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GLOBAL EMPLOYER GUIDE

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In today's global economy, more companies than ever have employees in numerous countries, often relying on a mobile global workforce to expand into new markets and meet strategic and operational needs. Driven by the many questions we receive from our clients, in 2015 we released our first Global Employer Guide—your concise, easy-to-read guide to the basics of employment law across numerous countries.

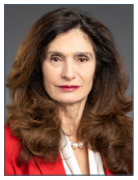
Our updated release reflects the changes in each country over the past year, including pandemic-related changes where applicable. Visa processes, employee rights, contract requirements, transfer of business considerations, privacy standards, and union involvement are just some of the issues every global employer faces.

The Global Employer Guide includes basic outlines of employment requirements in nearly 20 countries in a concise table format that allows easy comparison from country to country. From Australia to the United States and many places in between, each of the countries featured can be quickly accessed by selecting the country name in the table of contents.

Our Global Employer Solutions® team includes hundreds of lawyers across our five-continent platform. When needed, we coordinate with external counsel to provide truly global coverage through our platform. We regularly assist global employers with workforce matters around the world throughout the life cycle of the employment relationship, including advising them on employment contracts and counselling, employee mobility, global employee handbooks, litigation, collective labor issues, and the ongoing COVID-19 pandemic.

Content current as of January 2022 except where otherwise noted.

KEY CONTACTS



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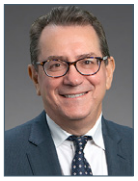

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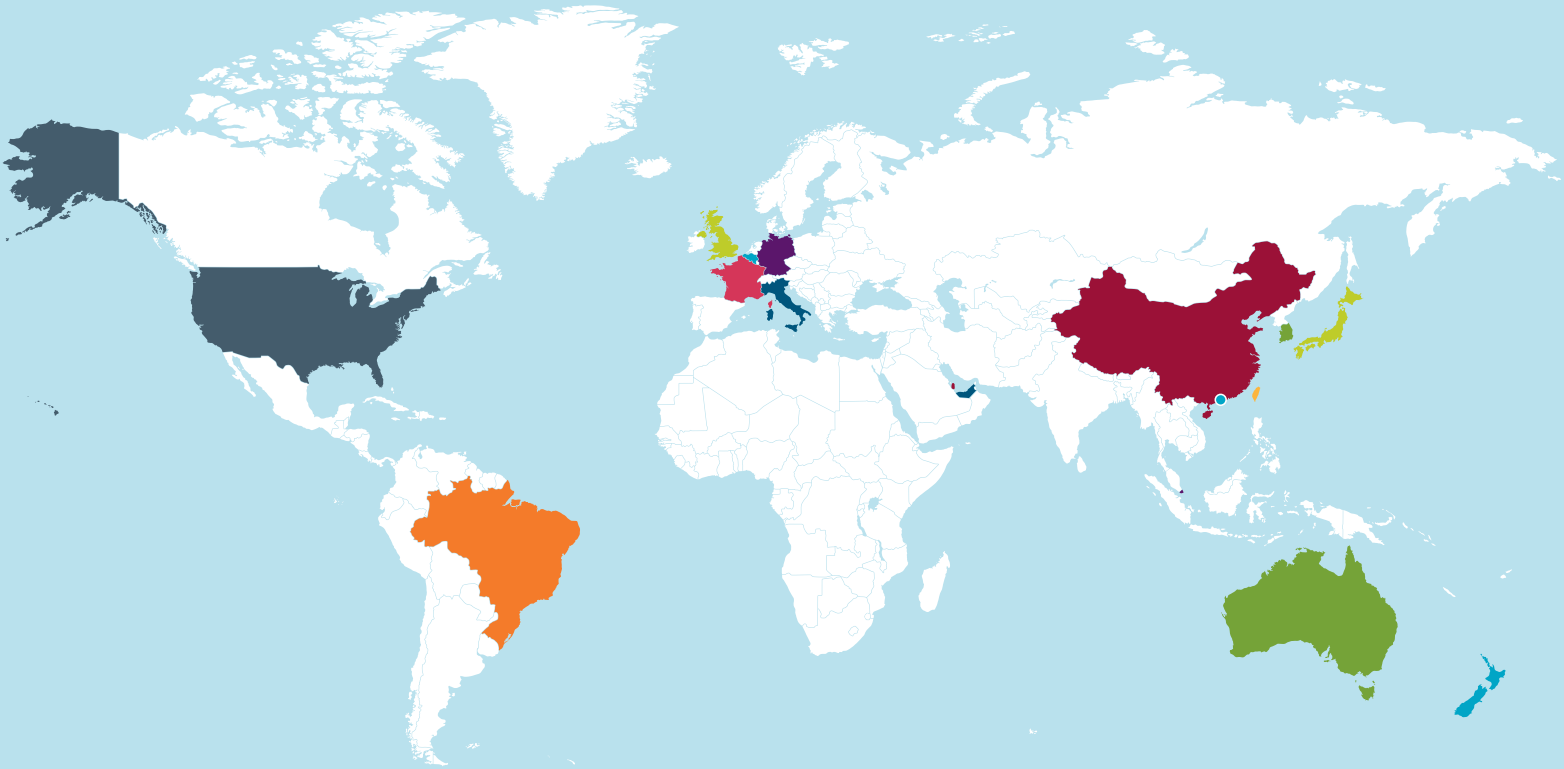

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EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Visa Requirements	Employers are responsible for ensuring that their employees have the right to work in Australia. Foreign workers wishing to work in Australia must apply for visas to live and work in Australia on either a temporary or permanent basis. There are a number of different types of visas administered by the Australian Department of Home Affairs. The Temporary Skill Shortage visa (subclass 482) allows employers to sponsor skilled foreign workers to live and work in Australia for up to four years where there is a "genuine" skills shortage. Some visas restrict the number of hours employees are allowed to work per week.
Reference/Background Checks	An employer is permitted to contact a prospective employee's referees and previous employers to gather and verify information.
Police Checks	Permitted with the applicant's consent if necessary to determine suitability for a particular job.
Working With Children Check	Mandatory for all child-related work.
Medical Examinations	Permitted with the applicant's consent if necessary to determine fitness for a particular job.
Minimum Qualifications	Permitted.
TYPES OF RELATIONSHIPS	
Employee	Individuals can be employed on either a full-time, part-time or casual basis. Employees attract different entitlements depending on what basis they are employed. Individuals can be employed on a fixed-term or on a maximum-term contract for a limited duration.
Independent Contractor	Independent contractors are commonly used and can be engaged directly by the company or via a personal services company.
Labour Hire	Labour hire workers are often engaged for short periods and are frequently used. Labour hire workers are not engaged as employees of the company which engages them; they remain employees or contractors of the labour hire firm.
INSTRUMENTS OF EMPLOYMENT	
Common Law Contracts	A contract can be oral or in writing. Written contracts are strongly recommended. Where no award or registered agreement applies, the minimum pay and conditions in the legislation will apply.

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Registered Agreements	A registered agreement (also commonly referred to as an "enterprise agreement") sets out the minimum pay and conditions an employee is entitled to. When a business has a registered agreement, the award does not apply. The pay and conditions provided in a registered agreement cannot be less than that of the applicable award or the National Employment Standards.
Awards	Awards set out the minimum pay and conditions an employee is entitled to if an award covers the business and the work the employee does. Awards do not apply when a business has a registered agreement and the employee is covered by it. There are currently 121 modern awards of general application that cover most people working in Australia, which means many employees who are not covered by a registered agreement will most likely be covered by an award.
Policies	Policies are not mandatory, but they are strongly recommended. Policies which should exist include those relating to discrimination, harassment, bullying and work health and safety.

ENTITLEMENTS

Minimum (Statutory) Employment Rights	There are 11 National Employment Standards set out in the Fair Work Act, which cover the majority of employees. ***1. Hours of work*** An employee can work a maximum of 38 ordinary hours in a week, although the employer may require an employee to work reasonable additional hours. ***2. Annual leave*** Full-time and part-time employees are entitled to four weeks of paid annual leave, calculated on a pro rata basis based on their ordinary hours of work. Shift workers may be entitled to five weeks of paid annual leave per year. Casual employees are not entitled to annual leave and instead receive leave loading as part of their pay. ***3. Parental leave*** Eligible employees are entitled to 12 months of unpaid parental leave (which can be extended by 12 months by agreement) when a child is born or adopted. Additional entitlements include paternity/partner leave, adoption leave, special maternity leave, no safe job leave and a right to return to the old job. Specific legislation may also entitle eligible employees to parental leave pay from the Australian government, equivalent to the minimum wage, for a period of up to 18 weeks. ***4.a. Personal/Carer's leave*** Full-time employees are entitled to 10 days of paid personal/carer's leave a year. This covers circumstances where an employee is sick or an employee has to care for a family or household member or attend a family emergency. Part-time employees are entitled to a pro rata of 10 days each year depending on their ordinary hours of work. All employees (including casuals) are entitled to two days of unpaid carer's leave on each occasion.

4.b. Compassionate leave

All employees are entitled to two days of paid compassionate leave each time a family or household member dies or suffers a life-threatening illness or injury.

4.c. Family and domestic violence leave

All employees (including part-time and casual employees) are entitled to five days of unpaid family and domestic violence leave each year. Employees are entitled to the full five days from the day they start work. The five days renews each 12 months but does not accumulate from year to year if it is not used.

5. Community service leave

All employees are entitled to community service leave for certain activities, such as volunteering during natural disasters or emergencies and for jury duty. Jury duty entitlements differ among states/territories.

6. Long service leave

Full-time, part-time and some casual employees are entitled to paid long service leave once they have worked for an employer for a long period of time. Most entitlements are stipulated by state/territory legislation.

7. Flexible working arrangements

Certain employees have the right to request flexible working arrangements. Employers can only refuse these requests on reasonable business grounds. Options include working part time, job sharing, working from home and altering work hours.

An employee is not entitled to make a request unless:

- They are an employee, other than a casual employee, who has worked for the same employer for at least 12 months.
- They are a casual employee who is a long-term employee and has a reasonable expectation of continuing employment by the employer on a regular and systemic basis.

If eligible, an employee can request flexible working arrangements if they:

- Are the parent or have the responsibility for a child who is school aged or younger.
- Are a carer (under the Carer Recognition Act 2010).
- Have a disability.
- Are 55 years old or older.
- Are experiencing family or domestic violence.
- Provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence.

8. Offers and requests to convert from casual to permanent employment

Casual employees who have worked for their employer for 12 months need to be offered the option to convert to full-time or part-time (ongoing) employment by their employer. Certain eligibility requirements need to be met for this to occur.

Casual employees may be able to request that their employer converts their employment to full time or part time (ongoing) in some circumstances.

Small business employers (those that globally employ less than 15 employees) are not required to offer casual conversion to their casual employees after 12 months, although an eligible casual employee working for a small business employer can request to convert to permanent employment at any time on or after his or her 12-month anniversary.

9. Public holidays

Employees are entitled to a paid day off for each public holiday in the state or territory in which they work. Some employees are entitled to additional pay if they work on a public holiday.

10. Notice of termination and redundancy pay

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, they must provide the following notice:

- Less than one year of service – one week.
- Between one to three years of service – two weeks.
- Between three to five years of service – three weeks.
- Over five years of service – four weeks.

Where an employee is over 45 years of age and has completed at least two years of continuous service, he or she is entitled to another week's notice.

Alternatively, an employer can make a payment in lieu of notice.

When an employee resigns, he or she has to provide the notice as specified in the relevant registered agreement/award or contract.

For circumstances where an employer no longer needs a full-time or part-time employee's job to be done by anyone and has consulted with the employee, an employee is entitled to the following redundancy payment (unless an employment contract or registered agreement specifies a higher payment):

- At least one year but less than two years – four weeks.
- At least two years but less than three years – six weeks.
- At least three years but less than four years – seven weeks.
- At least four years but less than five years – eight weeks.
- At least five years but less than six years – 10 weeks.
- At least six years but less than seven years – 11 weeks.
- At least seven years but less than eight years – 13 weeks.
- At least eight years but less than nine years – 14 weeks.
- At least nine years but less than 10 years – 16 weeks.
- At least 10 years – 12 weeks.

11. Fair Work Information Statement and Casual Information Statement

All new employees must be given a Fair Work Information Statement

	containing key terms before, or as soon as possible after, the commencement of employment. All new casual employees must be given a Casual Information Statement containing key terms before, or as soon as possible after, the commencement of employment.
	Superannuation Under the Superannuation Guarantee scheme, employers are effectively required to contribute 10% of employees' quarterly base salary to employee superannuation funds. Most employers make regular contributions in line with the pay period. ***Overtime*** In many cases, and in particular for those employees covered by a registered agreement or award, time worked outside of ordinary hours can attract overtime rates.
Discretionary Benefits	***Bonuses*** It is common for employers to include bonus provisions in employment contracts. Bonuses are usually dependent on individual, department or company performance and are paid at the employer's discretion. ***Salary sacrifice*** Some employers offer employees an additional two to four weeks' paid annual leave per year in exchange for employees sacrificing part of their salary each pay period. ***Paid parental leave*** Some employers offer paid parental leave schemes which either supplement the income provided by the legislated parental leave pay scheme or offer additional periods of paid parental leave. Other common discretionary benefits include provision of a mobile telephone, a laptop or a car.

TERMINATION OF EMPLOYMENT

GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice and termination (or resignation) by the employee.

MINIMUM ENTITLEMENTS

Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, they must provide the following notice:

- Less than one year of service – one week.
- Between one to three years of service – two weeks.
- Between three to five years of service – three weeks.

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	• Over five years of service – four weeks. Where an employee is over 45 years of age and has completed at least two continuous years of service, they are entitled to another week's notice. Alternatively, an employer can make a payment in lieu of notice. Notice does not need to be provided when an employer terminates an employee for serious misconduct. When an employee resigns, they have to provide the notice as specified in the relevant registered agreement, award or contract.
Statutory Entitlements	Payment on termination includes: • Outstanding wages for hours already worked. • Accrued annual leave. • Redundancy pay (if applicable). • Accrued long service leave (if applicable).
REDUNDANCY	
Genuine Redundancy	Redundancy is only available in circumstances where an employer no longer needs a full-time or part-time employee's job to be done by anyone.
Consultation	If the position being made redundant is covered by an award or registered agreement, the consultation provisions in that award or registered agreement should be followed.
Payment	An employee is entitled to the following redundancy payment (unless an employment contract or registered agreement specifies a higher payment): • At least one year but less than two years – four weeks. • At least two years but less than three years – six weeks. • At least three years but less than four years – seven weeks. • At least four years but less than five years – eight weeks. • At least five years but less than six years – 10 weeks. • At least six years but less than seven years – 11 weeks. • At least seven years but less than eight years – 13 weeks. • At least eight years but less than nine years – 14 weeks. • At least nine years but less than 10 years – 16 weeks. • At least 10 years – 12 weeks.
POST-TERMINATION RESTRAINTS	
	Those that protect the employee's legitimate business interests can be enforced if reasonable in the circumstances.
Non-competes	Typically no longer than 12 months (with some exceptions).
Customer Non-solicits	Permissible.

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Employee Non-solicits	Permissible.

REMEDIES

Unfair Dismissal	Eligible employees who have completed six months of service with their employer (or 12 months in the case of a small business employer with fewer than 15 employees) and earn up to the high-income threshold (AU$158,500 for FY 2021–22) or are covered by a modern award or registered agreement are eligible to made a claim for unfair dismissal. Remedy can vary and includes reinstatement or an award for compensation (up to six months' salary being a maximum of AU$76,800 for FY 2020–21).
Adverse Action	Employers are prohibited from taking "adverse action" (including termination) against employees because an employee has or exercises a "workplace right" or engages in "industrial activity" or because of a protected attribute. Further protections include a prohibition on an employer dismissing an employee because the employee is temporarily absent from work due to injury or illness. Remedy can vary and includes reinstatement or an award for compensation (with no maximum amount).

CORPORATION REGULATIONS

Payment of Benefits/Directors	Company officers or directors are not entitled to termination benefits or an increase in termination benefits if there is a change in shareholding or control of a company.

STATUTORY REQUIREMENTS

Transfer of Business	The Fair Work Act contains a number of rules that apply if there has been a "transfer of business". These rules apply when: • There is a connection between two employers (including the sale of all or part of a business, certain outsourcing and in-sourcing arrangements and where the two employers have associated entities). • The new employer agrees to employ some or all employees of the old employer. • An employee begins working for the new employer within three months of ending their job with the previous employer. • The employee's role has not significantly changed. The main effect of the rules is that a transferable instrument (i.e. a registered agreement) that covers the employee before the transfer will continue to apply after the transfer. The Fair Work Commission can make certain orders altering the effect of the rules if it deems it appropriate. At common law, employees cannot be transferred from one employer to another without their consent. There are statutory provisions which require continuity of service when there is a transfer between related entities or where service is recognised by the purchasing employer.

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RESTRUCTURING

Notification	Awards and registered agreements require employers to notify employees of the likely effects of any restructure and to discuss the change with employees.
Consultation	If a position that is subject to restructure is covered by an award or registered agreement, the consultation provisions in that award or registered agreement should be followed.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the employer's confidential information, including intellectual property, clients and other company employees.

CONTRACTUAL RESTRAINTS

Confidentiality provisions restrict employees from using confidential information for anything other than their duties. These provisions restrain employees from using confidential information during, and for a period of time after termination of, employment.

PRIVACY OBLIGATIONS

State and federal legislation imposes stringent obligations with respect to an employer's collection, use and disclosure of employee's personal information. The Australian Privacy Principles, which apply to all businesses with an annual turnover of over AU$3 million a year, protect an individual's personal information, unless the information falls within one of the legislated exemptions. The privacy laws only apply to some employee records. In determining this, employers follow the Australian Privacy Principles and enforce policies to restrict use of personal information.

WORKPLACE SURVEILLANCE

There are limitations on the way in which employers may monitor employees. Generally, the law prohibits employee monitoring in areas such as toilets, bathrooms and changing rooms. Some states also limit employee surveillance on computers, telephones and cameras without first notifying employees of that surveillance and the nature of the surveillance.

WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict resolution tool to determine policy breaches, misconduct or misuse of confidential information. The conduct of these investigations is determined by company policy. Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment.

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WORKPLACE BEHAVIOUR

MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies and agreements provide for management of employee performance and conduct.

Unfair dismissal provisions and caselaw require an employer to warn an employee before terminating his or her employment due to poor performance.

Employee misconduct may also warrant a warning, disciplinary action or, if the conduct is serious, termination of employment. Employees terminated for serious misconduct do not receive all of their usual notice and statutory entitlements on termination of employment.

BULLYING AND HARASSMENT

Bullying

Bullying is covered by the Fair Work Act and work health and safety laws. These cover all employees, contractors, outworkers, students gaining experience and volunteers.

A worker is bullied at work if:

- A person or group of people repeatedly act unreasonably towards them or a group of workers.
- The behaviour creates a risk to health and safety.

Reasonable performance management action carried out in a reasonable way is not bullying.

Harassment

Harassment is unwanted behaviour which is aimed at offending, humiliating or intimidating another person. Harassment in employment for an unlawful reason, such as sexual harassment, is prohibited by anti-discrimination legislation.

DISCRIMINATION

Discrimination in employment, on certain grounds, is prohibited by state and federal anti-discrimination legislation. The legislation differs from state to state. Most jurisdictions make it unlawful to discriminate on the basis of sex, colour, race, sexual preference, disability (both mental and physical), age, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, nationality, social origin, gender identity or trade union membership. In most cases, an employer is taken to be vicariously liable for its employees' actions.

Employees also have recourse for unlawful discrimination through the general protection provisions of the Fair Work Act.

In the anti-discrimination jurisdiction, the most common form of remedy is compensation. Reinstatement is also a remedy for unlawful discrimination under the Fair Work Act.

THEFT / FRAUD / ASSAULT

These are criminal acts which can amount to serious misconduct and result in immediate dismissal from employment.

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UNIONS

Representation	All employees and independent contractors can choose to be represented by a union or not. Any union validly appointed to represent an employee or employees or must be recognised and dealt with according to the law.
Right of Entry	Union officials can enter the workplace if: • The employer agrees for them to enter. • They have a valid right-of-entry permit issued by the Fair Work Commission. There are many rules surrounding union officials entering a workplace.
Industrial Disputation	It is only lawful to take industrial action (e.g. strikes, lockouts, slowdowns) during particular times.

STAND DOWN – FAIR WORK ACT

Employers may, in some circumstances, stand-down an employee without pay during a period in which the employee cannot usefully be employed because of:

- Industrial action (other than industrial action organised or engaged in by the employer).
- A breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown.
- A stoppage of work for any cause for which the employer cannot reasonably be held responsible.

COVID-19 RETURN TO WORK AND MANDATORY VACCINATION

The ability to return to work due to COVID-19 varies from state to state (and territory to territory), and public health directions in these states change rapidly. Requirements vary by industry and also by the local government area in which the worker resides.

Mandatory vaccination enforced by state and territory public health orders depends on industry. Currently, most of the vaccine mandates have been enforced by the Victorian and New South Wales governments, but some other states are following suit.

In addition to public health orders mandating COVID-19 vaccines, businesses are able to direct their workers to be vaccinated in certain circumstances or make it a condition of employment or engagement that workers are vaccinated. These measures are taken for the health and safety of workers, and whether they are lawful and reasonable will depend on the particular circumstances of the business.

