ▶ Boletín de novedades laborales de abril de 2015
- ▶ Boletín de novedades laborales de marzo de 2015

Sweden

Conferences

- ▶ Paula Hogéus participated in the national Expo HR 2015 (1 October in Malmö, 14 October in Gothenburg and 20 October in Stockholm). She spoke about changes in Swedish labor law and new judgments from the Swedish Labor Law Court

United Kingdom

Recognition

- ▶ Dan Aherne was ranked as a top 100 employment lawyer in the Chambers and Partners UK Directory for 2015. Dan was also ranked in the Chambers and Partners Global Directory for 2015.

Conferences

- ▶ "Managing severance payments in a global tax compliance framework," presentation made at the Human Capital Conference in Chicago in October 2015

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