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EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Work Permit and Visa Requirements	***EEA and Swiss citizens*** Nationals of the European Economic Area (EEA) and Switzerland have a right to work in Belgium without a work permit. ***Non-EEA and non-Swiss citizens*** In principle, every non-EEA national working and residing in Belgium must be in possession of the necessary permits. Employees and employers that want to establish a working relationship in Belgium for a period exceeding 90 days will need to jointly request the appropriate regional authorities to issue a so-called "single permit," which is a combined work and residence permit. Since 31 May 2021, applications for this "single permit" must be submitted through an online portal. Employers that want to employ an employee in Belgium for a period not exceeding 90 days will need to request the appropriate regional authorities to issue a work permit. In order to obtain a single permit or a work permit, the employer (and the employee) must submit a file that comprises, among other documents, a passport, an application form, and an employment contract. There are a number of exceptions to the obligation to apply for a work permit or single permit. Depending on whether the employee is already residing in Belgium, on the term of the employment in Belgium (more or less than 90 days) and on the country of origin of the employee, the employee will also need to request a visa to be able to travel to Belgium. Regarding Brexit, the Withdrawal Agreement provides that UK nationals and their family members who were residing or working in Belgium on 31 December 2020 have maintained their rights for the future. For new situations after 1 January 2021, a short stay in Belgium (i.e., 90 days within a period of 180 days) is allowed for UK nationals without a Schengen visa being required. In order to work, UK nationals, as with other third-country nationals, are now subject to the necessary work permit or single permit.
Reference/Background Checks	Reference checks are allowed with the applicant's consent. However, if the applicant clearly marks a certain former employer as "a reference" on his or her CV, then such designation as a referee can be considered as "giving consent." The employer must inform the applicant prior to actually making contact with the former employer.
Police and Other Checks	Criminal checks are only permissible for specific roles (if there is a legal obligation to have a clean criminal record for the function, e.g., director functions in the financial sector) and subject to proportionality requirements. Education checks are common and allowed with the applicant's consent.
Medical Examinations	Biological tests, medical examinations, or the gathering of oral information for the purpose of obtaining medical information are only permitted when intended to verify the current (not the future) suitability of an employee or prospective employee for a vacant position taking into account the specific

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	characteristics of that position. Medical tests are only permitted for certain functions (safety functions, functions with increased vigilance, or an activity with a specific risk) and must be related to the specific nature of the position. The medical checkup of a candidate is only allowed insofar as the checkup is the last step in the selection procedure and will result in an employment contract being entered into if the candidate is declared medically suitable.
Minimum Qualifications	Generally speaking, this is not applicable, but in order to obtain or renew a work permit/single permit, it can be required to file, for example, diplomas or certificates and payslips.

TYPES OF RELATIONSHIPS

Employee	Employees can be hired for an indefinite period, for a fixed-term period, for a specific project, and on a full- or part-time basis.
Independent Contractor	Independent contractors can be engaged directly by the company or via a personal services company (management company).
Agency Worker	Agency workers are common but can only be employed (i) to temporarily replace an employee whose employment contract was terminated or suspended, (ii) to address an increase in workload, (iii) for the execution of an exceptional job, or (iv) to fill in a vacancy. In the latter case, the user company is offered the opportunity to test the skills of the temporary agency worker with the aim of providing to the temporary agency worker a permanent job with the user when the period of temporary agency work of a maximum of six months has come to an end. Agency workers are subject to strict conditions and are employed for a limited time. Remuneration for agency workers cannot be lower than what would be received by a permanent worker for the same job. Different collective bargaining agreements (CBAs) set out the benefits enjoyed by agency workers, and a joint committee has been created specifically to cover the agency workers. Recent legislation enlarged the possibility of using electronic employment contracts for temporary agency work and abolished the so-called “48-hour rule.” The latter requires that an employment contract between a temporary work agency and a temporary agency worker must now be entered into in writing, at the latest, at the time when the worker starts working instead of within two working days of the start of the work, as was the case before.

INSTRUMENTS OF EMPLOYMENT

Contracts	An employment contract for an indefinite duration can be concluded orally or in writing. However, the following contracts must be in writing: • Fixed-term contracts. • Contracts for specific projects. • Part-time contracts. • Replacement contracts. • Contracts for domestic servants. • Contracts for working at home.

	• Contracts for temporary work and temporary agency work. • Student contracts. The essential elements of the employment contract include: • The function performed. • Amount of wages. • Working time. • The workplace. There are specific requirements for written employment contracts with regard to certain clauses, which include schooling clauses and non-compete clauses. Three elements need to be present to qualify a contract as an employment contract: • An employee performs work for wages. • Payment by the employer. • The work is performed under the authority of the employer. Belgian labor law allows employment agreements to be signed electronically. However, for the time being, an electronic employment contract is only legally compliant if it is signed through a qualified electronic signature (e.g., with an e-ID and card reader) and if the contract is archived with a qualified archiving service. Given that archiving providers cannot yet receive their recognition since the conformity assessment body does not yet exist, it is to date impossible to be fully legally compliant through an electronic-only employment contract. This is expected to change in the very near future. However, the Employment Ministry has confirmed that, for the time being, it suffices if the employment contract is stored by an electronic archiving service provider that meets all the technical requirements as provided by the Economic Law Code.
Codes or Rules	CBAs can be concluded at three different levels: • At the national level, within the National Labor Council. • At the sector-of-activity level, in joint committees or joint subcommittees. • At the company level. CBAs at the national or sector level can be made compulsory by royal decree, which means that the CBA will also apply to those employers who are not represented by an employer's representative organization and their employees. Where the CBA is not compulsory, only the clauses that are not contrary to the written contract of employment will apply to the employers who are not represented by an employer's representative organization and their employees.
Registered Agreements	No requirement to lodge an employment contract with, or get approval from, a third party.
Policies	A distinction has to be made between work rules, which are a mandatory document, and other policies (e.g., car policy, Internet policy). The mandatory work rules must contain specific information required by law

(e.g., work schedules, an overview of disciplinary measures, grievance procedure, policy of alcohol and drug abuse, a written health and safety policy).

In order to prepare and amend the work rules, specific procedures must be followed.

ENTITLEMENTS

Minimum Employment Rights

Working hours

There is a limit on working time of an average of 38 hours per week.

Deviations exist on the sector level provided in CBAs.

Generally, working at night, on Sundays, or on public holidays is prohibited. However, the law provides for certain exceptions.

Employees holding managerial positions or positions of trust (this includes a director, manager, or any person exercising authority who has responsibility for all, or a significant subset of, the enterprise), as well as sales representatives, home workers, and domestic servants, are not affected by the regulations on working time.

The Act of 5 March 2017 on Practicable and Flexible Work modernized Belgian employment law in regard to working time. This new act introduced, among other things, a legal framework for flexitime (working with core time frames and flexible time frames within certain limits), provided that certain formalities are met and a time registration system is put in place.

In a landmark judgment of 14 May 2019, the Court of Justice of the European Union (CJEU) held that EU member states must oblige employers to set up a system for recording the time worked each day by each worker. Following this judgment and like other member states, Belgium will have to amend its working time legislation and oblige employers to introduce a working time registration system for all employees and not only for employees with flexitime as is the case today. On 22 May 2020, the Brussels Labor Court of Appeal rendered a first Belgian judgment applying this ruling of the CJEU.

Rest breaks

An employee cannot work for more than six hours without a break. After six hours, an employee is entitled to a break of at least 15 minutes.

An employee is entitled to a break of 11 hours between two working periods. Once per week, an employee is entitled to 35 hours (11+24) of uninterrupted rest.

Overtime

In principle, overtime hours can only be performed on the basis of a limited number of specific grounds, such as sudden, unexpected increases in workload and work to prevent or repair damages to assets.

However, the Act of 5 March 2017 on Practicable and Flexible Work introduced an additional option of performing 100 (since increased to 120) overtime hours per employee per year without any need for justification (i.e., the need to prove any reason). The prior and written approval of the employee is obligatory and is valid for six months. A CBA at sector level can even increase this credit of overtime hours by up to 360 hours. As a measure to relaunch the economy following COVID-19, an additional 120 voluntary overtime hours per employee per year can be granted for the years 2021 and 2022.

For some grounds of overtime, the employer needs the prior consent of the trade union delegation and of the social inspection services or needs to

provide notice to the trade union delegation and the social inspection services.

Working overtime entitles the employee to 50% extra pay for the overtime performed, while working on Sundays or on public holidays entitles the employee to 100% extra pay for the overtime performed.

Compensatory rest breaks are also provided.

Working time may be performed on average during a certain reference period, which is in principle a quarter, but it can be extended to one year. At no time during such reference period may the number of overtime hours exceed 143 hours, i.e., the so-called internal threshold, but a sector CBA can provide for a higher threshold (without upper limit). If the threshold is reached, the employee should immediately receive compensatory rest before he or she is allowed to perform more overtime hours. However, provided that certain procedures are followed and for certain types of overtime hours, employees can waive their entitlement to compensatory rest for a maximum of 91 hours per calendar year (which can be extended to 130 or 143 hours if certain procedures are complied with) and agree on a simple payout.

Wages

Minimum wages are determined in CBAs (on a national or sectoral level) and are, in general, based on an employee's professional experience and seniority.

Vacation

Employees are entitled to four weeks' paid annual leave (20 days for those working five days a week, and 24 days for those working six days a week), provided that they worked the entire preceding calendar year.

Employees receive their normal remuneration together with an extra payment of holiday pay equivalent to 92% of their monthly remuneration (so-called "double holiday pay").

Employees who are starting their careers or who are restarting their activities after a long time off are entitled to additional holidays after an introductory period of three months, so they have the possibility of benefitting from four weeks of holiday over the period of one year. The employee will receive holiday pay that is equal to his or her regular salary. Holiday pay will be financed through a deduction from the double holiday pay of the next year.

There are 10 public holidays a year. An employee is entitled to a replacement holiday day when a public holiday falls on a normal rest day.

The Act of 5 March 2017 on Practicable and Flexible Work introduced an option for employees to "save" time and to take this up as holidays at a later stage during their careers, e.g., the saving of voluntary overtime hours or conventional holidays or the converting of a premium in paid annual leave (if provided for by royal decree). The legal framework on "career saving" entered into force on 1 February 2018. However, this new system can only be called upon if a sector CBA is entered into setting out the framework. If, after six months following such a request, no sector CBA is entered into, then the system can be introduced by company CBA. In some sectors, like the clothing sector and the insurance sector, a CBA on career savings has already been adopted. In other sectors, such as the additional national joint committee for white-collar workers (which applies to a large proportion of white-collar workers), the chemical industry, and the petroleum sector, a request has been submitted but no sector CBA has been entered into within a period of six months, which means that employers in these sectors can now enter into a company CBA on career saving.

Sick leave and pay

Employees are entitled to sick leave due to incapacity to work. Employees are entitled to 30 days of "guaranteed" remuneration in these circumstances, paid by the employer as follows:

- A white-collar worker is entitled to 100% of his or her remuneration.
- A blue-collar worker is entitled to 100% of his or her remuneration for the first seven days, then 85.88% of his or her remuneration from day eight to day 14 and 30% of his or her remuneration from day 15 to day 30, topped up with an allowance from the National Health Service.
- After the 30-day period, the employee is entitled to disability allowances paid by the National Health Service.

Recent labor law reform focusses on the re-integration of sick employees, introducing a so-called "re-integration track" in which the occupational physician (*arbeidsgeneesheer – médecin du travail*) examines whether or not a disabled employee can continue to work temporarily or permanently by giving him or her adjusted work or another function within the company.

Maternity/parental leave and pay

Maternity leave normally lasts for 15 weeks, which includes six weeks of prenatal leave (of which one week is compulsory and five weeks can be carried over as postnatal leave) and nine weeks of postnatal leave.

In the case of multiple births, maternity leave normally lasts for 19 weeks, which includes eight weeks of prenatal leave (of which one week is compulsory and seven weeks can be carried over as postnatal leave) and nine weeks of postnatal leave and two additional weeks at the request of the employee.

Maternity leave can be extended in specific cases, e.g., for up to 24 weeks in the case of hospitalization of the newborn.

Maternity leave allowances are paid by the National Health Service. Within the first 30 days, 82% of normal pay is paid, then 75% of normal pay is provided thereafter.

Employees have the right to return to work, and there is protection against dismissal from the date the employer is notified about the pregnancy up until a month following maternity leave.

The father or co-parent of a newborn child is entitled to 15 days of paid birth leave. As from 1 January 2023, the number of days of birth leave will be increased to 20 days. The father or co-parent benefits from protection against dismissal during a period of three months after the notification of the birth leave. Birth leave can be taken within four months from the date of the newborn's birth.

For birth leave, the employer is required to pay the normal remuneration for the first three days of leave, with the other seven days being paid as an allowance by the National Health Service.

Carer's rights

Employees are entitled to carer's breaks, in order to assist or provide care to a household or family member suffering a serious illness, parental leave, palliative care leave, etc., under certain conditions.

	This carer's break system enables employees to suspend their employment contract completely (full break) or to reduce their working hours by half or one-fifth for a maximum period of 51 months (in some cases). During this period, they will receive a lump-sum monthly allowance from the National Unemployment Office on top of their reduced salary. As of 1 June 2019, new forms of parental and thematic leave entered into force, namely: • One-tenth parental leave (for full-time employees), e.g., the possibility for parents to stay with their children on Wednesday afternoon. • Flexible forms of taking up full-time and half-time parental leave. • Flexible forms of taking up thematic leave for providing medical assistance.
Discretionary Benefits	An employment contract of an individual employee can always stipulate that an employee will also receive other benefits, including a car, laptop, mobile phone, and insurance, for example. In Belgium, one of the most popular discretionary benefits is the provision of "meal vouchers." These vouchers can be used to buy food and other provisions and are accepted in stores and most restaurants. Another very popular benefit is the granting of a company car, which the employee can use for private purposes. In an attempt to solve road congestion caused by such company cars, the Belgian government introduced a so-called "mobility budget." This "mobility budget" is a budget that an employee can freely allocate to three "buckets" (a company car that is more environmentally friendly, alternative means of transportation, or a cash balance amount).

TERMINATION OF EMPLOYMENT

GROUNDS

	Termination of the employment contract resulting from a unilateral decision taken by either party usually takes one of the following forms: termination with notice, termination with payment of an indemnity in lieu of notice, or termination for serious cause. An employer may give notice to, or dismiss, an employee on any grounds as long as the grounds are not prohibited by law (e.g., discrimination) and as long as the dismissal is not considered to be "clearly unjustified" (see "Dismissal Action" below). No administrative or legal approval is needed. There is specific protection against dismissal on the basis of a number of reasons, including, among others: • Employee representatives in the Works Council and the Committee for Prevention and Protection at Work. • Non-elected candidates for the Works Council and the Committee for Prevention and Protection at Work. • Trade union delegates. • Application for maternity or paternity leave.

- Parental leave or adoption leave.
- Being a candidate for a political mandate.
- Redundancy or threatened redundancy due to new technologies.
- Application for paid education leave.
- Application for leave in order to assist a person who is suffering a serious disease.
- Request by a night worker to return to a daytime working schedule.
- The lodging of a claim in relation to violence, harassment, or sexual harassment.
- The lodging of a claim in relation to discrimination.

The employer will have to prove that the grounds of dismissal are not related to the reasons listed above or will have to comply with a strict dismissal procedure before the employee is terminated.

The employer may terminate an employment contract without notice and without paying any compensation in the event of a serious cause, i.e., a fact due to which the relationship between the employer and the employee is immediately and irrevocably damaged beyond repair, provided that the reason is not known by the employer for more than three working days.

MINIMUM ENTITLEMENTS

Payments/Notice

An employer wishing to terminate an employment contract does not have to consult or obtain prior approval from the Works Council or any other regulating body or court (unless the employee would have a protected status for which such prior approval is provided).

Notice of termination subject to a notice period by the employer may only be validly given in a written statement, sent by registered mail, or a delivery by bailiff, specifying the starting date and duration of the notice period. For a termination subject to the payment of an indemnity in lieu of notice, no specific formalities apply. However, it is advisable to send the employee a notice letter as proof of the date of termination.

For employment contracts that became effective before 1 January 2014, notice periods are calculated in two distinct steps. The first part of the notice period is calculated based on the seniority of the employee on 31 December 2013. The second step is calculated based on the seniority acquired after 1 January 2014.

The following notice periods apply when an employee is dismissed under an employment contract that became effective on or after 1 January 2014. They also apply to the second step of the calculation for employment contracts that began before 1 January 2014:

- Zero to three months of continuous service – one week.
- Three to four months of continuous service – three weeks.
- Four to five months of continuous service – four weeks.
- Five to six months of continuous service – five weeks.
- Six to nine months of continuous service – six weeks.
- Nine to 12 months of continuous service – seven weeks.
- 12 to 15 months of continuous service – eight weeks.

- 15 to 18 months of continuous service – nine weeks.
- 18 to 21 months of continuous service – 10 weeks.
- 21 to 24 months of continuous service – 11 weeks.
- Two to three years of continuous service – 12 weeks.
- Three to four years of continuous service – 13 weeks.
- Four to five years of continuous service – 15 weeks.
- As of five years – plus three weeks per commenced year of continuous service.
- As of 20 years – plus two weeks per commenced year of continuous service.
- As of 21 years – plus one week per commenced year of continuous service.

The first step for employment contracts that became effective before 1 January 2014, taking into account the seniority of the employee on 31 December 2013, is calculated as follows for white-collar employees:

- If the annual remuneration of the employee was below the amount of €32,254 gross on 31 December 2013, the first part of the notice period amounts to three months per started period of five years of seniority.
- If the annual remuneration exceeded the amount of €32,254 gross on 31 December 2013, the first part of the notice period amounts to one month per started year of seniority, with a minimum of three months.

For blue-collar workers, the first step for contracts that entered into force before 1 January 2014 gives rise to shorter notice periods.

Where the individual is entitled to an indemnity in lieu of notice, this is calculated on the basis of the gross annual compensation at the time of termination, which includes all benefits earned over the last 12 months of employment. The indemnity in lieu of notice is equal to the salary that would have been due for the full duration or the remaining part of the notice period.

Statutory Entitlements

During the notice period, the employee is entitled to paid time off to look for new employment: a half-day per week and up to one day per week during the last 26 weeks of the notice period.

All employees who are entitled to a notice period (or an indemnity in lieu of notice) of at least 30 weeks are entitled to outplacement services (general system). If the employment contract is terminated with a notice period, the employee must use this outplacement support during his or her working hours. In case the contract is terminated with an indemnity in lieu of notice, the employer may deduct four weeks' salary from the indemnity in lieu of notice. Employers are exempt from the obligation to offer outplacement to employees proving their medical incapacity to follow the outplacement support (for example, a terminally ill employee). If the contract is terminated with an indemnity in lieu of notice, the full amount of the indemnity in lieu of notice will in that event be due without deduction of the four weeks' salary.

Please note that the general system does not apply to companies that are considered companies in "restructuring." If the employee is not entitled to a notice period (or an indemnity in lieu of notice) of at least 30 weeks but he or she is older than 45, subsidiary rules pertaining to outplacement services apply. Moreover, a recent reform provides that employers must also make an outplacement offer to employees who were not dismissed but whose

	employment contract came to an end for medical force majeure invoked by the employer. Employees will also be entitled to a pro rata end-of-year premium (known as the "13th month") if provided for in the applicable sectoral CBAs. An employee will also be entitled to departure holiday pay, which is an anticipated payment of the holiday pay for the year following the year in which the employment relationship came to an end and will, therefore, be deducted from the holiday pay normally due by the new employer of the employee concerned for that year.
Dismissal Action	Since 1 April 2014, each dismissed employee has the right to know the precise reasons that have led to his or her dismissal and can request a "motivation" or "justification." Failure to comply with the obligation to provide the reasons for dismissal within the prescribed period can lead to an administrative fine amounting to two weeks' salary. If the employee is not satisfied with the reasons given by the employer, he or she can bring a claim for "clearly unjustified dismissal" before the Labor Court. If the court accepts that the dismissal was "clearly unjustified," the employer can be liable to pay damages to the employee amounting to a minimum of three and a maximum of 17 weeks' salary, according to the "degree of unreasonableness." Litigation involving termination disputes is not unusual. Such litigation usually takes between 12 to 15 months after the application is made before being tried before the Labor Tribunal, with an additional year if an appeal is lodged with the Labor Court.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS	
Transfer of Business	There are protections under the EU Acquired Rights Directive/CBA no. 32 to automatically transfer employee entitlements in the event of transfers of an undertaking or part thereof. All employees' rights and obligations are automatically transferred to the new employer, and it is not necessary to sign a new employment contract. There is a duty to inform and consult with employee representative bodies or, in the absence of representative bodies, to inform employees directly. If an employee is dismissed because of a transfer, this is considered unfair unless economic, technical, or organizational reasons can be established or it is a case of a serious cause.
RESTRUCTURING/REDUNDANCY	
Collective Dismissal/Plant Closure: Definitions	Regarding the employer's information and consultation obligations, a collective dismissal occurs when the following number of employees are laid off during a 60-day period: • Where there is an average of 20 to 100 workers employed in the year prior to the redundancies, 10 or more employees are laid off. • Where there is an average of 100 to 300 workers employed in the year prior to the redundancies, 10% or more of employees are laid off.

	• Where there is an average of more than 300 workers employed in the year prior to the redundancies, 30 or more employees are laid off. An employer planning a collective dismissal must follow strict procedures in terms of information and consultation. A plant closure occurs: • In case of a definitive cessation of the main activity of the company. • If the number of employees is reduced below one-quarter of the average number of employees employed in the company during the four quarters preceding the quarter in which the definitive cessation of the company takes place.
Information and Consultation	The employer must give notice of its intention to conduct a collective dismissal to the employee representatives (or the employees directly in case of absence of employee representatives), as well as to the appropriate public authorities. The employer must inform and consult with the Works Council before any decision of collective redundancies is taken and before any public announcement is made. Where there is no Works Council, the employer must inform and consult (in accordance with a prescribed format) with the trade union delegation; where there is no Works Council and no trade union delegation, the Committee for Prevention and Protection at Work must be informed and consulted; and where there is no Works Council, no trade union delegation, and no Committee for Prevention and Protection at Work, the employees must be informed and consulted directly. Following the information and consultation, if the employer decides to proceed with the collective dismissal, the employer must send a second notification to the appropriate public authorities that sets out the number of employees normally employed, the number of employees being laid off, the reason for the collective dismissal, the period during which the layoff will occur, etc. In principle, the collective dismissal cannot occur during the 30 days following the second notification to the appropriate public authorities, i.e., the cooling-off period. During the cooling-off period, it is common to negotiate a social plan detailing the conditions under which the concerned employees will be dismissed and to set up an employment cell if the employer is required to do so. An employment cell is a redeployment body aimed at assisting the dismissed employees in finding new employment and to comply with formalities towards authorities. It must be set up by employers employing more than 20 employees, together with the trade unions and the regional employment agency. An employer employing 20 employees or less is only obliged to set up such cell if it wishes to dismiss employees within the framework of “bridge pension” (system of unemployment benefits with company top-up) at a lower age than the age that is normally applicable for “bridge pension” within the company. The employment cell must make an outplacement offer to the employees who participate in the cell. After the cooling-off period, the employer can, in principle, proceed with the individual dismissals in accordance with legal provisions and the provisions of the social plan (if any). It should be noted that additional formalities would need to be complied with if the collective dismissals were to be accompanied by the closure of the

	company or a division of the company.
Payment	Employees made redundant during a collective dismissal are in principle entitled to receive a collective dismissal allowance. This collective dismissal allowance is not due to employees who are entitled to the special closure indemnity. Contrary to the definition of collective dismissal in the context of information and consultation obligations, a collective dismissal with respect to the specific collective dismissal indemnity is defined as: any dismissal of personnel due to economic or technical reasons and involving, over a period of 60 days, a 10% reduction of the workforce, with a minimum of six dismissals in the case of companies employing between 20 and 59 employees.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Following Article 17 of the law regarding employment agreements, an employee may not disclose, even after termination of employment, any "trade secrets" or secrets concerning personal or confidential matters, which he or she has obtained during his or her employment with the company.

A recent law of 30 July 2018, transposing the European Directive 2016/943 on the protection of trade secrets into Belgian law, introduces, among others, a definition of what is understood by a "trade secret" within the Belgian Code of Economic Law. To qualify as a trade secret, company information must meet three cumulative criteria:

- The information must be secret.
- The information must have commercial value.
- The person holding the information must have taken reasonable protective measures to safeguard its confidentiality.

Article 17 of the law regarding employment agreements has been brought in line with this new definition of "trade secrets" in the Code of Economic Law. However, in practice, this should not lead to substantial changes, as this update is a mere modification of terminology (making it clearer and consistent with other legislation) and is in line with existing caselaw on this concept.

CONTRACTUAL RESTRAINTS AND NON-COMPETES

In order for an "ordinary" non-compete to be valid, certain requirements must be met:

- The clause must be in writing.
- It must concern activities similar to those activities that the employee exercised at his or her former company.
- A geographic limitation is to be taken into account.
- The non-compete clause must not exceed 12 months, starting from the termination of the employment contract.

The employer is obliged to provide payment of a single lump-sum amount in compensation for a non-compete clause of at least 50% of an employee's gross salary corresponding to the duration of the clause, unless the employer waives the application of the clause within 15 days of the end of the employment relationship.

A "derogating" non-compete clause is also used in Belgium but only for certain categories of undertakings. This is an alternative for multinationals to protect their cross-border interests.

Specific rules apply to non-compete clauses for sales representatives.

Employee non-solicitation clauses are permissible but are only enforceable if they are reasonable.

PRIVACY OBLIGATIONS

Employees must generally be notified of any personal data processing. The Data Protection Act governs the treatment of personal data and sets out the conditions under which personal data may be processed.

Circumstances where the processing of personal data is allowed, in principle, include:

- Where it is necessary for the execution of the contract.
- Where it is necessary for the performance of a statutory provision.
- Where the person concerned has given his or her explicit consent (although consent is often considered to be problematic in an employment context).
- Where it is required to achieve the legitimate interests of the controller.

On 25 May 2016, the EU General Data Protection Regulation (GDPR) entered into force, harmonizing data protection legislation in the European Union.

By far the most important change is that the Belgian Data Protection Authority now has the power to sanction companies that violate the data protection rules with huge administrative fines of up to €20 million or 4% of the company's annual global turnover.

GDPR still leaves room for member states to lay down specific rules (which may not deviate from GDPR) in national legislation. In Belgium, a new Data Protection Act entered into force on 5 September 2018.

WORKPLACE SURVEILLANCE

There are significant restrictions on the monitoring of entrances and exits, emails, Internet use, and the use of cameras in the workplace.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

Given legislation regarding the reason for dismissal, it has become more important to keep a file and to document information such as remarks, assessments, warnings, and absences relating to individual employees. This will allow an employer to duly communicate the concrete reasons that have led to the dismissal in case of a request from the employee for detailed

	information. This will also ensure that the reasons for each dismissal are evidenced to the extent possible and cannot be considered as "clearly unreasonable."
BULLYING AND HARASSMENT	
Bullying	In Belgium, workplace bullying is more commonly referred to as "moral harassment" (*harcèlement moral – moreel geweld*). Moral harassment is defined as an unlawful set of repeated, similar, or different behaviors of any origin, internal or external to the enterprise, which include notably unilateral conduct, words, intimidations, acts, gestures, or writing having as their purpose or effect to negatively affect the personality, dignity, or the physical or mental integrity of an employee during the performance of the employment, to jeopardize the employee's employment, or to create an intimidating, hostile, degrading, humiliating, or offensive environment.
Harassment	Sexual harassment and violence at work are covered by the law relating to the well-being of workers when carrying out their work (4 August 1996). Sexual harassment at work is defined as "any form of verbal, non-verbal, or physical conduct of a sexual nature which has an effect on the dignity of a person or to create an intimidating, hostile, degrading, humiliating, or offensive environment at the workplace." The law provides for a very specific procedure to be followed in cases of moral or sexual harassment or violence at work. The employer must conduct a risk analysis and identify measures that can be taken to prevent violence, moral harassment, and sexual harassment at work and, in general, all psychosocial risks at work. These measures are then implemented after consulting the Committee for Prevention and Protection at Work. The employer must also call upon a prevention advisor specializing in the psychological aspects of work. An employee who is a victim of harassment can request a formal intervention by the prevention advisor, which protects him or her against dismissal. He or she may be entitled to compensation that is equal to six months' pay in case of unlawful dismissal.
DISCRIMINATION	
	In Belgian employment law, there are three relevant laws in relation to anti-discrimination: the general anti-discrimination law, the anti-racism law, and the law that imposes equality between men and women. Direct and indirect discrimination is prohibited on the grounds of age, sex, social origin, language, sexual orientation, marital status, birth, wealth, religious or philosophical beliefs, political beliefs, union membership, present or future health situations, disability, and physical or genetic characteristics. Direct discrimination is when there is a direct distinction, based on a protected criterion, and results in a person being treated less favorably, without justification, than another person in a comparable situation. Direct discrimination is prohibited unless the distinction is based on an objective and reasonable justification. Indirect discrimination occurs when a seemingly neutral term or criterion appears to be especially disadvantageous to certain people characterized by a given protected criterion in comparison to other people.

	The anti-discrimination provisions stated in the Anti-Discrimination Act cover all employment aspects, including the interview stage, the hiring process, terms and conditions of employment, equal pay, promotion opportunities, fringe benefits, and termination. Remedies include uncapped compensation based on the claimant's financial loss or a lump-sum indemnity that is equal to three or six months' remuneration. Where discrimination is alleged, it is up to the employer to prove that there is no discrimination.
UNIONS	
Representation	With over 54% of all employees being members of a particular trade union, Belgium has one of the highest participation levels in the world. Trade unions represent the interests of their members through their bargaining role by negotiating with employer organizations on issues such as wages, compensation, working conditions, and health and safety issues, as well as consulting with different levels of government when preparing new labor legislation. A Committee for Prevention and Protection at Work must be established when there are at least 50 employees. In principle, the committee is composed equally of elected employee representatives and employer representatives. It promotes and actively contributes towards the welfare of employees and exercises certain Works Council powers if a Works Council does not exist within a company. A Works Council must be established when the company has at least 100 employees. This is a consultative body with equal representation of employee representatives and employer representatives. It has duties in relation to information, consultation, and active participation.
Right of Entry	At the request of the trade union and in accordance with the applicable national or sectoral provisions, an employer is obliged to allow the setting up of a trade union delegation within the company. Trade union delegations negotiate CBAs at the company level, monitor compliance with employment legislation, and play an important role in conflict situations.
Industrial Disputes	The right to strike is based on the European Social Charter. Otherwise, there is no specific Belgian law that governs industrial actions and lockouts. The Belgian courts have acknowledged the right of an employer to declare a lockout or lockdown; however, this has rarely been seen in Belgium.
COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS	
Safety and Prevention Measures	Employers must take the necessary safety and prevention measures for COVID-19. As much as possible, social distancing, i.e., two people keeping to a distance of at least 1.5 meters, has to be respected in the workplace. However, if this distance is not possible, then other prevention measures that provide at least an equivalent level of protection must be taken (e.g., spreading working hours, placing partitions, tensioning ribbons, protective clothing). To assist companies with the return to the office, the Ministry of Employment has developed a "generic guide" to preventing the spread of COVID-19 at work, which provides a general framework with particular prevention measures. For certain sectors, this "generic guide" is completed with more

	specific sector guidelines describing how the companies in that specific sector can safely resume work. Prevention measures must be determined at the company level, taking into account the social dialogue. The employer must consult with the Health and Safety Committee or, in its absence, the Trade Union Delegation or, if there are no consultative bodies, then directly with the employees, about which preventive measures are needed and how they will be implemented. In addition, a risk analysis and an action plan must be drawn up together with the internal or external prevention service. The employer must inform the workers in good time about the prevention measures in force and provide them with appropriate training. Also, third parties must be informed about the applicable prevention measures. Violation by the employer of the obligations relating to the COVID-19 prevention measures is punishable by a Level 2 penalty, i.e., a criminal fine of between €400 and €4,000 or an administrative fine of between €200 and €2,000. The amount of these fines is multiplied by the number of employees concerned (with a maximum of 100).
Temporary Unemployment	In the beginning of the COVID-19 crisis, the Belgian government implemented a simplified temporary coronavirus unemployment regime based on force majeure to allow as many employers as possible to use temporary unemployment to manage the crisis. This temporary unemployment regime has been extended until 31 March 2022. If an employer is faced with a temporary unemployment situation due to the coronavirus outbreak, then this is automatically considered as force majeure and a simplified procedure applies. This regime is also available for employees whose child cannot go to school, day care, or a center for persons with a disability due to a COVID-19 measure (e.g., a quarantine measure due to an outbreak of COVID-19 at school).
Days of COVID-19 Temporary Unemployment Are Assimilated to Working Days for the Calculation of the Number of Holidays and Holiday Pay in 2021 and 2022	Both the number of holiday days and holiday pay are calculated on the basis of the number of days worked and assimilated days (e.g., days of illness) during the “holiday service year” (i.e., the previous year). However, the situation of temporary unemployment due to force majeure as a result of COVID-19 did not appear in the list of days assimilated to working days in the holiday legislation, which meant that many employees risked having fewer holidays and less holiday pay in 2021 and 2022. Different royal decrees have assimilated these days of COVID-19 temporary unemployment for force majeure taken up in 2020 and 2021 with days worked for the calculation of the number of holiday days and the holiday pay for 2021 and 2022. Employers whose white-collar employees benefitted from temporary unemployment due to COVID-19 receive a partial compensation from the National Social Security Office (NSSO) for the cost resulting from the assimilation of the days of temporary unemployment.
Consumption Voucher	Employers that have achieved “good results” during the pandemic can grant a so-called “corona premium” of a maximum of €500 per employee under the form of a consumption voucher. The decision to do so must have been taken between 1 August 2021 and 31 December 2021, but the vouchers can still be handed over to the employees until 31 March 2022. This consumption voucher is free of taxes and regular social security contributions (only a special employer’s contribution of 16.5% is due). In some joint committees,

	the granting of a corona premium has been made compulsory by CBA if the employer performed well.
Telework	As of 20 November 2021, telework has been made compulsory again by the government. Until further notice, all workers are obliged to telework, unless the worker's role or the continuity of business operations does not allow for teleworking. The employer may arrange for occasions on which workers can return to the office, but these "moments of return" must be limited to one day per week and only a maximum of 20% of the persons required to telework may be present in the office at the same time. The monitoring of compulsory telework is twofold: (i) the employer must provide a worker working in the office with a certificate or other supporting document attesting that his or her presence in the workplace is needed, and (ii) employers are obliged to monthly register the "non-teleworkable functions" within their company through an online portal of the NSSO.
Social Security Implications in Case of COVID-19 Telework in a Cross-Border Situation	The Belgian social security authorities have decided that, exceptionally, periods of telework performed on Belgian territory by employees who normally work in another EEA member state but who, as a result of the COVID-19 pandemic, are (partly) teleworking in Belgium (e.g., because Belgium is their home country) will not be taken into account for the purpose of determining the applicable social security legislation. These periods of teleworking in Belgium due to COVID-19 will thus be "neutralized" and will not entail any change of social security regime without there having to be any formalities to comply with. This decision to make an abstraction of "COVID telework" will be valid until 30 June 2022, but it may be revised according to the COVID-19 measures. However, the change in working place must be due solely to the measures taken in connection with COVID-19, and the situation must return to normal as soon as the COVID-19 measures have ended.
Suspension of the Notice Period During Periods of COVID-19 Temporary Unemployment	An employer can terminate the employment contract of any employee placed in COVID-19 temporary unemployment. However, the notice period will be suspended during all periods of temporary unemployment on the basis of the simplified COVID-19 procedure.
Medical Certificate Quarantine	If an employee has to put himself or herself in quarantine but is capable of working and is not sick, then he or she should immediately inform the employer of that fact. If so requested by the employer, the employee has to submit a "quarantine" medical certificate issued by the employee's personal physician. For the period covered by such a "quarantine" medical certificate, the employer is not liable for the payment of the employee's (guaranteed) salary. If telework is not possible, then the employee might possibly benefit from unemployment allowances based on a COVID-19 temporary unemployment regime for force majeure.
Vaccinations	An employer cannot force its workers to get vaccinated due to the lack of any legal basis for doing so (vaccination for COVID-19 is not compulsory in Belgium, except for health personnel as from April 2022). ***Prohibition on discrimination*** An employer may not treat less favorably any worker who chooses not to be vaccinated (e.g., by denying such a worker access to the workplace,

"penalizing" the worker by means of a disciplinary measure for refusing to be vaccinated, obliging non-vaccinated workers to comply with more stringent prevention measures).

Requesting a vaccination certificate, negative PCR test, or "recovery certificate"

Under current legislation, employers cannot request workers to show a vaccination certificate, a negative PCR test, or a "recovery certificate" (recovering from a previous contamination).

- Employers cannot have their employees tested systematically (PCR test) on a large scale. Testing can only happen when the occupational doctor decides so and only for well-defined categories of employees (such as high-risk contacts, when the occupational doctor deems testing to be necessary to combat an imminent outbreak in the company, or for employees who have to make a business trip abroad for which a negative test is required, etc.).
- Requesting information on the employees' health status (vaccination or previous infection) would lead to the processing of sensitive health data that is, in principle, prohibited by the GDPR, unless a legal basis would allow for the processing of such sensitive data. However, the Belgian Data Protection Authority has taken the position that currently under Belgian law, there is no sufficient legal basis for justifying the processing of health data regarding vaccination by the employer.

Yet companies employing at least 50 workers are allowed to ask the company doctor for the vaccination rate in their company, which the company doctor can check through a specific government tool that only the company doctor can consult.

Vaccination in the workplace

In principle, vaccinations take place in vaccination centers. Workers wanting to get vaccinated are granted leave of absence to do so.

Under certain conditions depending on the region, employers can also organize vaccinations in the workplace on a voluntary basis and using occupational doctors.

BRAZIL

BRAZIL

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT

Immigration/Visa Requirements	There are numerous types of visas and permits allowing foreigners to work in Brazil. Any foreigner wishing to work in Brazil must have either Brazilian residency or a work visa. Foreign workers require a work permit (*Autorização de Trabalho*), and anyone applying for this document must also obtain the appropriate immigration visa (*Vista*) that is applicable to his or her individual case. Work visas are issued by the consulate of the applicant's country of legal residence under the authority of the Brazilian Ministry of Foreign Affairs (*Ministério das Relações Exteriores*). In general, work visas and work permits will be issued only to employees of Brazilian-registered companies, subject to local tax and labor regulations. This means that a foreigner cannot work in Brazil while being paid by a company that is registered outside Brazil.
Reference/Background Checks	Although there is no specific local law on this matter, background checks are a sensitive topic in Brazil. As a general rule, background checks should concern only matters that are directly relevant to the future employment relationship. The employer must also avoid any unauthorized pre-employment investigation, and the applicant must be informed in advance of any background check that will be undertaken by the employer, including the information that will be queried and the parties from which it will be sought.
Police and Other Checks	There are no statutory or regulatory requirements for police and other checks. Employers have the discretion to require "criminal good-standing certificates" from the employee if the nature of the job requires this type of protective measure, and this practice is very usual and common across all sectors of the Brazilian employment market.
Medical Examinations	There is a pre-admittance medical exam that is mandatory under Brazilian law. It must be conducted before an employee commences work. The medical exam consists of a clinical evaluation of the patient (taking into account the patient's health history, any outstanding conditions present immediately prior to the beginning of their employment, and other evaluations), a physical and mental medical examination, and any necessary complementary exams.
Minimum Qualifications	***Age restrictions*** As a general rule, it is strictly forbidden to hire children under the age of 14. Certain restrictions apply to the employment of children aged between 16 and 18 years old. ***Nationality restrictions*** At least two-thirds of a Brazilian company's employees must be Brazilian, and at least two-thirds of a Brazilian company's payroll must be linked to payments to Brazilian employees. This provision applies to all employees, including managers and directors.

BRAZIL

TYPES OF RELATIONSHIPS

Employee	Individuals can be employed on a full-time, part-time, or casual basis for an indefinite or fixed-term period.
Independent Contractor	An individual will be considered an independent contractor if in his or her employment relationship: • He or she has independence to perform the work. • He or she is not subordinated to a company's directives and regulations. • No exclusivity is provided for in the relationship between the parties. Independent workers may also be professionals organized under a legal entity to render services under a contract. These professionals are not covered by the labor legislation.
Labor Hire	Outsourcing is generally deemed legal for labor purposes only if the services are not directly related to the company's core business. There are exceptions established by law for telecommunication and other public services.

INSTRUMENTS OF EMPLOYMENT

Contracts	Employers and employees are not required to execute written employment agreements. According to the Brazilian Labor Code, there is an employment agreement whenever an individual works personally for another individual or entity, on a regular basis with frequent payments, and is subject to the direct orders and supervision of the employing individual or entity. As a consequence, the employment conditions may be tacitly arranged, although the employer is required to register the pre-defined and agreed-upon arrangement on the employee's labor card. Employment conditions established by a written employment agreement signed by both the employee and by the employer are enforceable, provided that they are consistent and in accordance with the Labor Code, which governs most aspects of an employment relationship. An employment agreement subjects the parties to the applicable labor, social security, and tax laws. Finally, the employer is required to register the main work conditions with the registry systems kept by the social security system (*Instituto Nacional do Seguro Social*), the Ministry of Employment (*Ministério do Trabalho*), and the Federal Bank, which handles the Severance Funds (*Fundo de Garantia do Tempo de Serviço*).
Codes or Rules	Companies may have codes or rules that impose obligations in addition to those already provided for in Brazil's labor legislation. Typical internal rules include: • Clauses that establish the obligatory use of uniforms (in administrative areas or factory floors). • Care in the handling of machinery and equipment. • The correct use of computers and prudence when using company vehicles. • General requirements for admission.

	• Conditions for indemnity in case of damages caused to the employer by intent, fault, negligence, recklessness, or malpractice of the employee, which can affect third parties. • Conduct towards superiors and co-workers. • Rules regarding absence. • Procedures and forms for requesting and granting holidays. • Workplace transfers. • Benefits. • Dress code. • Acting ethically, both inside and outside the company. • Rules on handling confidential information of the company. The codes and rules cannot violate rights already guaranteed by law. Codes and rules are deemed void when in conflict with any legal provision.
Registered Agreements	There are also collective labor agreements that are applied depending upon the business of the company and its location. They are mandatory regardless of union affiliation and valid for up to two years.
Policies	Please see the information above under "Codes or Rules" of this guide.
ENTITLEMENTS	
Minimum Employment Rights	The statutory labor rights include: • A national minimum wage of approximately US$300 per month. • Thirty days of paid vacation per year (not affected by eventual contract suspension). • A vacation bonus (one-third of the vacation payment). • A "13th month" bonus. For those employees whose contracts were suspended due to the pandemic, they will receive the bonus proportionately to the months they effectively worked (one-twelfth of salary for each month). • Guarantee Severance Fund (FGTS) at 8% of the monthly compensation (please see COVID-19 section for details). • A minimum of 30 days' notice for termination. • Indemnity for unfair termination equal to 50% of the FGTS account balance. • Overtime payment. • Enrolment in social security. • Shared payment of transportation costs. • Weekly rest. Individual circumstances may also trigger other additional pay, mainly in the event of inherently hazardous or unhealthy work and night shifts or overtime.

Discretionary Benefits	Under Brazilian Labor Law, any awards or benefits routinely granted to employees in addition to their base salary may be considered fringe benefits. In such cases, the total amount of the employee's earnings, including fringe benefits, must be included as income for payroll and tax purposes. Generally, housing and car allowances granted to employees, as well as to foreign individuals working in Brazil, are fringe benefits and should be included as income for payroll purposes. However, there are exceptions to this (e.g., where such benefits are essential for the performance of the work).

TERMINATION OF EMPLOYMENT

GROUNDS

Termination without cause

Employees can be dismissed without cause at any time, subject to notice periods and severance pay, except in the case of protected and tenured employees. The employer is not required to formally justify the dismissal.

Termination with just cause

There are certain circumstances in which the employer has the right to dismiss the employee with cause, including, among other things, gross misconduct, or material breach of contract.

Underperformance is not a cause for termination.

Constructive dismissal

In certain circumstances, the employee is considered to be entitled to resign on the basis of constructive dismissal, for example, if the employee is assigned to tasks outside the scope of the services for which he or she was employed.

Termination by mutual consent

Both parties mutually agree to terminate the employment contract. This results in the payment of 50% of the prior notice (*aviso prévio*), FGTS, and full payment of other labor allowances due in a termination without cause.

Employee's resignation

The employee has the right to receive his or her salary balance, proportional 13th bonus, vacation plus one-third bonus, and proportional vacation plus one-third bonus.

MINIMUM ENTITLEMENTS

Payments/Notice	Employees can be dismissed without cause at any time, provided that they receive: • Termination notice of at least 30 days plus three days for every year worked (the employer can pay in lieu of notice). • Statutory severance pay.
Statutory Entitlements	Please see information above under "Minimum Employment Rights" of this guide. The referred section displays the statutory rights in the event of

	termination.

REDUNDANCY

	There is no concept of redundancy in Brazil.

REMEDIES

Dismissal Action	Written notification must be provided in cases of termination for cause. In the case of dismissal for any other reason (without cause), there is no prescribed procedure, but notice must be certain and is generally written. Once notice is given, termination becomes effective upon expiration of the respective period of notice. If the employer reconsiders the dismissal before the end of the notice period, the worker may accept or reject that decision. If the worker accepts the reconsideration or continues to work after the notice period expires, the employment contract will remain valid as if no notice had been given.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business	Employees are transferred by law in the event of business transfers in the following circumstances: • Group company transfer – Employees automatically transfer as part of a business transfer between two members of the same group of companies. • Employer transfer – Employees automatically transfer in the context of an acquisition or transfer of business (all assets and employees are transferred and the same activities and core business are to be maintained). If the transferee replaces the transferor as the employer because the transferee has assumed ownership of the transferor's business, it employs the transferor's employees automatically without having to rehire them. In these two cases, the transferee is the transferor's legal successor and is responsible for any employment-related liabilities and obligations.

RESTRUCTURING

Notification	Employers are not required to notify unions, works councils, or employees when completing a major transaction (such as an acquisition, merger, or joint venture).
Consultation	Employers are not required to notify unions, works councils, or employees when completing a major transaction (such as an acquisition, merger, or joint venture).

BRAZIL

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Confidentiality and nondisclosure obligations are inherent to the employment relationship, and any breach of those obligations is viewed as a cause for dismissal.

CONTRACTUAL RESTRAINTS AND NON-COMPETES

During the employment contract, an employee may be subject to non-compete obligations as a result of receiving salary from the employer. It is advisable to put those commitments in writing. This is commonly part of the employment contract in Brazil for senior employees, particularly those occupying managerial positions.

Post-employment restrictive covenants

Under the right of freedom to work contained in the Federal Constitution, an employer cannot require an employee to refrain from working for a competitor or an entity that is in direct competition with the terminating company after termination of employment. Therefore, any non-compete clause will only have a moral effect and will not be legally enforceable unless the non-compete clause clearly sets out the following:

- The scope of restrictions on competition after employment termination.
- A specific payment (indemnity) in consideration for the non-compete obligation equivalent to at least 50% of the last month salary per month of non-competition according to caselaw interpretation.
- A specific period no longer than 24 months according to caselaw interpretation.
- A reasonable geographical area.

PRIVACY OBLIGATIONS

The Federal Constitution protects the privacy of all citizens residing in Brazil. Breach of the right to privacy may entitle the employee to a claim for damages.

WORKPLACE SURVEILLANCE

There is no specific legislation governing this matter in Brazil. Therefore, the labor courts tend to use common sense when determining whether limitations on employees' privacy are acceptable in light of employers' justifiable interest. The Brazilian Superior Labor Court (*Tribunal Superior do Trabalho*) has ruled that video surveillance in restrooms is a violation of employees' constitutional rights to privacy. However, the same court has repeatedly confirmed the right of employers to monitor employees by video surveillance for safety reasons and even as a legitimate way to supervise and control certain activities.

BRAZIL

WORKPLACE INVESTIGATIONS

The Federal Constitution grants citizens, including applicants and employees, the right to privacy. An employer may investigate any suspicious conduct of its employees, but it may not conduct an investigation in a way that unreasonably infringes upon an employee's privacy right. Brazilian courts consider whether the employer's right to conduct business outweighs the employee's right to privacy on a case-by-case basis. There is no clear line, and an investigation must be conducted in a reasonable manner using the least invasive procedures available and avoiding methods that cause embarrassment or harm to the reputation of the employee.

The Brazilian Clean Company Act (Law No. 12,846) provides credits for companies that have implemented a compliance program.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

The main concerns for an employer managing behavior and performance are the following:

- Performance is not grounds for termination with cause.
- Employees are entitled to privacy at the workplace.
- The Federal Constitution forbids any kind of discrimination.

BULLYING AND HARASSMENT

Bullying

Brazilian employees are entitled to protection in case of bullying in the workplace. Examples of bullying include excessively harsh treatment by superiors, humiliation, constant threats, and the continuous questioning of an employee's capacity. In these instances, the employee may terminate his or her agreement with cause and file a claim against the company for damages.

Harassment

There are no specific employment laws protecting employees from harassment. Harassment, except for sexual harassment, is not a criminal offense. However, caselaw provides that the employer can be liable for moral and material damages caused by harassment under the rights provided by the Federal Constitution.

There is no minimum period of continuous employment an employee must serve before he or she can bring a claim for harassment.

DISCRIMINATION

The Federal Constitution forbids any kind of discrimination, including discrimination by race, religion, gender, and sexual orientation.

There is no minimum period of continuous employment in order to bring a claim for discrimination.

BRAZIL

UNIONS

Representation	Employees are free to organize professional and union associations, but they cannot organize more than one association representing the same professionals in the same municipality. No specific number of workers is required to form a union. In Brazil, unions are most common in industries such as commerce, metallurgy, and chemical manipulation. Currently, employees must pay annual contributions to their respective unions, equivalent to one day's salary, and this contribution is typically paid in March. Employers now also have this same obligation, but their annual contributions are calculated according to percentages of their share capital, and their contribution must be paid in January. However, a labor reform extinguished these mandatory union dues as of 11 November 2017, and it is expected that the federal government will present bills to the Federal Congress regarding rules for new types of union dues to be mandatory in case of collective bargaining.
Industrial Disputes	Unions are generally authorized to declare a strike after unsuccessful negotiations with employers, pursuant to the employees' decision to do so and provided that they observe certain legal conditions, including a minimum 48-hour notice period depending on the nature of the business. During the strike, any of the parties, as well as the public attorney, may file a collective lawsuit for the Labor Court of Appeals to decide on the legal grounds of the strike and on the merits of the claims brought by the declarant union. In practice, before that occurs, labor courts end up acting like mediators and seek to seal an agreement to end the strike. During the strike, employment agreements are suspended and, therefore, cannot be terminated. Days not worked cannot be deducted from the striking employees' salary, except if expressly negotiated with the Federal Union or if the strike is considered abusive by the Labor Court of Appeals. The employer cannot hire substitutes unless necessary for the conservation of goods, assets, and equipment. During the strike, the union should guarantee a sufficient number of employees to ensure essential activities listed by the law.

COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS

Most COVID-19-related restrictions and laws related to return to the workplace were revoked with the improvement of the pandemic's status in Brazil. The only remaining restriction is that pregnant women are prohibited to go to work in person. However, there is a bill in the Senate that, if passed, will let pregnant women go normally to work if fully vaccinated or if they agree to sign an agreement stating that they are aware of the risks. Although it differs from one federal state to another, some common restrictions, such as mandatory use of face masks, are still in place, so when returning to the office, all employees must use a face mask.

CHINA

CHINA

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT

Immigration/Visa Requirements	As required by applicable laws of the People's Republic of China (PRC or China), employers must ensure their employees are lawfully allowed to work in China. Foreign nationals are prohibited from working in the PRC without obtaining a work permit and a residence permit. Otherwise, such foreign national may be subject to a fine of RMB5,000 to RMB20,000 (US$750 to US$3,000), detention of five to 15 days in situations of serious violation or deportation. In addition, the employer may be subject to a fine of RMB10,000 (US$1,500) for each unlawful hiring, not to exceed an aggregate amount of RMB100,000 (US$15,000) for all unlawful hirings. Work permits usually have a term of one year and no longer than five years if certain conditions are satisfied. Residence permits usually have the same term as work permits. If the employer intends to continue to employ a foreigner after the expiration of the work permit and the residence permit, the employer must apply for a renewal of the permits 30 days before their expiration. Otherwise, the employer and the foreign employee may be fined by the authorities. Foreign employees should obtain a work visa (known as a Z Visa), a work permit, and a residence permit according to PRC laws.
Reference/Background Checks	PRC labor laws do not prohibit employers from contacting or engaging a third party to contact a prospective employee's referees and previous employers to gather and verify necessary employment-related information. However, the candidate's prior express consent should be obtained by the employer or the third party before conducting reference or background checks. Furthermore, the employer and the third party must keep in strict confidence the personal information collected and will not divulge, distort, or damage such information or sell or illegally provide the same to others.
Police and Other Checks	PRC laws do not prohibit employers from requesting candidates to conduct criminal checks with the police authority. In practice, prior to employment, the employer may ask the candidate to conduct criminal checks with the police authority and provide an official report issued by the police authority.
Medical Examinations	PRC labor laws do not prohibit employers from requesting medical examinations to determine a candidate's fitness for a particular job. However, PRC laws and regulations expressly prohibit employers from testing applicants for hepatitis B.

TYPES OF RELATIONSHIPS

Employee	There is no at-will employment in the PRC. Individuals can be employed on a full-time or part-time basis, on a fixed-term or open-ended contract, or on an individual project basis.
Independent Contractor	The concept of "independent contractor" is not recognized under PRC labor laws. An individual independent contractor relationship in China may be viewed as an employment relationship, with a few exceptions, such as housekeeper and professional insurance agents. Thus, an independent

	contractor may be entitled to employee protection/benefit under PRC labor law and cannot be terminated at will. An entity independent contractor relationship is considered as a contractual relationship between two legal entities, which is governed by PRC Civil Code.
Labor Hire	PRC Labor Contract Law allows employers to hire an employee on an individual project basis. The employment relationship will be terminated when the project is completed or reaches a certain milestone agreed upon by both employer and employee. In addition, an employer can fill its temporary, auxiliary, or substitutional positions via a labor dispatch arrangement according to PRC Labor Contract Law. Under the labor dispatch arrangement, the worker is employed by a human resources company and dispatched to work for a business on a temporary basis.

INSTRUMENTS OF EMPLOYMENT

Contracts	Employment contracts must be in writing as required by PRC Labor Contract Law. The employer is required to sign a written employment contract with the employee within one month from the starting date of employment. An employer who fails to do so will owe double wages to the employee for each month of employment after one month without a written contract. If the employer fails to enter into a written contract with the employee for over a year, it is deemed that the employer and the employee have entered into an open-ended employment contract. However, a part-time employee who works no more than 24 cumulative hours per week and four average hours per day is subject to different requirements and may be employed under an oral contract.
Codes or Rules	Codes or rules should be prepared and published by an employer in writing, and an employer is required to go through consultation with the labor union or employee representatives. In order to be enforceable under PRC labor law, internal policies and rules must be acknowledged by an employee. Therefore, the best practice for the employer is to obtain a written acknowledgment, such as an employee's signed copy of the internal policies and rules or an acknowledgment form from the employee.
Registered Agreements	Generally not applicable under PRC labor laws. However, a copy of an employment contract concluded with a foreign national will be submitted to the labor authority when applying for a work permit.
Policies	Policies should be prepared and published by an employer in writing, and an employer is required to go through consultation with the labor union or employee representatives. In order to be enforceable under PRC labor law, internal policies and rules must be acknowledged by an employee. Therefore, the best practice for the employer is to obtain a written acknowledgment, such as an employee's signed copy of the internal policies and rules or an acknowledgment form from the employee.

CHINA

ENTITLEMENTS

Minimum Employment Rights

Hours of work

Generally, under the standard working hour system, employees will work for no more than eight hours per day and 44 hours per week, and employers should ensure that employees take at least one day off per week. Hours worked beyond this are generally considered overtime, which entitles an employee to overtime pay. Depending on the employee's job title, duty, and salary, and upon filing with the local labor bureau, employers can also implement a flexible working hour system for eligible employees, under which the employers are not obligated to pay overtime.

Annual leave (statutory minimum requirement)

- Five days for employees who have worked for one to 10 years.
- Ten days for employees who have worked for 10 to 20 years.
- Fifteen days for employees who have worked for 20 years or more.
- Annual leave is in addition to public holidays and weekends.

Public holidays

Employees are entitled to paid leave for each day that is proclaimed a public holiday in the PRC. If an employer requests an employee to work on a public holiday, the employee is entitled to additional pay.

Maternity leave

The maternity leave of female employees is generally 98 days under the national law, including 15 days of antenatal leave. Extra maternity leave of 15 days will be granted in cases of dystocia. Female employees who bear more than one baby in a single birth are granted extra maternity leave of 15 days for each additional baby born. Different provinces and cities also provide additional days according to local policies.

In accordance with the relevant local regulations of certain provinces and cities that were released in late 2021, the additional maternity leave provided by the local government has been increased by 30–60 days, respectively. Such provinces and cities include Beijing, Shanghai, Guangdong, Hubei, Qinghai, Zhejiang, Chongqing, Hebei, Anhui, Heilongjiang, Jiangsu, Shanxi, Jiangxi, and Sichuan as of the date hereof.

Male employees may be entitled to paid paternity leave of varying length, depending on the locality.

Female employees who have a miscarriage before the fourth month of pregnancy are granted 15 days of maternity leave, and female employees who have a miscarriage in or after the fourth month of pregnancy are granted 42 days of maternity leave.

Parental leave (applicable in certain provinces/cities only)

In accordance with the relevant local regulations of certain provinces and cities that were released in late 2021 as mentioned above, both female and male employees who have a child of less than three or six years old, depending on the area, are entitled to five to 15 working days of paid parental leave for each year.

	Nursing lease (applicable in certain provinces/cities only) In accordance with the relevant local regulations of certain provinces and cities that were released in late 2021 as mentioned above, employees are provided with five to 20 days of paid nursing leave on an accumulative basis to take care of their parents, if and when their parents need nursing care, under certain conditions. ***Probation period*** The employer and employee must agree on only one probation period. If the term of an employment contract is: • More than three months but less than one year, the probation period may not exceed one month. • More than one year but less than three years, the probation period may not exceed two months. • Fixed for three or more years or is open-ended, the probation period may not exceed six months. ***Mandatory social insurance and house fund*** Employers are required by applicable PRC labor laws to contribute to the mandatory social insurance fund and house fund in accordance with local standards.
Discretionary Benefits	***Bonus or stock option*** Employers may choose to incentivize employees by including bonus or stock option provisions in employment contracts. Bonus or stock option provisions are usually dependent on individual, department, or business performance and are usually paid at the employer's discretion. Otherwise, they will be considered part of the normal income in terms of calculation of severance. ***House and transportation allowance*** Some employers offer a house and transportation allowance for certain groups of employees, usually management employees. ***Unpaid administrative leave*** Some employers offer unpaid administrative leave schemes at the employer's discretion.

TERMINATION OF EMPLOYMENT

GROUNDS	
	In the PRC, it is relatively difficult to terminate an employee since PRC labor laws are designed to protect an employee's interests. Termination must be based on justified causes specified by PRC Labor Contract Law, including mutual agreement, unilateral termination by the employee, expiry of the employment contract, retirement, and termination by the employer with a legal cause under PRC Labor Contract Law.

CHINA

MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates a full-time employee based on incompetence, non-work-related illness, or substantial change of employment basis, the employer is required to provide 30 days' written notice in advance or one month's salary in lieu of the 30 days' advance notice. The employer also is required to provide severance pay to the employee.

The employer can terminate an employee with immediate effect without giving notice in advance and paying severance if the employment contract is terminated based upon the employee's serious misconduct, serious violation of internal rules and policies, incompetency during the probation period, invalid employment due to the employee's fraud or coercion, criminal liability of the employee, or if the employee takes up a second job harming the first employer.

When an employee unilaterally resigns, the employee is required to give 30 days' written notice in advance or a three-day advance notice during the probation period.

Statutory Entitlements

Under certain circumstances specified by PRC Labor Contract Law (e.g., termination by an employee due to the fault of the employer, employee's incompetence for the job, termination by the employer with the consent of the employee, not renewing a contract (unless the employee refuses to renew upon maintained or raised provisions)), an employee is entitled to severance payment upon termination. Severance is based on the length of the employment period, which is one month's salary for each year of service. An employment period of less than six months entitles an employee to a half-month's salary as severance pay. An employment period of between six and 12 months entitles an employee to one month's salary as severance pay. The salary, adopted on a severance-calculation basis, refers to the employee's 12-month average monthly salary prior to termination. However, where the monthly salary of the employee exceeds three times the average monthly salary in the city where the employer is located, severance pay is capped at three times the local average salary and the employment period for calculation of severance cannot be more than 12 years.

Accrued but untaken annual leave at the total rate of 300% of the average daily wage for each unused leave day (100% has been included in the monthly salary and therefore only 200% needs to be additionally paid), overtime, and normal salary should be paid to an employee on termination, which can be offset by any amount an employee owes to the employer.

REDUNDANCY

Genuine Redundancy

If any of the following circumstances makes it necessary to reduce the workforce by 20 persons or more, or less than 20 persons but accounting for 10% or more of the total number of employees of the employer, the employer may conduct economic layoffs.

- Restructuring pursuant to the enterprise bankruptcy law.
- Serious difficulties in production or business operation.
- The enterprise switches production, introduces significant technological innovation, or adjusts its business model and still needs to reduce its workforce after amending the labor

	contracts. • A material change in the objective economic conditions relied upon at the time of conclusion of the labor contracts renders it impossible for the parties to perform. Certain required procedures must be followed, including explaining the situation to the labor union or to all of its employees 30 days in advance, submitting its workforce layoff plan to the labor administrative department, and considering the opinions of the labor union or the employees.
Consultation	Consultation with labor union or all employees is required.
Payment	Employees are entitled to severance pay based on the length of their employment.

REMEDIES

Dismissal Action	An employee is required to first bring employment claims to the employer's local Labor Arbitration Committee (where the employer is registered). After the labor arbitration decision, either the employer or the employee can appeal the case to the district court. Either party can then appeal the case to the municipal court for the final decision if not satisfied by the district court's decision. An employer can bring counterclaims against an employee, including returning company property and reimbursement for damages caused by the employee. In the case of wrongful termination, an employee can choose to request either reinstatement of the employment contract or double severance pay.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business	***Share transfer*** • Where the original investors in the business transfer their shares to other investors, the employment relationship will not be affected since the legal entity of the employer does not change. • Where the business is merged, divided, etc., the existing employment contract will remain valid and continue to be performed by the new employer. • A business does not need to obtain an employee's consent to conduct a share transfer. ***Asset transfer*** • Employees cannot be transferred from one employer to another without the employees' consent when the legal entity of the employer changes. • If an employee agrees to transfer and the new employer agrees to hire, the initial employment contract with the original employer needs to be terminated, and a new employment

	contract needs to be signed with the new employer. In such cases, the original employer is obligated to pay severance to the employee based on their service period with the original employer; otherwise, if agreed by the employee, the new employer should recognize the years of service of the employee for future severance purposes. • An employer is not required to obtain its employees' consent to transfer an asset.

RESTRUCTURING

Notification	If the restructure does not involve any layoffs, notification to employees is not required. If the restructure will result in economic layoffs, the employer is required to notify all employees or their work union 30 days in advance to collect the employees' or the work union's opinions. Also, the plan for layoffs needs to be filed with the local labor bureau.
Consultation	If the restructure does not involve any layoffs, notification to employees is not required. If the restructure will result in economic layoffs, the employer is required to notify all employees or their work union 30 days in advance to collect the employees' or the labor union's opinions, but the employer has discretion to make the final decision.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Pursuant to PRC Labor Contract Law, the employer and employee in the contracts of employment may include provisions protecting the confidentiality of an employer's information, including intellectual property, client information, and other confidential information. If the employee has divulged confidential information to any third party, the employer may claim any damage incurred thereof against the employee. However, liquidated damages agreed by the employee and employer in the employment contract are not recognized in breach of confidentiality obligations cases.

In legal proceedings where the employer claims the breach of a confidentiality obligation by the employee, the burden of proof lies with the employer. Among other things, the employer is required to provide preliminary evidence that the employer has taken proper measures to protect its confidential information and that its confidential information has been infringed by the employee. Then the burden of proof will shift to the employee who is required to prove the information being used or divulged is not the confidential information as specified under PRC laws.

CONTRACTUAL RESTRAINTS AND NON-COMPETES

According to PRC Labor Contract Law, an employer and an employee may add a post-termination non-compete clause in an employment contract or confidentiality agreement. Non-compete provisions can only be applied to senior management, senior technical, and other employees subject to confidentiality obligations. These provisions usually prevent employees from competing with their former employer for a period of up to

24 months within a certain business scope and geographic region.

In order to enforce non-compete provisions, an employer is obligated to pay an employee on a monthly basis after the termination of employment. The amount is based on an agreement between the parties. In practice, monthly compensation is typically set between 20–50% of the average monthly salary of the employee. If the agreement is silent on the amount, normally 30% of the employee's average monthly salary for the prior 12 months will be viewed as reasonable. But such amount will not be less than the local minimum salary.

Under PRC Labor Contract Law, the employee may be required to pay liquidated damages to the employer if he or she is in violation of a non-compete obligation. In practice, the employer and employee usually will agree on a liquidated damage amount in the employment agreement or confidentiality agreement.

If an employer has a non-compete agreement with an employee, but does not want to enforce such agreement, the employer should expressly waive the non-competition duties before the termination of employment. Otherwise, once the employment is terminated, the employer will be obliged to pay the non-competition compensation on a monthly basis or would need to pay three additional months' non-compete compensation if it intends to rescind the non-compete agreement.

PRIVACY OBLIGATIONS

Relevant PRC laws, including the Cybersecurity Law, protect an individual's privacy rights, which impose certain obligations with respect to an employer's collection, storage, transmission, use, and disclosure of an employee's personal information. The employer should inform and obtain written consent from the employee in advance of any collection, storage, transmission, use, or disclosure of an employee's sensitive personal information.

WORKPLACE SURVEILLANCE

PRC labor law does not have specific provisions regarding workplace surveillance.

According to the principles of PRC law, an employer is prohibited from monitoring employees in areas such as toilets, bathrooms, and changing rooms.

WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict-resolution tool to determine policy breaches, misconduct, or misuse of confidential information. The conduct of these investigations cannot violate an employee's legitimate rights, such as privacy rights and personal freedom. Outcomes of workplace investigations are often used to manage the performance of employees or to determine whether to terminate an employee's employment.

CHINA

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

Employment contracts, internal policies, and rules must be published by an employer in writing.

In order to be enforceable, PRC labor laws require internal policies and rules be acknowledged by an employee. Therefore, the best practice for the employer is to obtain a written acknowledgment, such as a signed copy of the internal policies and rules or an acknowledgment form from the employees.

Employee misconduct may lead to a warning, disciplinary action, or, if the conduct is serious, termination of employment. All rules and policies must be specified in detail in the internal policies and rules.

Employees terminated for serious violation of internal policies and rules are not entitled to any severance pay or notice in advance.

MANAGING PERFORMANCE AND CONDUCT

Bullying	PRC labor laws do not have specific provisions regarding bullying. The relevant term is usually specified in the internal policies and rules as a form of misconduct.
Harassment	PRC labor laws do not have a detailed definition of rules regarding harassment. PRC law provides only the general principle requiring employers to ensure workplace safety and provide protection to employees against workplace injury. The relevant term in relation to harassment is usually specified in internal policies and rules as a form of misconduct.

DISCRIMINATION

PRC labor law prescribes that regardless of their ethnic group, race, sex, religious belief, or residence status, employees will not be discriminated against in employment.

Women will enjoy the equal right, with men, to employment. With the exception of the special types of work or posts deemed unsuitable to women as prescribed by the law, no employer may, in employing staff and workers, refuse to employ women by reason of sex or raise employment standards for women. Employers are not allowed to terminate a female employee during her pregnancy and breast-feeding period, and a female employee is entitled to maternity leave.

There are also special protections in respect to the employment of the disabled, people of minority ethnic groups, and veterans.

UNIONS

Labor unions in the PRC do not have significant power compared to Western countries. In certain circumstances (e.g., employment termination), an employer is only required to notify and consult with the labor union, which can offer suggestions; however, an employer has the right to make the final decision, despite any suggestions provided by a

	labor union.
Representation	Not applicable under PRC labor laws.
Right of Entry	Not applicable under PRC labor laws.
Industrial Disputation	Not applicable under PRC labor laws.

COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS

Entry Restrictions and Quarantine Requirements	The PRC issued an announcement on 28 March 2020 to suspend the entry of most foreign nationals who hold a Chinese visa, residence permit, APEC business travel card, or port visa. On 23 September 2020, relevant authorities updated the 28 March announcement to allow foreign nationals holding valid Chinese residence permits for work, personal matters, and reunion to enter China starting from 28 September 2020. Since early 2021, the PRC embassy/consulate started to accept visa applications from foreigners who wish to travel to China but do not hold the above mentioned permits. However, visas are issued only on a limited basis and with strict requirements. Foreigners bound for China must provide, within 48 hours before boarding, a certificate of negative nucleic acid COVID-19 test result, a certificate of negative IgM antibody test result, and apply for an HDC green health code with the PRC embassy/consulate. For those who are fully vaccinated,[1] a certificate of negative N protein IgM antibody test result, vaccination statement, and vaccination certificate must also be provided. Upon arriving in China, foreigners are subject to quarantine requirements that vary from city to city. Most cities, such as Shanghai, Beijing, Guangzhou, and Shenzhen, require international travelers to have a 14-day quarantine at designated places, plus a seven-day home quarantine. It is expected that, as conditions change, the Chinese government will adjust the broad restrictions and quarantine requirements to ensure effective epidemic control.
Prevention and Control of COVID-19	In accordance with the severity of the outbreak in each city, local governments issued various notices and orders to regulate outbreak control and to specify employer and employee obligations in response to COVID-19, such as the responsibility to strengthen the prevention and control of the infection.
Return to Office	China has largely returned to normal, and public sites, as well as office buildings, are re-opened and operating under normal conditions at this time. As one of the regular measures to strengthen the prevention and control of the infection, the government has implemented a health code tracking system. Every time when entering a public site or office building, the visitors are required to show a green health code. The visitors are also subject to body temperature screenings and required to wear face masks while in public sites or office buildings, unless alone in a closed office.
Vaccination Consideration	Vaccination against COVID-19 at this time is not a mandatory requirement in China. However, in furtherance of efforts to protect the health and safety of people who live in China, the Chinese government strongly

[1] A person is considered fully vaccinated 14 days after completion of a COVID-19 vaccination series.

	encourages people to get fully vaccinated as soon as possible. People who are fully vaccinated are still subject to pandemic prevention and control measures.


FRANCE

FRANCE

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT

Immigration/Visa Requirements	Employers must make sure that their employees are lawfully allowed to work in France. Where an employee is seconded from a foreign country, a prior declaration must be completed on the labor authorities' website. In cases of non-compliance, there is the risk of a penalty of (€4,000 per seconded employee). European Union (EU), European Economic Area (EEA), and Swiss citizens do not require visas or a work permit to live and work in France. Other foreign workers must obtain a work permit from the labor authorities and a visa from the immigration authorities to live and work in France. Visas can be for a short duration (less than three months) or a long duration (more than three months). Since the United Kingdom's exit from the EU (Brexit), a French long-stay visa (equivalent to a work permit) is required for UK citizens in order to validly work in France. No visa or work permit is required for UK employees staying in France for less than 90 days.
Reference/Background Checks	An employer is allowed to contact a prospective employee's references and previous employers to gather and verify information, as long as the employee is informed of such verification. Former employers are not allowed to give "negative opinions" on a candidate; damages can be awarded against them if they do so. The French Data Protection Authority (CNIL) (*Commission nationale de l'Informatique et des Libertés*) recruitment frame of reference currently being discussed is expected to be published in 2022 and provide a comprehensive framework on the subject.
Police Checks	Police and other checks are allowed with the applicant's consent. Certain regulated positions (such as security agent, cash escort, taxi, or positions practiced in an airport) require the employer to obtain a copy of the employee's criminal record at the time of hiring.
Medical Examinations	Labor laws allow different types of medical examination: • An initial consultation of "information and prevention," which must take place within three months of hiring, except if the employee was employed in the same position in his or her previous employment contract. After this first consultation, a personal medical record is created for the employee. Failing this obligation carries a penalty risk of €1,500 per employee and a risk of legal action by the employee. • A periodic examination (every five years). • A reinstatement examination after maternity leave or professional disease or in case of sick leave of more than 30 days. Additional examinations may be prescribed, depending on the circumstances. Some employees are subject to increased health

	surveillance (these include employees under 18 years old, pregnant employees, disabled employees, night workers, and employees subject to certain risks such as asbestos, vibration, and noise). The employees' medical examination results are protected by doctor-patient confidentiality and are deemed sensitive data as health-related data under the General Data Protection Regulation (GDPR). The occupational health doctors are the only authorized entities allowed to access it, with the exception of the employer.
Minimum Qualifications	Employers must make sure that their employees are lawfully allowed to work in France. In cases of non-compliance, there is the risk of a penalty of €15,000 if the foreign employee is not allowed to work in France EU, EEA, and Swiss citizens do not require visas or a work permit to live and work in France. Other foreign workers must obtain a work permit from the labor authorities and a visa from the immigration authorities to live and work in France. Visas can be for a short duration (less than three months) or a long duration (more than three months).

TYPES OF RELATIONSHIPS

Employee	Individuals can be employed on a full-time or part-time basis and on a fixed-term or permanent contract. Employees are entitled to different rights and obligations depending on the basis on which they are employed. However, generally, an employee qualifies for a wide range of legislative labor protections. Nevertheless, independent contractors often claim for the reclassification of their contracts into employment contracts in order to obtain the associated protection. Employers should be aware that this may create financial and criminal risks.
Independent Contractor	Businesses often engage independent contractors on a fee-for-service basis. A business will usually take on the individual through a service agreement with the individual or with the individual's business. An independent contractor does not have the benefit of the employee's statutory social security system and protection. The Job Act (*Loi Travail du 8 août 2016*) created social responsibility for independent contractors working with electronic platforms (the so-called Uber structure). Since 1 January 2018, and subject to a turnover threshold being met by the worker on the platform, they have new social rights protection from work-related accidents and professional training. They will also have the right to go on strike and to create or be affiliated to trade unions. Since the French Mobility Orientation Act 2019 (*Loi d'Orientation des Mobilités*), the social rights of independent contractors working with electronic platforms have been strengthened: Electronic platforms are encouraged to set a policy (*Charte sociale*) providing for rules fixing relationships to regulate their status, i.e., the right to refuse an assignment without being subject to a penalty and the right to choose their period of work and time off. Furthermore, the independent contractors working with electronic platforms will be able to elect their representatives in 2022.

FRANCE

Fixed Terms and Temporary Contracts	Fixed-term employees (*contrat à durée déterminée*) are often engaged for short periods. A fixed-term contract can be renewed only twice, except in the case of replacement of an employee. The maximum duration of a fixed-term contract, renewals included, is 18 months (except some specific cases not exceeding 36 months). The hiring of temporary workers (*travailleurs intérimaires*) and employees under fixed-term contracts and the terms of such contracts are strictly regulated by the French Labor Code. The hiring of temporary workers and fixed-term workers is only allowed in certain cases listed in the French Labor Code, and temporary and fixed-term contracts must contain a number of mandatory provisions; otherwise, the contract reclassifies as a permanent contract, and the employer may face civil and criminal sanctions. Temporary workers and fixed-term contracts are permitted for the replacement of an employee on leave, where there is a temporary increase of activity, or for a specific and temporary mission where the tasks are not related to the standard activity of the company. There are certain industries where it is considered a customary practice to hire fixed-term workers, including building and construction, broadcasting, and seasonal activities, such as crop harvesting. The limitations imposed by the French Labor Code do not apply to these industries. Temporary and fixed-term workers are entitled to an indemnity, paid by the employer, which amounts to 10% of the total aggregate gross remuneration paid during the whole contract. This indemnity is not payable when the employer proposes a permanent contract at the end of the temporary or fixed-term contract or in the case of termination for serious misconduct. Temporary workers remain employees of the temporary employment agency or labor hire firm. However, non-compliance with provisions concerning the reasons, length, terms, and renewals may create liability for the end-user company with the risk of a judicial declaration of a permanent employment relationship.
Seconded Employees	Since 30 July 2020, following the application of a European directive on secondment (*détachement*), the general scheme of secondment applies for a limited period of 12 months, which can be extended (under exceptional circumstances) by six additional months with specific approval from the French labor authorities. Beyond 12 months, the seconded employee in France benefits from a new regime of "long-term secondment." The seconded employees are subject to the provisions of the French Labor Code, with the exception of the execution of an employment contract and termination of the employment contract. In such cases, the seconded employee should benefit from all the mandatory benefits provided for by the French Labor Code, in particular the collective health insurance plan (*mutuelle*), death and disability collective plan (*prévoyance*), mandatory and voluntary profit-sharing schemes (*participation*," "*intéressement*), etc.

INSTRUMENTS OF EMPLOYMENT

Contracts	French law does not always require a formal written employment contract, except in certain cases, including temporary and fixed-term contracts, part-time contracts, apprenticeship contracts, and all contracts with foreign workers. However, EU regulations require that the employer confirm in writing the main elements of the contract within two months from the starting date. Most collective bargaining agreements (CBAs) provide that the employee must be provided with a written agreement regardless of the type of

	contract. The use of a formal written contract is strongly advised for evidentiary reasons.
Codes or Rules	The French Labor Code is an organized collection of most of the laws and regulations applicable to labor law and mainly concerns employees under private law labor contracts. Public employees are generally subject to specific statutes.
Collective Bargaining Agreements	CBAs are agreements concluded by employees, unions, and employers' organizations that provide mandatory rules in addition to but still compliant with the French Labor Code. The CBAs are concluded by sector of activities. CBAs apply to all employees covered by the scope of the CBA and cover a broad range of topics, especially employment conditions such as minimum remuneration, notice periods, and vacation, as well as termination indemnities. A company falling within the scope of a CBA (on industry or geographical grounds) is required to abide by the CBA's provisions as soon as the CBA is extended by the Ministry of Labor and published in the *Official Journal*. Note that the forthcoming labor reform will impact CBAs in future years, as the structure of unions and the scope of application of CBAs will change.
Company Collective Agreement	Company collective agreements (CCAs) are concluded by the employer and the union representative appointed (if any) in order to collectively govern the employees of a company. CCAs are subject to strict rules of disclosure to the labor authorities in order to be valid and enforceable. The reform of the French Labor Code of September 2017 has established a principle of superiority of the CCA that is now the prevailing agreement in collective negotiation. However, in relation to some specific topics, CBAs still prevail: minimum wages, classifications, social protection, working time, and fixed-term contracts. Companies are required to negotiate once every four years, when they have set up a trade union section, on certain specific matters of public order: • Wages, working time, and distribution of added value plans. • Gender equal pay, quality of working life, and, as of March 31 2022, working conditions. • Job management and a professional pathway for companies with over 300 employees.
Internal Rules and Regulations	The Internal Rules and Regulations (*Règlement Intérieur*) is a written document governing the duties and rights of employees within the company. The Internal Rules and Regulations are mandatory for companies with at least 50 employees but optional for small businesses. They must be drafted in French and must specify the effective date. The employer draws up this document unilaterally, although it must be subject to prior consultation with staff representatives, notified, and filed with the labor authorities. There are mandatory subjects that must be covered by the Internal Rules

and Regulations, such as prohibition of moral or sexual harassment, acts of sexism, smoking, disciplinary procedures, the hierarchy of sanctions, the employee's right of defense, and health and safety rules.

French courts have accepted the possibility for the employer to provide for a "zero alcohol tolerance" for certain workstations. The internal regulations may prohibit not only the consumption of alcohol in the workplace but may also prevent an employee from attending work with alcohol in his or her system. This specific prohibition must be justified by the nature of the tasks to be performed and proportionate to the intended purpose of the prohibition.

ENTITLEMENTS

Minimum Employment Rights

French legislation provides for rights that apply mandatorily to every employee working in France.

Working time

The legal weekly working hours consist of 35 hours. Rules apply with respect to maximum daily and weekly rest hours.

For managerial employees with autonomy in their work organization, it is possible to consider a global remuneration for a maximum of 218 days worked per year (*convention de forfait annuel en jours*) within limits required by the CBA and the French Labor Code.

Annual leave

Employees are entitled to paid holidays corresponding to 2.5 days per month of work, up to a total of five weeks' paid holidays per year. The period of reference for accruing and taking paid leave is not the calendar year but from 1 June to 31 May of the following year.

At the end of the employment contract, any accrued but untaken vacation days are to be paid out.

Maternity and parental leave

The length of maternity leave depends on the number of children, the minimum duration being a total of 16 weeks of leave for the first two children (at least six weeks prior and 10 weeks following the birth). Women with two or more children are entitled to 26 weeks' maternity leave (at least eight weeks prior and 18 weeks following the birth). Women are protected from dismissal and from changes to their duties during the whole pregnancy, the maternity leave, and during a period of 10 weeks after the end of the maternity leave, with the strongest protection during maternity leave. Effectively, until the end of the protection period, the only possible basis for dismissal is serious misconduct.

The father is protected under the same conditions against dismissal during a period of 10 weeks following the birth of his child.

Longer periods may apply due to medical reasons related to the pregnancy, such as cases of twin or multiple pregnancies or if the applicable CBA provides a longer period of maternity leave.

Paternity leave can be taken, subject to a prior notice of one month, after the birth of a child and lasts no more than 25 calendar days (Saturdays, Sundays, and public holidays included).

Paternity leave includes two periods:

- A first mandatory period of four consecutive calendar days following the birth.

- A second voluntary period of 21 calendar days (or 28 in case of multiple births), which must be taken following the first period of four calendar days or within six months. In addition, after maternity or paternity leave, an employee with at least one year of service may request a further period of parental leave. Employees have the option to not work during this period or return to work on a part-time basis (up to a maximum of 80% of their full-time hours) with a minimum of 16 hours per week.

Parental leave has an initial duration of one year and may be extended two more times but not beyond the third birthday of the child.

Sick leave

The period in which an employee is paid sick leave varies according to the employee's length of service within the company and the duration of absence.

During a period of sick leave, the employment contract is suspended and the National Health Body, which covers a certain percentage of the employee's salary (around 70%), pays the employee. A CBA may provide for a system of salary maintenance that is more generous to the employee.

An employee having at least one year of employment with the company who is on sick leave is entitled to additional payment by the employer and may also be entitled to a top-up payment by an insurer (*Régime de Prévoyance*).

An employee on sick leave must receive at least 90% of the remuneration he or she would have received if they had worked during the first 30 days of their sickness absence and then up to 66% thereafter.

Discretionary Benefits

Minimum remuneration

Employees are often solely paid a fixed salary. However, many employers choose to additionally grant employees variable remuneration elements, which must be defined in a written document (drafted in French) signed by the employee.

Since January 2022, the minimum wage for an adult worker is €10.57 gross per hour, which is €1,603 gross per month, on the basis of the legal standard 35 working hours per week.

Employers in France must be equal opportunity employers, which includes equal remuneration for work of the same level regardless of gender.

Since 1 March 2020, a new index has been created to address gender pay inequality in the workplace. The index (*Index Egalité Homme-Femme*) must be calculated and published annually by all companies with at least 50 employees. The index is calculated on the basis of five indicators, including the gender pay gap out of a total score of 100 points.

As of 2022, companies with at least 50 employees must publish annually the index score and also the results for all indicators on the company's website.

The employer must provide the indicators and level of results to the labor inspector and the Social and Economic Committee (CSE) (*Comité Social et Economique*) (new works council).

Penalties of up to 1% of the total payroll are provided if the minimum score of 75 points is not achieved after three years from the publication of the first score or if the company does not publish its index.

Pension

In France, employees are automatically eligible to participate in a national

mandatory pension scheme. The basic pension of employees is calculated according to three parameters:

- The total duration of the career.
- The reference wage.
- The duration of activity as a salaried employee.

The forthcoming reform, temporarily suspended due to the COVID-19 pandemic, will provide for a universal system of calculating social security contributions for all categories of employee (a fixed system of points and the free choice for the employee to retire upon reaching the age of 62).

Public holiday

Employees are entitled to paid leave for each day that is proclaimed a public holiday in the country, except in certain industries, such as restaurants and bars. If an employer requests an employee to work on a public holiday, they are usually entitled to additional pay, as well as compensatory rest for work on 1 May (Labor Day).

Exceptional tax-exempt purchasing power bonus

Employers can pay their employees an exceptional tax-exempt purchasing power bonus (*prime exceptionnelle de pouvoir d'achat*), up to a limit of €1,000 per beneficiary. This amount is increased up to €2,000 if the employer has implemented a voluntary profit-sharing agreement (*accord d'intéressement*). This exceptional bonus is exempt of all social security contributions. In order to benefit from these social and tax-exempt benefits, the bonus must be paid between 1 June 2021 and 31 March 2022.

TERMINATION OF EMPLOYMENT

GROUNDS

Termination can be by mutual agreement, upon expiry of a fixed-term contract, at the employer's initiative, by resignation of the employee, or by judicial resolution:

- If it is based on real grounds that are serious enough to justify the employee's dismissal, such grounds are either "personal" or "economic."
- After following the proper dismissal procedure (in particular, preliminary meeting and minimum waiting periods).

MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than gross or willful misconduct, it must comply with a minimum notice period.

The same notice period must be complied with by the employee in case of resignation.

The minimum duration of the notice period is one month for employees having between six months' and two years' seniority and two months for employees with more than two years' seniority. CBAs usually provide for longer notice periods, especially for white-collar workers who usually benefit from a three-month notice period.

FRANCE

	Notice does not need to be provided when an employer terminates an employee for gross or willful misconduct. If an employee resigns, they must comply with the notice period provided in the contract or CBA. The employer can exempt the employee from working out the notice period, which should nevertheless be paid.

Entitlements	As a general principle, severance payment includes:
	• Outstanding wages for hours already worked.
	• Indemnity in lieu of accrued but untaken paid holiday (*indemnité de congés payés*).
	• Indemnity in lieu of notice (if applicable) (*indemnité de préavis*).
	• Dismissal indemnity in case of dismissal and termination through mutual agreement (*indemnité de licenciement*).
	
	The statutory minimum dismissal indemnity is based on the employee's length of service, as follows:
	• For service of less than 10 years, indemnity cannot be less than one-fourth of monthly gross salary per year of seniority.
	• For service of more than 10 years, the additional indemnity cannot be lower than the following amounts:
	  • One-fourth of monthly gross salary per year of service for the first 10 years.
	  • One-third of monthly gross salary per year of service from the 11th year.
	
	Most CBAs provide for higher dismissal indemnities, particularly for white-collar workers.

REDUNDANCY	
Genuine Redundancy	In the case of redundancy, there are external circumstances (e.g., economic, financial, evolution of information technology, or equipment) that can result in a position no longer being needed. Note that economic grounds for dismissals have changed and cover additional grounds that were already retained by caselaw: The company's reorganization is necessary to safeguard its competitiveness and the termination of the company's activities. These grounds have been added in the new definition of redundancy in the French Labor Code. Since these reforms, parameters for economic dismissals are more precise. Termination by way of redundancy is subject to very specific rules. The procedure is complex and varies according to whether the company has more than 50 employees and if the dismissal concerns at least 10 employees.
Consultation	Information and consultation of staff representatives is mandatory. Staff representatives must give their opinion on the contemplated redundancy before it can be decided and implemented by the company. The opinion of the staff representatives is not binding. The labor authorities must be informed when a redundancy is implemented.

	In a case where at least 10 employees are dismissed in a company having at least 50 employees, an Employment Protection Plan (PSE) must be negotiated with the union representative, and the PSE must be subject to the staff representatives' opinion and approved by the labor authorities.
Payment	Usually, a severance payment in case of redundancy includes: • Outstanding wages for hours already worked. • Indemnity in lieu of an accrued but untaken holiday. • Redundancy indemnity (generally higher than the mere dismissal indemnity). • Indemnity in lieu of notice (if applicable). • A one-year specific state training program (*Contrat de Sécurisation Professionnelle*) or redeployment leave if the group has at least 1,000 employees in Europe, by which the French company must pay for a retraining and redeployment plan (*Congé de Reclassement*) that triggers important financial costs, notably because the dismissed employees do not receive state unemployment benefits but keep being paid by the company during a period (between four and 12 months) and benefit from training programs. In addition, where a PSE applies, companies will also pay additional amounts, such as costs associated with training measures, outplacement counselling, indemnity to help employees setting up a new company, relocation assistance, or a reindustrialization indemnity to the local administration.
REMEDIES	
Dismissal Action	Employees may challenge any dismissals in court on the grounds or the procedure of the dismissal, as well as the amount of severance payment provided or overtime hours. According to the specific procedural labor rules, conciliation is always possible and encouraged before and during the labor court action. The grounds stated in the dismissal letter should be sufficiently specific to be verifiable. In order to secure and minimize the risks associated with a labor dispute, since the Labor reform 2017, the amount of damages that can be awarded to an employee by a court are predetermined on the basis of length of service. Indeed, a specific amount of indemnity, based on a monthly gross salary, is fixed for each year of service. The French Labor Code specifies minimum and maximum amounts for each year of service as follows: • For companies with 11 or fewer employees, the damages are calculated as follows: • From a minimum of 0.5 months to a maximum of 20 months.

	• For companies with more than 11 employees, the damages are calculated as follows: • From a minimum of one month to a maximum of 20 months. Many labor courts had rejected the legitimacy of this new scale. However, the French Supreme Court (*Cour de Cassation*) delivered an opinion on 17 July 2019 indicating that the scale was valid and in accordance with international law.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS	
Transfer of Business	In case of transfer of an ongoing business that is economically autonomous, all employment contracts in progress are automatically transferred to the new employer who must maintain all employment contracts with the same terms and conditions. Suspended contracts (e.g., maternity leave, sick leave for injury or occupational illness, training) are also transferred. In the case of a partial transfer of ongoing business or activity, only the contracts assigned to the transferred activity are transferred with it. If staff representatives are concerned by the potential transfer, a prior authorization from the labor inspector is required. This transfer is automatic. That means it is binding on the employer and to employees, who do not have to agree or comment on the transfer. All collective agreements remain applicable for a period of 15 months, except where new collective agreements are signed with union representatives in order to replace them. However, dismissals can be carried out before the transfer under specific conditions: • A PSE has been adopted. • The company has received a purchase offer. • The procedure involves an independent economic entity.
RESTRUCTURING	
Notification	Information can be provided to employees after consultation with staff representatives.
Consultation	Information and consultation with staff representatives regarding the contemplated restructure and the likely effects of the restructure on the personnel is required. The staff representatives must give their opinion before the company is entitled to any definitive decision. The opinion of the staff representatives is not binding.

FRANCE

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and trade secrets as defined in articles L.151-1 to L.151-9 of the French Commercial Code.

If those provisions are breached, an employee might face penalties, along with damages to the legitimate holder of the trade secret. However, these obligations should not restrict the employees' rights to earn a living.

CONFIDENTIAL RESTRAINTS AND NON-COMPETES

As a general principle, an employer can potentially enforce clauses preventing the employee from working for a competitor or from soliciting the employer's employees and customers. Such clause must be in the employment contract.

A non-compete duty arising for the period the employee is employed must be included in the contract.

Any non-compete duty after termination of the employment contract must meet the following conditions in order to be valid:

- Be limited in time and space.
- Be limited as to the nature of the prohibited activities.
- Be required to protect the interests of the company.
- Provide for financial compensation to be paid to the employee (no statutory minimum, but caselaw generally considers 30% of the average remuneration as a minimum), which is a salary item (subject as such to both employee's approximatively 23% and employer's approximatively 45% social security contributions).

All of the above conditions must be met. In case of non-compliance with any of the above conditions, the non-compete clause is void, and the employee can claim damages from the employer. The employee who does not comply with the non-compete may be ordered to pay damages to the employer, subject to evidence of such a breach and related prejudice.

An employer may waive a non-compete clause if a waiver is provided in an employment contract clause or with the employee's consent. The CBAs can provide non-compete regulations.

PRIVACY OBLIGATIONS

The GDPR came into force on 25 May 2018 and has substantially changed the law and practice in this area.

As part of GDPR's accountability framework, a general obligation of compliance has replaced the previous practice of either notifying or obtaining prior authorization from the CNIL. However, for the most sensitive data processing operations some formalities remain (e.g., data protection impact assessment (DPIA) consultation with the CNIL). Prior to the implementation of a whistleblowing system, the employer is required to carry out a DPIA, as these measures are included in the list of types of processing operations for

which a DPIA is required.

All employers now need to be able to demonstrate their compliance in relation to the data processing operations that they implement with regard to their employees.

Depending on the nature of the data processing operations, companies may also be required to appoint a data protection officer, a person in charge of overseeing GDPR compliance, with sufficient legal and technical knowledge, as well as sufficient independence and time to conduct his or her missions.

GDPR requires that a sufficient legal basis justifies personal data processing operations, and according to European Data Protection Board guidelines on consent, due to the imbalance of power resulting from the employer/employee relationships, consent should generally be discouraged as a legal basis for employee data processing carried out by employers.

GDPR has also reinforced employees' rights (right of information, consultation, withdrawal, to be forgotten) and formalized how employees can submit data subject access requests. The employer is required to inform employees about any change in the terms of data processing in the event of a transfer of business. It has also improved the powers of investigation and sanctions given to the CNIL. Breach of GDPR is subject to fines up to €20 million or 4% of annual global turnover.

WORKPLACE SURVEILLANCE

An employer has the right to monitor an employee's activity during work time if it meets the following obligations:

- Demonstrates a legitimate interest for the company.
- Is strictly related to a specific task.
- Consults the works council prior to the implementation of a monitoring system.
- Informs individually each employee before the implementation of the monitoring system.

Information obtained in violation of these rules is null and void and will not constitute evidence and cannot justify either sanction or dismissal.

French law prohibits employee monitoring in areas such as toilets, bathrooms, and changing rooms or on a permanent and continuous basis, such as for workstations (except specific circumstances, e.g., an employee handling money).

Since 2016, non-compliance with protective rules applicable to the collection of personal data is sanctioned by the Criminal Code and may lead to a maximum of five years' imprisonment and a fine of €300,000 for legal representatives and €1,500,000 for the company (as provided by the Digital Republic Law), and there is also a risk of a GDPR fine of up to €20 million or 4% of annual global turnover.

WORKPLACE INVESTIGATIONS

Employers may conduct a workplace investigation to determine policy breaches, misconduct, or misuse of confidential information. However, the investigation has to be open, and evidence must be shared with the employee in question to allow him or her to defend himself or herself. The searching of personal belongings is allowed only by complying with the

	conditions and methods specified by internal regulations. The employer is entitled to inspect the employee's professional computers, emails, and telephone and to copy the data, except all elements, files, and emails identified by the employee as "personal." Whistleblowing protection is "neither provided nor authorized by Labor Law" according to the CNIL. However, warning procedures have arisen in recent cases of harassment, discrimination, or money laundering in the banking sector. They are strictly regulated with respect to the procedures to follow and the protection of employees' rights.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

	Employment contracts, rules and regulations, and agreements provide procedures for the management of employees' performance and conduct. Unfair dismissal provisions require an employer to warn an employee before terminating his or her employment due to poor performance. Misconduct may also lead to a warning, disciplinary action, or, if the conduct is serious, termination of employment. Employees terminated for serious misconduct do not receive all of their usual entitlements on termination of employment.

BULLYING AND HARASSMENT

Bullying	Bullying is prohibited by law.
Harassment	Sexual and moral harassment and sexist acts are prohibited by French legislation and subject to civil and criminal sanctions. Companies who have at least 50 employees must appoint a special supervisor for cases of sexual harassment. The supervisor's report can be used in case of any legal dispute.

DISCRIMINATION

	France has very strict regulations prohibiting certain types of employment discrimination. The Labor Code provides that no candidate may be turned down from a recruitment process, nor may any employee be punished, dismissed, or subjected to a discriminatory measure (directly or indirectly) with regard to remuneration, training, relocation, appointment, classification, qualification, or promotion on the grounds of his or her origin, gender, morals, sexual orientation, age (unless the difference of treatment based on age can be justified by a legal purpose), marital status, ethnicity, nationality, race, political or religious beliefs, union involvement, physical appearance, surname, state of health, disability, pregnancy, maternity, or negative discrimination due to the economic situation of a poor person. Indirect discrimination is also prohibited. However, some discrimination can be justified either by the need to protect the economic interests of the company or by the desire to protect certain

categories of people.

UNIONS

Representation

Within a business, the interests of employees are represented by staff representatives, including works councils, employee delegates, health and safety committees, and union representatives. This has been completely changed by the Labor Reform in 2017, creating the CSE, a unique employee representative body, mandatory since January 2020.

The general duties of these representatives include:

- Ensuring that laws are complied with.
- Working together with the employer in good faith.
- Ensuring that men and women are treated equally.

In addition, representatives are entitled to be involved in many of the employer's decisions, such as employee issues, dismissals, economic matters, and operational changes. They are also the interlocutors of the labor inspector and can inform them of any problem with law enforcement.

Trade and labor unions are employee representation coalitions that are not bound to a single employer or business. The main purpose of unions is the conclusion of CBAs, either with employer associations or with individual employers.

Intended to unify the various representative bodies (staff representatives, CSE, Health and Safety Committee), it will entail reduced or extended functions, depending on the size of the company.

The role of the CSE with reduced functions (for companies with less than 50 employees) will be to present individual or collective claims relating to wages and social protection. The CSE will also be competent in matters of health and safety and working conditions, investigations following work accidents, or occupational or professional illnesses.

The role of the CSE with extended skills (for companies with at least 50 employees) will be to primarily provide a mandatory consultation on matters relating to the organization, management, and general operations of the undertaking in general on every measure able to affect the volume or structure of the workforce and for every change affecting economic or legal organization.

The CSE will also be competent to deal with a health and safety analysis of professional risks, wage equality, and right of alert in case of infringement of individual rights, physical and mental health, or individual freedoms in the company.

The CSE will also have the right to participate in the company's board meetings twice per year.

The law provides the procedure to adopt for the progressive adequacy from the precedent to the current system.

Employees' personal data relating to their union activities is considered as sensitive data under GDPR as it reveals political opinions. Processing such data is prohibited in principle. In the event employers carry out such processing, the CNIL pointed out that it requires special vigilance and that specific obligations apply.

FRANCE

Industrial Disputes	It is lawful to take industrial action (e.g., strikes), as long as, collectively, employees' claims are of a professional nature. In the public sector, employees must give notice of at least five days before going on strike.

COVID-19 IMPLICATION: RETURN TO OFFICE / VACCINATION CONSIDERATIONS/WORK ORGANIZATION

Remote Work	During the lockdown, remote work was the rule for employees whose duties can be performed remotely. Since the end of the lockdown, the French government has published protocols and recommendations. Since 3 January 2022, the National Protocol requires employers to set a minimum number of three days of remote work per week, which can be increased to four days when compatible with the employees' functions.
Barrier Gestures and Mandatory Mask Wearing	Barrier gestures and social distancing must still imperatively be implemented in a company. Employers have an active role to play in the implementation of barrier gestures and employee health and safety protection. As a priority, companies must implement collective prevention measures. Employers must ensure compliance with safety regulations and recommendations, in particular, by designating at least one "COVID-19 referent" among the employees. Systematic wearing of face masks, in shared and enclosed spaces, is mandatory when there is less than two meters distance between individuals. Masks must comply with specific standards, and their supply by the employer must be constant. Rooms should also be ventilated for 10 minutes every hour, or a regulatory ventilation system must be used if this is not possible. Remote meetings should be preferred.
French Health Pass	The French health pass (*pass sanitaire*) is required for employees in contact with the public (e.g., receptionists, medical and paramedical staff, waiters). This pass shows either proof of full vaccination against COVID-19, a recent negative test, or recovery from the virus. Whenever an employee subject to this obligation does not present such health pass, he or she may, in agreement with the employer, choose to use paid vacation days or rest days. Failing this, the employer must notify the employee of the suspension of his or her employment contract until the employee is able to present a valid health pass. During the suspension, the employee is not paid. If the employment contract is suspended for more than three working days, the employer must invite the employee to attend a meeting in order to examine the possible ways to resolve the situation. If the suspension of the employment contract continues, the employer still has the possibility to terminate the employment contract. Since 15 September 2021, vaccination is mandatory for health employees and professionals (including administrative and technical staff working in health establishments and services). In addition, the French National Authority for Health requires a third dose for people aged 12 and over. The health pass would become a "Vaccination Pass" before the end of January 2022, which means that a negative test will no longer be enough

to use it.

COVID-19 PARTIAL ACTIVITY

"Classic" Partial Activity Regime

Partial activity is a tool for preventing economic redundancies that enables an employer facing financial or economic difficulties to have all or part of the cost of remunerating its employees during periods of reduced activity.

The purpose of partial activity is to avoid economic redundancies by reducing the working time of employees. During the period of partial activity:

- The employer receives an allowance from the state equivalent to part of the hourly pay of the employee concerned by partial activity.
- The employee receives a partial activity indemnity from the employer in lieu of pay for the period during the partial activity period.

The hours covered by the state allowance, usually limited to 1,000 hours per year, were increased to 1,607 hours in 2020 and 2021. This increase could be applicable in 2022 given the economic and health situation.

In principle, the company must apply for partial activity to the French labor administration after consultation with the CSE.

This scheme can be set up for a maximum period of 12 months.

Long-Term Partial Activity Regime

Long-Term Partial Activity (APLD) (*Activité Partielle De Longue Durée*) is an economic support mechanism that offers companies facing long-term economic difficulties the opportunity to reduce its employees' working hours, maintain the employee's net remuneration (at 84%), and receive from the state an allowance for hours not worked but paid. This scheme is set up by a collective agreement validated by the labor administration or by a unilateral document from the company approved by the labor administration.

The collective agreement or the unilateral document must contain specific information, such as the economic situation diagnosis, activities and employees concerned, trainings, and maximum reduction of working hours below the legal working time.

When the APLD is implemented:

- Employees' working time can be reduced by up to 40%.
- For hours not worked, employees receive an indemnity from the employer corresponding to 84% of their net hourly pay.
- The company receives from the state an allowance that varies according to the labor authorities' application date.

The APLD may be implemented for a maximum of 24 months, consecutive or not, over a period of 36 consecutive months.


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EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Visa Requirements	Employers must ensure that their employees are lawfully allowed to work in Germany. In principle, employees are required to apply for a visa allowing them to work in Germany before entering the country. Visa requirements vary depending on the country of origin. Employees from EU member states generally do not require visas.
Reference/Background Checks	An employer may ask employees to provide and verify information that is relevant for a particular job. However, comprehensive background checks without the employee's consent are not permissible.
Police and Other Checks	Permitted with the applicant's consent, if necessary to determine suitability for a particular job.
Medical Examinations	Permitted with the applicant's consent, if necessary to determine fitness for a particular job.
Minimum Qualifications	Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.
TYPES OF RELATIONSHIPS	
Employee	Employment relationships may be full time or part time, as well as unlimited in term or fixed term. Fixed-term contracts are only permissible in certain circumstances and often require an objective reason. In principle, employees must be treated equally and enjoy the same rights regardless of the form of employment.
Independent Contractor, Freelancers, or Consultants	Individuals engaged as independent contractors, freelancers, or consultants do not qualify for a wide range of legislative protections. These individuals do not fall within the scope of the statutory social security system and different tax obligations apply. Misclassification can result in additional liabilities and risks for the employer, especially (i) freelancers claiming employment resulting in the applicability of statutory employee protective rights and benefits, and (ii) liability for back pay of social security contributions plus interest as of the commencement of the engagement.
Labor Hire (Agency Work)	Labor hire (agency work) is highly regulated and only permissible for a temporary period. The labor hire firm generally requires an official permit and remains the employer of the labor hire workers. Violations of the labor hire regulation may, for example, result in employees being able to claim employment with the hiring entity.
INSTRUMENTS OF EMPLOYMENT	
Contracts	A written contract of employment is not legally required but is strongly advised in order to minimize the risk of disputes. Within one month of the start of the employment relationship, the employer must provide the employee with a written summary of certain fundamental employment

	conditions, such as details of pay, notice periods, duties, holidays, and hours of work. Employers can comply with this obligation by entering into a written contract of employment at the start of the relationship. Collective bargaining agreements cover a broad range of topics relating to employment conditions, such as remuneration, notice periods, and leave entitlements. A collective bargaining agreement applies to every individual contract of employment between an employer (that is bound by the agreement) and any employee who is a member of the union. Employers may further choose to make reference to collective bargaining agreements and thereby implement them voluntarily.
Registered Agreements	Collective bargaining agreements may be declared generally binding by public order for all employers in a business sector.
Policies	Policies are not required but are often introduced to achieve consistent standards throughout a company or group of companies. In many cases, such policies touch upon mandatory codetermination rights of the works council and, therefore, cannot be introduced unilaterally if a works council has been established.

ENTITLEMENTS

Minimum Employment Rights	Employment conditions set out in German labor law can be divided into two main categories: • Mandatory provisions. • Provisions that allow deviations only to the benefit of the employee. In some cases, deviations are only permissible by way of collective agreements (i.e., collective bargaining agreements with trade unions or works agreements with works councils). For the majority of provisions protecting employees' rights, no deviations or only limited deviations from the law may be agreed on. Important minimum employment rights include: ***Hours of work*** Employees may not work more than an average of 48 hours per week over a reference period of either six calendar months or 24 weeks. ***Annual leave*** All employees are entitled to four weeks' paid annual leave a year, which is calculated on a pro rata basis for part-time employees. Public holidays must be granted in addition to this. Severely disabled employees receive an additional entitlement of one week's leave. ***Maternity and parental leave*** Women are entitled to at least six weeks' paid maternity leave prior to, and eight weeks following, the birth of their child and generally do not work during this period. Women may be entitled to longer periods of maternity leave for medical reasons. A parent may request parental leave in order to care for and educate their child for up to three years. During parental leave, the employer generally

has no obligation to continue to remunerate the employee.

Flexible working arrangements

Employees may request a reduction of their working time, i.e., work part-time. Furthermore, employees on parental leave may request to work part-time during their parental leave instead of being fully released from their working duties.

Protection against unfair dismissal

Protection against unfair dismissal rules, as outlined in the "Dismissal Action" section of this Germany guide, is binding and may not be agreed otherwise between the parties.

Continued pay (illness, public holidays, and other)

During public holidays and in the case of sick leave, employees are generally entitled to continuous pay of their regular remuneration. Employees are entitled to up to six weeks' full pay for each period of illness, except employees who have been employed for less than four weeks, who receive no pay when absent. Employees can also be entitled to continuous pay in the case of other short-term leave, i.e., when taking care of sick children or attending a close family member's wedding.

Public holiday

The number of public holidays varies between the different German federal states and ranges from nine to 13 days per year. In principle, employees must not work on a public holiday.

Minimum wage

A general statutory minimum wage of €9.60 per hour currently applies. It is reviewed every two years, and it will increase to €9.82 effective 1 January 2022 and to €10.45 effective 1 July 2022. There are only very limited exceptions from the minimum wage.

Notice of termination

When an employer terminates a full-time or part-time employee's employment, it must observe the following notice periods:

- Less than two years of service – four weeks.
- Between two and five years of service – one month.
- Between five and eight years of service – two months.
- Between eight and 10 years of service – three months.
- Between 10 and 12 years of service – four months.
- Between 12 and 15 years of service – five months.
- Between 15 and 20 years of service – six months.
- Over 20 years of service – seven months.

For employees who are in a probationary period (up to six months), a notice period of two weeks may be agreed on.

There are no legal obligations regarding severance or redundancy payments when terminating employees.

Wage taxes and social security contributions

Employers must pay social security contributions toward the employee's statutory health insurance and wage taxes to the appropriate tax authority. The German statutory social security systems include pension insurance,

	unemployment insurance, health insurance, nursing care insurance, and accident insurance. Social security contributions currently amount to a total of 40% of the employee's monthly gross remuneration, but they are capped at a maximum of €2,419.80 per employee for Western Germany and €2,335.80 for Eastern Germany. The employer's contribution represents approximately 50% of the social security contributions and is capped at €1,203.85 and €1,161.85, respectively.
Discretionary Benefits	***Bonuses*** Employers may choose to incentivize employees by including bonus provisions in employment contracts. Bonuses are usually subject to individual, department, or business performance. Once bonus payments have been agreed, there are only limited ways in which they can be revoked. ***Additional annual leave*** Additional annual leave can be granted in addition to the statutory minimum of four weeks. ***Other benefits*** There is a wide variety of further benefits, such as a company car, company housing, and travel allowances, that may be provided. These discretionary benefits may be calculated as taxable income and are also considered when calculating the social security contributions.

TERMINATION OF EMPLOYMENT

GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, by the employer with or without notice, or by the employee.

Employees may enjoy statutory dismissal protection under the Dismissal Protection Act if the employer employs more than 10 employees in Germany (in certain rare circumstances, this threshold may be reduced to five employees). Employees only gain protection against dismissal from the Dismissal Protection Act once they have worked for the employer for at least six months.

Generally, the employer can only validly dismiss an employee under the Dismissal Protection Act if there is a sufficient reason relating to:

- The employee, such as inability to perform contractual duties (for example, because of long-term illness).
- A breach of contract, such as misconduct.
- A restructuring of the business resulting in redundancy.

Special additional rules on the dismissal procedure apply if the employees have established a works council. Furthermore, certain employees enjoy additional dismissal protection. This includes employees on maternity or parental leave, employees who are severely disabled, and employees who are members of the works council.

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MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates an employee's employment for reasons other than for good cause, it must provide the notice as described under the "Entitlements" section of this Germany guide.

An employer can dismiss without notice for good cause. However, where a termination is based on breach of contract, a prior written warning is almost always required before the employment relationship may be terminated. Short and strict deadlines apply for such a termination without notice.

Employees must observe a notice period of at least four weeks (two weeks during a probationary period). However, in practice, it is generally agreed that the employee has to observe the same notice periods as the employer, as described under the "Entitlements" section of this Germany guide.

Statutory Entitlements

Payment on termination includes:

- Outstanding wages for hours already worked, including working time accounts.
- Continued remuneration until the end of the notice period.
- Accrued annual leave.

REDUNDANCY

Genuine Redundancy

A redundancy will only justify a dismissal pursuant to the Dismissal Protection Act if the employer can prove that the job reduction is a result of the implementation of an entrepreneurial decision (such as restructure) and the following preconditions are met:

- There is a lack of positions available in the company to transfer the employee to.
- The affected employee has to be chosen under observation of the social selection criteria (e.g., length of service, age, family obligations, and whether the employee is handicapped).

For the social selection process, the general rule is that if there are (company-wide) employees comparable to those whose positions have ceased to exist, employees with the lower "social data" have to be made redundant first.

FORMAL REQUIREMENTS

Consultation

If a works council has been established at the business, it has to be consulted before every termination. Furthermore, approval by a state authority must be granted in cases where the employee is pregnant, severely disabled, or on parental leave.

Notice of termination must be in writing (with an original signature of authorized person(s) included).

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REMEDIES

Dismissal Action

Unfair dismissal

Employees may bring an unfair dismissal claim against their former employer.

If the employer has sufficient reasons, the dismissal is valid and the employer will not be obliged to pay severance. If the employer does not have sufficient reasons, the dismissal will be found to be invalid and the employment relationship must be continued. Again, no severance needs to be paid. Reinstatement is the only remedy. There are no other alternatives, such as granting compensatory awards.

In spite of the rules in the Dismissal Protection Act, most claims for dismissal protection end with a settlement providing for the termination of the employment relationship and severance for the employee.

As there are no rules on severance, it is a matter of negotiation. A "typical" severance would be one-half of the employee's monthly salary per year of employment with the employer.

Adverse action

Employers are prohibited from taking "adverse action" (including termination) against employees who exercise their rights (e.g., joining a trade union or demanding minimum working entitlements) or because of a protected attribute (see the "Discrimination" section in this Germany guide below).

Such adverse action is null and void. It may further result in affected employees being able to claim damages.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business

German legislation prescribes a number of rules that apply if there has been a "transfer of business" (often referred to as transfer of undertakings).

Generally speaking, these rules apply when:

- A business, or a part of a business, is transferred from one company to another while keeping its identity (i.e., transfer of an economic unit).
- The new company continues the business.

The main effects of the rules are that:

- All employees transfer to the new company.
- Existing employment conditions in principle continue to apply after the transfer.
- Terminating employees due to the transfer is not permitted.

The particulars of a "transfer of business" are highly regulated and subject to ever-changing caselaw.

GERMANY

RESTRUCTURING

Notification	Restructuring can trigger a variety of notification obligations (e.g., in relation to the employment agency, a works council, an economic council).
Consultation	If a works council has been established at the affected business and the restructure constitutes a change of business (e.g., breakup of a business or a merger), a reconciliation of interests and a social compensation plan may have to be negotiated and agreed on with the works council before carrying out the restructure. Such negotiations will, among other things, typically result in severance payments for the affected employees. The process can be very time-consuming and can take several months or more.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the employer's confidential information, including intellectual property and client information. Trade and business secrets of the employer are also protected by law.

CONFIDENTIAL RESTRAINTS AND NON-COMPETES

Confidentiality provisions may restrict employees from using confidential information for anything other than the performance of their work duties. However, there are limited ways to prevent employees from using the knowledge they acquired during the term of their employment after termination.

Many employment contracts (especially with executives and key knowledge carriers) contain non-compete provisions that protect an employer's legitimate business interests and can be enforced and protected by contractual penalty clauses. These provisions usually prevent an employee from competing with their former employer for a period of up to 24 months after the termination date. However, non-competes are only binding on the employee if they provide for a non-compete allowance in the sum of at least 50% of the compensation last received by the employee, including any variable remuneration and other benefits, such as car allowances. A shortfall of this commitment makes the entire post-contractual non-competition covenant unbinding.

PRIVACY OBLIGATIONS

A fundamental principle of the federal Data Protection Act and the EU General Data Protection Regulation (GDPR) is the employee's constitutional right to informational self-determination (i.e., right to privacy).

All intrusions of privacy require the employee's consent or must be explicitly permitted by law. In principle, employers may only collect, process, and use personal data of employees that is necessary to establish, execute, or terminate the employment. Pursuant to the GDPR, the employer is obliged to inform the employee in detail about the collection and processing of his or her data and his or her legal rights in this regard.

Further, employers can be obliged to appoint a data protection officer.

There are limited ways in which data can be transferred to third parties, especially outside the European Union. There are no intra-group exemptions, so group companies have to be treated as third parties.

WORKPLACE SURVEILLANCE

Surveillance of employees with cameras or other technical means is strictly regulated.

Allowing employees to use the employer's information technology infrastructure for private purposes (e.g., sending and receiving personal emails, visiting non-work-related websites) or tolerating such usage can vastly restrict the options of the employer to record, monitor, or investigate data.

WORKPLACE INVESTIGATIONS

Investigations may be permissible in the case of suspected crime or substantial contract violations. They may be required before a dismissal for conduct-related reasons is lawful.

Investigations may violate the Data Protection Act and the GDPR and constitute criminal offenses if carried out incorrectly.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies, and agreements may set out the employer's expectations regarding the employees' performance and conduct.

The ability to terminate an employee due to poor performance is very limited.

A prior written warning is almost always required before an employment relationship may be terminated due to misconduct.

BULLYING AND HARASSMENT

Workplace bullying and harassment are not covered by any special legislation in Germany. Depending on the circumstances, bullying may be covered by anti-discrimination law (see the "Discrimination" section in the Germany guide below).

Bullying and harassment by an employee may constitute a form of misconduct that justifies termination of employment.

DISCRIMINATION

Discrimination in employment (including during the recruitment process) is prohibited by anti-discrimination legislation. It is unlawful to discriminate on the basis of race, ethnicity, sex, religion, ideology, disability, age, or sexual identity.

Limited objective reasons may justify discrimination in certain cases. Also,

	positive action in order to prevent or compensate for existing disadvantages may be seen as lawful. Furthermore, all employees are entitled to equal treatment where different treatment cannot be justified by objective reasons (regardless of the grounds on which the different treatment is based).
UNIONS	
Representation	Trade and labor unions are employee representation coalitions for multiple employers or businesses. The main purpose of unions is to agree to collective bargaining agreements, either with employers' associations or with individual employers. However, not all industries or employers are bound by collective bargaining agreements. At the business-unit level, the interests of the employees are represented by the works council. A works council may be established in a business with at least five permanent employees who are over 16 years of age. Employers can agree to "works agreements" relating to certain mandatory codetermination rights with the works council, such as questions relating to the behavior of the employees or the organization of remuneration systems. Employers are also free to agree to voluntary works agreements to regulate other work-related areas that are not covered by collective bargaining agreements.
Right of Entry	If a works council has been established at the business, representatives of trade and labor unions may be allowed to enter the workplace in order to exercise specific rights in connection with the Works Constitution Act. External representatives of trade and labor unions are generally not permitted to enter the workplace, except in the above circumstances. Works council members are allowed to enter the workplace, as they are employees of the business.
Industrial Disputes	It is lawful for trade and labor unions to undertake industrial action (i.e., strikes) under certain circumstances. Currently, no legislation regulating industrial action exists; rather, the framework for, and limitations of, industrial action has been developed by caselaw and remains in a state of flux. Works councils may not undertake industrial action. Disputes between a works council and the employer may be resolved by reconciliation committee proceedings.
COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS	
Remuneration/Sick Pay	Employees who are ill from COVID-19 are generally entitled to continued remuneration from their employer for a period of up to six weeks. If a quarantine is ordered by the state without the employee actually being sick, the employer must generally also continue to pay remuneration. The employer can generally be entitled to claim compensation from the state under the Infection Protection Act (*Infektionsschutzgesetz*) for such continued remuneration. From November 2021, the employer's obligation to continue to pay remuneration for employees who are in quarantine will change. A distinction will be made between vaccinated and unvaccinated employees. Vaccinated employees will continue to receive their wages, or compensation under the Infection Protection Act. Unvaccinated employees,

	on the other hand, will no longer receive their wages if they are being quarantined due to having contact with an infected person—without actually being ill—and have had the opportunity to get vaccinated.
State Aid	As a general rule, employees remain eligible for full pay even if the employer cannot provide sufficient work. This is generally true even if the employer is forced to shut down its business due to instructions by the authorities. However, a loss of work due to COVID-19 or the associated safety measures may result in an entitlement for compensation for reduced hours or reduced productivity (*Kurzarbeitergeld – KUG*) from the government. Ultimately, businesses may be able to reduce the working hours and pay of their employees if there is a shortage of work due to COVID-19. The employees can then receive state-paid partial compensation for such reduced hours for a maximum of 24 months. In addition to short-time work, the German government has implemented extensive liquidity aid for companies and freelancers in Germany.
Termination of Employment	Terminations are still possible in times of COVID-19. This generally also applies with regard to employees who are sick or cannot attend work due to other reasons. However, no simplified rules for terminations apply due to the existence of COVID-19. Especially in cases where an employer employs more than 10 employees, terminations generally are subject to the strict limitations of the Dismissal Protection Act. In addition, special dismissal protection as outlined in the "Termination of Employment" section may need to be taken into account.
Home Office	The employer generally cannot unilaterally require an employee to work from home without a contractual or collective legal basis. However, employers are currently obligated to offer their employees who perform office work or comparable activities the opportunity to work from home, unless there are "compelling operational reasons" for not doing so. Employees generally must accept the employer's offer to work from home unless there are reasons on their part for not working from home, e.g., lack of space, interference by third parties, or lack of proper equipment at home. These obligations will remain in force until 19 March 2022 with the possibility of one three-month extension. Employers can also agree on a home office arrangement with each employee individually on a full-time or part-time-basis. If there is a works council and the employer wants to regulate the use of home offices more generally, the works council has a legal right of co-determination.
Protective Measures	Every employer has a general duty of care (*allgemeine Fürsorgepflicht*) towards its employees. The employer is obliged to take all reasonable measures in order to protect its employees, especially from infections at the workplace. The German Ministry of Labor has published detailed occupational health and safety standards and regulations under the current COVID-19 pandemic, including measures such as: • Workplaces should be arranged in such a way that a distance of at least 1.5 meters can be maintained between employees in order to comply with distance rules. If this is not possible, the employees must wear at least mouth and nose covers for mutual protection, which must be provided by the employer. • The home office should be considered as a way to reduce the number of employees present in the company at the same time

	and to support the observance of distance rules. Regulations on working hours and availability should be established. • Depending on the local epidemic situation, business trips or meetings should be replaced or reduced by the use of electronic means of communication. • When drawing up shift plans and working groups, the same people should be assigned to common shifts or working groups, if possible, and the number of people in a shift or working group should be reduced to the necessary minimum. • Easily accessible washing facilities with running water, sufficient liquid and skin-friendly soap, facilities for hygienic hand drying, and hand-washing rules must be provided in sanitary facilities, cafeterias, and break rooms. • Employers are required to offer free and voluntary tests to their employees. • Legally required occupational safety instructions can be provided by the use of electronic means of communication during the pandemic. Information about the current state of knowledge, the risk of infection, and the risk of a new illness on return of recovered employees who were ill with COVID-19 will be part of the instruction. • Employees with COVID-19 symptoms must be instructed to immediately leave work or stay at home. • Employers are required to give employees time off to attend vaccination appointments during working hours. In addition, it will generally be reasonable to further request employees to immediately notify the employer if either (i) they have been in direct or indirect contact with an infected person or a person that is in government required quarantine, or (ii) they have travelled to specific risk areas (especially such areas for which specific warnings have been issued by German government authorities).
Works Council Rights	The works council has mandatory rights of co-determination as well as its own right of initiative for various COVID-19-related measures, such as measures of occupational health and safety, shift planning, and working hours. Therefore, where such co-determination rights apply, such measures should generally not be implemented without an agreement with the company's works council (if any).
Data Privacy	Employers should be careful when it comes to requesting COVID-19-related actions or disclosures from employees, such as requesting employees to undergo specific health checks or notifying personal matters, such as travel plans. While certain actions and disclosures can be justified, others may violate applicable data privacy laws. However, employers may process personal data, including data on employees' vaccination, recovery, and testing status, to comply with certain COVID-19-related legal obligations.
Vaccination	Currently, there is no general mandatory vaccination obligation, except for employees in the health and care sector. Employees can voluntarily communicate their vaccination status to the employer.

GERMANY

Workplace Entry Restrictions	Strict workplace entry restrictions currently apply where physical contact between individuals cannot be avoided. Entry will be allowed only if employees wishing to gain entry are fully vaccinated against, recovered from, or tested negative for COVID-19 (the so-called “3G model” based on the three German words for vaccinated (geimpft), recovered (genesen), or tested (getestet)). In addition, the individuals will need to be in the possession of a vaccination certificate, recovery certificate, or negative test result. The certificate or test result needs to be made available for inspection by the employer or on file with the employer no later than upon entry into the workplace. Stricter regulations apply to certain businesses and facilities, such as hospitals or nursing homes. Employers must monitor compliance with the above obligations on a daily basis by means of verification checks, and they must also document them on a regular basis. Employees are required to provide proof of their vaccination, recovery, or testing status upon request. These obligations will remain in force until 19 March 2022 with the possibility of one three-month extension.

HONG KONG

HONG KONG

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Visa Requirements	Employers must ensure their employees are lawfully allowed to work in Hong Kong. Foreign workers must possess the necessary work permit. Visas to live and work in Hong Kong can be either temporary or permanent. There are a number of different types of visas administered by the Hong Kong Immigration Department depending on whether the worker is a professional (university graduate or above), imported worker (technician level or lower), domestic helper, or from mainland China. The Employment Ordinance requires that, prior to employing a person, employers must inspect the person's Hong Kong identity card or, if the person does not have one, his or her passport.
Reference/Background Checks	An employer requires consent from the applicant before it may contact a prospective employee's referees and previous employers to gather and verify information.
Police and Other Checks	Police checks on a prospective employee are not permitted. Employers of persons undertaking child-related work and work relating to mentally incapacitated persons can ask prospective employees to undergo a sexual convictions record check to determine the suitability of the prospective employee for that employment.
Medical Examinations	Medical examinations are permitted with the applicant's consent, if it is necessary to determine his or her fitness for a particular job. Obligations exist regarding obtaining and handling personal data by employers (or prospective employers).
Minimum Qualifications	Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.
TYPES OF RELATIONSHIPS	
Employee	Individuals can be employed on a full-time or part-time basis, on a fixed term or ongoing contract, or on a casual basis. Employees can attract different entitlements depending on the basis on which they are employed.
Independent Contractor	Businesses often engage independent contractors on a fee-for-service basis. A business will usually engage the individual by means of a service agreement with the individual or with the individual's business.
Labor Hire	Labor hire workers are often engaged for short periods and are common in certain industries, such as building and construction and information technology. Such workers may be employees or contractors of the labor hire firm.
INSTRUMENTS OF EMPLOYMENT	
Contracts	Employment contracts can be oral or in writing. However, if the contract is not of the type that renews from month to month, then under Section 5(2) of the Employment Ordinance, it must be in writing and signed by both

	parties. While it is customary for the terms of employment to be expressly set out in a formal contract or offer letter and agreed on between the parties, they may also be implied by law and by application of the Employment Ordinance.
Codes of Rules	Not applicable in Hong Kong.
Registered Agreements	Not applicable in Hong Kong.
Policies	Policies are not mandatory, but they are strongly advised. Policies that should exist include those relating to discrimination, harassment, victimization, and work health and safety.

ENTITLEMENTS

Minimum Employment Rights	***Wages*** Effective from 1 May 2019, the statutory minimum wage is HKD37.50 per hour. Unless otherwise agreed, there is a presumption in the Employment Ordinance that the wage period is one month. Wages must be paid as soon as practicable but not later than seven days after that time. If the employee's contract contains a contractual right to an end-of-year bonus payment but the employee has only completed part of the year, the employee is entitled to a pro rata payment provided the period of employment during the relevant year has been at least three months. ***Leave entitlements*** Employees in Hong Kong are entitled to a minimum of 12 statutory holidays per year or public holidays (which consist of every Sunday, 12 statutory holidays, plus five extra public holidays). Employers may require employees to work on a statutory/public holiday if an alternative or substituted day is granted in lieu. All employees who are continuously employed (i.e., at least 18 hours per week for four consecutive weeks) are entitled to one rest day in every seven-day period. All employees who are continuously employed (see above) are entitled to paid statutory sickness allowance. Under the Employment Ordinance, the employee accumulates a certain number of leave days per month of service up to a maximum allowance. Employers are prohibited from terminating employees while they are absent from work and receiving paid sickness allowance. Under the Employment Ordinance, an employee who has completed 12 months of continuous service is entitled to seven days' paid annual leave (up to a maximum of 14 days for nine years of service). However, in practice, employers frequently agree to a contractual annual leave entitlement in excess of the statutory minimum. ***Maternity protection and benefits*** On 9 July 2020, the Legislative Council passed the Employment (Amendment) Bill 2019 enhancing maternity leave benefits of female employees who are employed under a continuous contract (see above). With effect from 11 December 2020, statutory maternity leave under the Employment Ordinance has been extended from 10 weeks to 14 weeks. The amount of maternity leave pay is calculated at four-fifths of the

	employee's daily average wage, although in practice many employers choose to make no deduction as a benefit to the employee. The maternity leave pay for the additional four weeks is subject to a cap of HKD80,000. The Hong Kong government will reimburse employers in respect of the extended period of maternity leave. Once a pregnant employee has given notice of pregnancy, the employer is prohibited from terminating her employment until the date of her return from maternity leave. In addition to the protections under the Employment Ordinance, Hong Kong's anti-discrimination legislation prohibits discrimination against employees on the grounds of sex, race, pregnancy, and family status. ***Paternity leave*** Male employees are entitled to five days' paid paternity leave for each child born on or after 18 January 2019. To qualify, the male employee must (i) have been employed under a continuous contract for not less than 40 weeks immediately prior to the intended commencement of the leave, (ii) have given the required notification of the intention to take leave to his employer, and (iii) provide evidence that he is the father of the child. Paternity leave can be taken separately or consecutively but must be taken within the period of four weeks prior to the expected date of delivery and 14 weeks following the birth of the child.
Discretionary Benefits (Bonuses)	It is common for employers in Hong Kong to pay employees an end-of-year payment. It is sometimes referred to as "double pay," "13th month bonus," or "end-of-year payment" and is usually paid prior to the Chinese New Year holiday. The amount is typically equal to a full month's wages.

TERMINATION OF EMPLOYMENT

GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice, or termination (or resignation) by the employee. There is no concept of "unfair dismissal" in Hong Kong. The contract may also come to an end by operation of the law (e.g., in the case of frustration, death, dissolution, or winding up of the business).

MINIMUM ENTITLEMENTS

Payments and Notice	The length of notice required to terminate a contract will depend on the type of contract involved. Where the contract is deemed to renew from month to month but does not specify the length of notice, the notice period is not less than one month. Where the contract specifies a notice period, then the length of notice will be the agreed period, but it cannot be less than seven days. Both the employer and employee may terminate the employment by making payment in lieu of notice. It is also permissible to have a combination of part notice and part payment. In the case of serious misconduct, disobedience, or incompetence warranting summary dismissal, the employer may terminate the contract immediately without notice to the employee.

HONG KONG

	The following payments may be payable to the employee upon termination: • Payment in lieu of notice • Accrued wages • Accrued annual leave • Outstanding holiday pay • Accrued end-of-year payment (and pro rata portion) • Severance pay, if applicable • Long service pay, if applicable • Any other contractual entitlements
Statutory Entitlements	See above. Employers are required to pay the employee's final entitlement as soon as practicable but in any event not later than seven days after the date of termination.
REDUNDANCY	
Genuine Redundancy	Eligible employees who have been made redundant or subjected to layoff are entitled to a statutory severance payment. To be eligible, the employee must have been employed under a continuous contract for not less than two years.
Consultation	Not applicable in Hong Kong.
Payment	The payment is calculated on the basis of either two-thirds of the employee's monthly average wage or HKD15,000, whichever is the lesser, for each year of service (pro rata for an incomplete year). The amount is subject to a maximum cap of HKD390,000.
REMEDIES	
Dismissal Action	***Constructive dismissal*** A constructive dismissal occurs when an employer has acted or engaged in conduct that amounts to a significant breach of the employment contract or shows that the employer no longer intends to be bound by the contract. In such situations, the employer is said to have repudiated the contract. The employee ceases to have any further obligations under the contract (including any post-employment restraints) and is entitled to leave the employment with or without notice. As noted above, there is no concept of unfair dismissal in Hong Kong. However, the employee may be able to bring a claim against the employer on the basis of breach of the implied duties of good faith, mutual trust, and confidence.

HONG KONG

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business	There is no law providing for an automatic transfer of the employment relationship upon a transfer of business. The employment relationship with the former employer must be lawfully terminated and a new contract entered into with the new employer. In the absence of such contractual novation, all employment contracts with the former employer will be terminated by operation of law upon the transfer. An employer may avoid the obligation to make severance payments if it re-employs or re-engages an employee on equal terms or the employee unreasonably refuses the offer.

RESTRUCTURING

Notification	There is no requirement of notification in Hong Kong unless the restructuring involves the termination of employees. Notification to employees must be made in accordance with the terms of their employment contracts.
Consultation	Not applicable in Hong Kong.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and the business' employees.

CONTRACTUAL RESTRAINTS AND NON-COMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than their work duties. These provisions restrain employees from using confidential information during and for a reasonable period of time after termination of employment.

Most executive employment contracts contain non-compete provisions that protect an employer's legitimate business interests, which can be enforced if reasonable under the circumstances. These provisions usually prevent an employee from competing with his or her former employer for a period of up to 12 months.

PRIVACY OBLIGATIONS

In Hong Kong, the collection and use of personal data is governed by the Personal Data (Privacy) Ordinance (the Ordinance). Personal data is information about a living person that would allow the individual to be identified. The Ordinance sets out requirements relating to the collection, use, storage, and handling of personal data.

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WORKPLACE SURVEILLANCE

Under Hong Kong law, there is no general prohibition against an employer undertaking surveillance of its employees. The Monitoring Guidelines issued by the Privacy Commissioner set out various factors for employers to consider when assessing the appropriateness of implementing employee monitoring and its potential impact on the collection of personal data and privacy issues.

WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict-resolution tool to determine policy breaches, misconduct, or misuse of confidential information. The conduct of these investigations is determined by policy.

Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies, and agreements provide for management of employee performance and conduct.

While the concept of unfair dismissal does not exist in Hong Kong, it is generally considered to be good practice for an employer to warn an employee and document grounds for dismissal before terminating for poor performance. This may help to protect the employer against claims made by employees and to avoid payments, such as statutory severance.

BULLYING AND HARASSMENT

Bullying

There is no law against bullying in Hong Kong. However, an employee may be able to rely on breaches of the relevant anti-discrimination ordinances or the common law duty of the employer to provide a safe place and a safe system of work to the employee.

Harassment

Harassment is unwanted behavior that is aimed at offending, humiliating, or intimidating another person. Harassment in employment for an unlawful reason, such as sexual harassment, is prohibited under the Sex Discrimination Ordinance.

DISCRIMINATION

Hong Kong's anti-discrimination legislation prohibits discrimination in the workplace and elsewhere based on sex, race, disability, or marital status. The legislation comprises:

- The Sex Discrimination Ordinance
- The Race Discrimination Ordinance

	• The Disability Discrimination Ordinance • The Family Status Discrimination Ordinance At present, the law does not prohibit discriminatory behavior based on age, religion, or sexual preference.
UNIONS	
Representation	Individuals in Hong Kong have the right and freedom to form and join trade unions. However, the level of participation is relatively low compared to many other jurisdictions. These rights are set out in Hong Kong's Basic Law. The Employment Ordinance also provides protection against anti-union discrimination. Other relevant legislation includes the Trade Unions Ordinance, the Trade Union Registration Regulations, and the Labor Relations Ordinance. Employers should also be familiar with the Code of Labor Relations Practice issued by the Labor Department.
Right of Entry	No person is permitted to be a member of a registered trade union unless they ordinarily reside in Hong Kong and are engaged or employed in a trade, industry, or occupation with which the trade union is directly concerned. The trade union is not allowed to refuse membership on the basis that an individual is only casually or seasonally engaged or employed in the trade, industry, or occupation.
Industrial Disputation	A union officer has a right of audience before an arbitration tribunal between an employee and employer.
COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS	
Work From Home	The employer has a common law duty and a statutory obligation to ensure the safety and health at work of all employees so far as reasonably practicable. This is largely being addressed by work-from-home arrangements. In the case where work from home has not been arranged, employers should adopt precautionary measures at the workplace with reference to guidelines published by the relevant authorities, such as the Health Advice on Prevention of COVID-19 in Workplace (Interim) by the Infection Control Branch of the Centre for Health Protection. Employers should also have and communicate to the employees on contingent plans when there are confirmed cases among employees or their close family members.
Wage Reduction	The Employment Ordinance provides that no deductions will be made by an employer from the wages of an employee other than in accordance with the said ordinance (e.g., deductions for absence from work) or with the employee's consent. The employer should not reduce or refuse payment to the employee solely because the employee has contracted or been suspected of having contracted COVID-19.
Annual Leave	The employer may direct employees to take their annual leave, provided that there has been consultation with the employee and confirmed by a written notice to the employee at least 14 days in advance, unless a shorter period has been mutually agreed upon.

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No-Pay Leave	There is no provision under the Employment Ordinance on no-pay leave. If employees are required to take no-pay leave due to special needs of the business, employers should conduct prior thorough and frank consultations with employees to obtain consent from them. Note that if such leave arrangement will result in a "layoff" situation under the Employment Ordinance, the employee employed under a continuous contract for not less than 24 months may be eligible for a severance payment accordingly.
Mandatory Vaccinations Policy	There are no laws that specifically allow or prevent an employer from mandating its employees to be vaccinated. Note that employers are legally required to take reasonable care of their employees' health and safety, and employees are obliged to comply with "lawful and reasonable" orders from their employers, the failing of which may be a ground for summary dismissal. However, it is unclear whether mandatory vaccination is considered "reasonable" in all circumstances, and it will be dependent on the facts of the case.
Data on Vaccination/Vaccination Status	The employer may legally collect vaccination information from its employees. It is likely that such information will be considered as personal data, and so the employer will have to comply with the Ordinance (as defined above) and the data protection principles. In particular, the employer will have to have a valid reason for such data collection, notify the employees of the purpose of data collection, and ensure that the data is only used for such purpose. The employees should also be informed, on or before the collection of personal data, of whether the supply of personal data is voluntary or obligatory (if the latter is the case, the consequence for the employee if he or she does not supply the personal data must be disclosed). Data collected should not be excessive, and such data should not be kept longer than is necessary to fulfill the purpose for which it is used.

ITALY

ITALY

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Visa Requirements	Employers must ensure their employees are lawfully permitted to work in Italy. Foreign workers must have visas to live and work in Italy. An employer who wishes to hire a foreign worker residing abroad can submit an application by following the required procedure as soon as work entry quotas have been decided. Extra quotas of work permits are available for intra-company assignments (highly skilled workers posted within the same group for a maximum of five years) and for the so-called "Blue Card" permits (direct hiring of specialized workers who hold at least a three-year university diploma). Such quotas are set by means of an ad hoc decree adopted by the President of the Council of Ministers (DPCM), which allows it to set subjective and income requirements necessary to grant an application on a case-by-case basis. The DPCM decree also sets the maximum quotas for non-European nationals allowed to work in Italy. These quotas are then distributed among provinces and regions. Immigration help desks are in charge of issuing the *nulla osta* (an official declaration not to be against something or someone) for work as an employee and for seasonal employment, as well as for other instances.
Reference/Background Checks	An employer is permitted to contact previous employers to gather and verify information provided by the employee.
Police and Other Checks	To ensure fairness and impartiality, an employer is only allowed to rely upon checks performed by relevant inspection and social security public entities to determine an applicant's suitability for a particular job.
Medical Examinations	Medical examinations are permitted, if necessary, to determine fitness for the required job when requested by the employer and performed by relevant inspection and social security public entities. An employer is not allowed to perform a medical examination.
Minimum Qualifications	Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.
TYPES OF RELATIONSHIPS	
Employee	Individuals can be employed on a full-time or part-time basis, on an open-ended or fixed-term basis, or for apprenticeships.
Independent Contractor	Independent contractors may be engaged on a fee-for-service basis through a service or cooperation agreement.
Manpower	Workers also may be engaged for a fixed term through labor agencies owning a special authorization granted by the Italian Labor Ministry. Supply of manpower is common in certain sectors, such as construction and information technology. Workers supplied through labor agencies remain employees of the labor agencies themselves.

ITALY

INSTRUMENTS OF EMPLOYMENT

Contracts

Employment contracts can be executed orally or in writing.

Italian labor law provides for the obligation of the employer to advise the employee in writing of the essential terms and conditions of the employment relationship.

Codes of Rules

Employees are covered by the Statute of Workers (*Statuto dei Lavoratori*), setting out the applicable legislation in terms of freedom and dignity of employees and obligations of the employer.

Certified Agreements

At the request of contractual parties, contracts with independent contractors may be certified by qualified public entities that will issue a certificate assessing compliance between the formal qualification of the agreement and its actual content.

This certification procedure is aimed at avoiding any dispute over the qualification of the agreement. A party is always entitled to challenge the agreement qualification, even if certified, to claim the status of a full-time employee.

Policies

Policies are not mandatory under Italian labor law. Nonetheless, policies relating to work health and safety, use of working tools, and emergency procedures are strongly advised.

ENTITLEMENTS

Minimum Employment Rights

Italian legislation prescribes several employment standards that cover the majority of employees. Reference standards are provided by the *Statuto dei Lavoratori* but may also be found in the Italian Constitution (*Costituzione*) and in other laws.

Hours of work

Employees are not required to work more than 40 ordinary hours a week. Overtime work can be agreed upon between the parties. Overtime work cannot exceed 250 hours per year.

Holiday leave

Employees are generally entitled to four weeks' paid holiday leave per year. Holiday leave cannot be replaced by any indemnity/payment in lieu.

Parental leave

Eligible female employees and, under specific circumstances, male employees, are entitled to a two-month leave before the expected birth date and a three-month leave after the birth date. During the parental leave, the eligible employee will receive 80% of daily salary, calculated on the basis of the salary received at the end of the last month prior to the parental leave.

Parents are entitled to take up to 10 months' leave to take care of the child until he or she turns 12 years old. In this event, indemnity will be reduced according to applicable provisions.

Leave for assistance

Disabled employees and relatives of disabled individuals are entitled to up to two hours per day or, alternatively, up to three days per month of paid leave. Under certain circumstances, an extraordinary paid leave period of

	up to two years may be granted for employees who need to assist disabled parents or relatives. ***Public holidays*** Employees are entitled to paid leave for each day that is proclaimed a public holiday in Italy. Additional public holidays may apply in the specific territory in which an employee works. ***Severance payment*** In any case of termination of employment, employees are entitled to a severance indemnity (TFR) (*Trattamento di Fine Rapporto*). TFR is calculated by the amount of remuneration due for the said year divided by 13.5 (adding for each year of service). The share is then proportionally reduced in respect of a fraction of one year. Such fractions are calculated as full months when the relevant period is equal to or higher than 15 days. Furthermore, TFR is increased on a compound basis by the increase in the index of retail prices as determined by the National Institute for Statistics, applying from December of the preceding year. TFR must be apportioned yearly by the employer within its financial statement. Therefore, it does not constitute an actual disbursement for the employer when it is paid out upon termination of the employment agreement. ***Work information*** Employers must give all new employees a written document providing full information on: • Identity of the parties. • Place of work. • Starting date of employment. • Term of employment, indicating whether the same will be an ongoing relationship or not. • Job qualification. • Salary and payment terms. • Duration of paid annual leave and vacation. • Working hours. • Terms and conditions of notice of termination. • Probationary period, if any.
Discretionary Benefits	***Bonuses*** Employers may choose to incentivize employees by including bonus provisions in employment contracts. The measure of a bonus usually depends on individual and company goals.

TERMINATION OF EMPLOYMENT

GROUNDS

The employer may dismiss employees due to disciplinary reasons or for redundancy.

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	Termination can be served by the employer with or without notice. The employee can terminate the employment relationship through resignation. Furthermore, the employment relationship may cease upon mutual agreement or upon expiration of the term of a fixed-term contract. Different provisions apply to dismissals by the employer depending on whether there are more or less than 15 employees employed within the same local unit and on whether termination refers to an individual or to five or more employees within a period of 120 days.
MINIMUM ENTITLEMENTS	
Payments/Notice	Where the employer terminates an employee for reasons other than just cause (i.e., very serious misconduct by the employee implying an immediate termination), a notice period must be given or the relevant indemnity in lieu of must be paid. Where an employee resigns, the employer must be given the relevant notice period unless the employee resigns due to just cause attributable to the employer. If the employee fails to do so, the employer will deduct the relevant indemnity in lieu of the notice period from the employee's final payslip.
Statutory Entitlements	In any case of termination of the employment relationship, the employee is entitled to TFR, as per the "Entitlements" section above.
REDUNDANCY	
Genuine Redundancy	The employer is entitled to lawfully dismiss an employee due to redundancy where there are no alternatives to the employee's job cancellation, as determined by productive and organizational reasons, and the redundant employee cannot be otherwise re-employed within the employer's organization. If the employer needs to dismiss due to redundancy five or more employees within a 120-day period, a special procedure for collective dismissal must be started.
Consultation	In the event that a procedure for collective dismissal has to be initiated, a number of information and consultation sessions with trade unions must be carried out.
Payment	The employee dismissed due to redundancy is entitled to receive the indemnity in lieu of the notice period, the TFR, and other mandatory sums to be paid out upon the termination of the employment relationship (such as holidays accrued but not taken, supplementary monthly instalments accrued pro rata, and temporary leaves not enjoyed).
REMEDIES	
Dismissal Action	***Unlawful dismissal*** Where a dismissal is declared unlawful by the competent Labor Court, remedies and sanctions applicable vary depending on the company's size and on the reason for dismissal. Where the company employs more than 15 employees, under certain circumstances, the competent Labor Court may order reinstatement of the employee unlawfully dismissed due to disciplinary reasons or for

	discrimination/retaliation; in such an event, the employee may opt for an indemnity in lieu of reinstatement equal to 15 monthly salaries. The employer will also be sentenced to pay to the employee a further indemnity of not less than five monthly salaries. Should a company employing more than 15 employees dismiss an employee due to redundancy and the relevant dismissal be found unlawful by the competent Labor Court, reinstatement is rarely applied, and the employer may instead be sentenced to pay to the affected employee an indemnity ranging from 12 to 24 monthly salaries. In light of a reformation of Italian labor law, reinstatement is basically excluded—even in case of unlawful disciplinary dismissal—for those employees hired after 7 March 2015, unless dismissal is based on discrimination or retaliation. Reinstatement is excluded if the employee dismissed belongs to a company employing 15 or less employees, unless dismissal is based on discrimination or retaliation.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business	Article 2112, paragraph 5, of the Italian Civil Code, implementing the principles set forth by EC Directive 98/50, expressly defines the "transfer of a going concern" as "any transaction which, as a result of a legal transfer or merger, has the effect of transferring the ownership of an organized economic activity existing before the transfer and maintaining its identity after the transfer…regardless of the nature of the agreement or decision providing the transfer." The same paragraph 5 of article 2112 further specifies that the above discipline also applies to the transfer of a branch of a wider business if such branch is "intended as a functionally autonomous part of an organized economic activity, identified as such by the transferor and the transferee at the moment of the transfer." Based on these definitions, it is worth evaluating, case by case, if a part of a wider business can be construed as a "functionally autonomous part of an organized economic activity" and, consequently, whether its transfer can be construed as a transfer of a going concern pursuant to article 2112. In this respect, the part of the business, whether identified prior to or at the moment of the transfer, must include the "essential" means necessary to enable the transferee to carry out the business activity concerned, although such means may need to be integrated with the transferee's assets and staff in order to continue in full operation with the transferee itself. Where a business is being transferred, the employees working therein are automatically transferred with their existing terms and conditions of employment, i.e., the consent of such employees is not required for their transfer, provided that their terms and conditions of employment remain the same. However, there is always a risk that the employees and the employees remaining with the transferor may seek to object to their respective allocations to the transferred or former business. Before executing any binding agreement between the transferor and the transferee, if the transferor employs in aggregate more than 15 employees and employees are included in the business to be transferred, transferor

	and transferee will have to carry out a special trade union information and consultation procedure, to be opened by notifying in writing the relevant trade unions at least 25 days before execution of the relevant transfer agreement or of a binding understanding between the parties. The scope of this provision is to impose a trade union consultation process before any legally binding decision is taken by the transferor and the transferee, in order to give the trade unions the power to effectively exercise an influence on the transfer process in the best interests of the transferring employees.

RESTRUCTURING

Notification	Employers with more than 15 employees are required by law to notify unions, employees, and relevant labor district authorities of the likely effects of any downsizing or restructuring that will result in dismissal of five or more employees in a period of 120 days.
Consultation	Unions may ask to jointly discuss the matter with the employer and the competent labor district authorities in order to evaluate any alternative solutions to collective dismissals. Within the context of such information and consultation procedure, the employer and the trade unions may reach an agreement (i) to enable the affected employees to have access to special public redundancy funds (*Cassa Integrazione Guadagni*) before dismissal, or (ii) to reduce the employees' working time for a given period as a measure in lieu of dismissal (*Contratti di Solidarietà*).

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

	Article 2105 of the Italian Civil Code prevents the employee from divulging or making use of any information relating to the organization or production techniques of the employer in such a way that may compromise the employer or its activity. The individual employment agreement may include provisions protecting the confidentiality of an employer's confidential information, including information relating to intellectual property, clients, and employees.

CONTRACTUAL RESTRAINTS AND NON-COMPETES.

	Confidentiality provisions restrict employees from using confidential information for anything other than their duties. These provisions restrain employees from using confidential information during employment and for a period of time after employment. Article 2105 of the Italian Civil Code provides a specific "duty of loyalty" preventing an employee from engaging any business, either in the employee's name or on somebody else's behalf, in competition with the employer. Provisions preventing an employee from competing with his or her former employer for a given period after the termination of the employment relationship may be agreed upon in writing by the parties at the same time of the execution of the employment agreement, provided that the non-compete obligation does not exceed "reasonable limits" in terms of subject matter, time, and space. In such cases, according to article 2125 of the

Italian Civil Code, the non-compete clause must include fair compensation and specific zone, activity, and time limits.

PRIVACY OBLIGATIONS

Legislative Decree no. 196/2003, also known as the Personal Data Protection Code (PDPC), as amended by Legislative Decree no. 101/2018 in accordance with the provisions of the EU General Data Protection Regulation, imposes onerous obligations on the employer with respect to the collection, treatment, and disclosure of employees' personal information.

A public authority, the *Autorità Garante per la protezione dei dati personali*, is empowered by law to monitor and ensure substantial compliance with provisions of the PDPC by any intended recipient and, in case of any breach, to determine applicable remedies.

WORKPLACE SURVEILLANCE

There are limitations on the way in which employers may monitor employees. The law generally prohibits monitoring of employees for work surveillance purposes. Audio or video surveillance is only allowed with prior notice to company unions, if any, and to the labor inspector's office, and only if the surveillance is justified by organizational or workplace security reasons.

Previous agreement with unions and the labor inspector's office is only required in certain circumstances, where the investigation involves exclusively the working tools assigned to the employee to perform his or her daily working activity. However, in those cases, the employees must be provided with a detailed policy specifying both the terms and conditions of use of working tools and the checks that will be carried out by the employer.

WORKPLACE INVESTIGATIONS

An employer cannot carry out an investigation, even via a third party, on the political, religious, or trade union opinions of an employee or investigate any fact that is not strictly relevant to the employee's working activity. By contrast, the employer is permitted to conduct investigations on a given employee (even through a specialized investigation company and on the company's means used by the employer in carrying out his or her working activity) where there are grounds to believe that such employee has seriously infringed his or her obligations under the employment agreement.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

Disciplinary rules relating to sanctions, breach of duties, and grievance procedures need to be disclosed to employees and published within the company in locations that are easily accessible to all employees.

An employer cannot adopt any disciplinary sanction without first providing the written charge to the interested employee and subsequent consultation with the same, who has the right to render his or her justifications in writing

	within a given time frame (usually, within five days of receipt of the letter of charge). An employee may also request to be heard by the employer with the assistance of a trade union representative.

BULLYING AND HARASSMENT

Bullying	Bullying is not a crime but may be prosecuted in connection with several types of criminal offenses provided by the Italian Penal Code, such as beating and procured injury (Articles 581 and 582), threatening (Article 612), revilement and defamation (Articles 594 and 595), damage to property (Article 635), harassment (Article 660), and stalking (Article 612-bis).
Harassment	Under Italian caselaw, harassment constitutes behavior aimed at offending, humiliating, or intimidating another person (including sexual harassment) and is considered as a serious criminal offense when carried out in the workplace.

DISCRIMINATION

General discrimination is widely prohibited by Article 3 of the *Costituzione* and, with specific regard to employment, by Article 8, 15, and 16 of the *Statuto dei Lavoratori*.

In particular, the following covenants are considered by law as null and void:

- Those intending to subordinate hiring to joining or not joining any trade union organization.
- Those providing for dismissal or other sanctions in the event of affiliation to unions or attendance at strikes.
- Those discriminating against employees on the basis of political opinions, religious views, language, sex, disability, age, sexual orientation, or personal beliefs.

Different economic treatment for discriminatory purposes is also prohibited by law.

UNIONS

Representation	Employees and independent contractors can choose to be represented by a union. Any union validly appointed to represent an employee or group of employees must be acknowledged and dealt with according to the law.
Unions in the Workplace	Within the context of companies employing more than 200 employees, the employer has to provide a permanent, suitable venue for unions to have meetings and carry out other union activities. In businesses with fewer than 200 employees, unions may request to be provided with suitable venues to have meetings.
Industrial Disputes	It is only lawful to take industrial action (e.g. strikes, lockouts, slowdowns) under certain circumstances prescribed by both law (as to public employment) and caselaw.

ITALY

COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS

In Italy, the state of emergency due to COVID-19 has been extended to 31 March 2022. Please see below for an updated picture of the status of the relevant legislation currently in force:

- From 15 October 2021, all employees, public or private and even self-employed, are required to own and show the so-called "Green Pass" to access the workplace. The Green Pass is a certificate attesting:
  - Proof of COVID-19 vaccination, which covers the employee for a 12-month period after completion of the vaccination cycle.
  - Recovery from COVID-19 disease, which covers the employee for a six-month period where they have not had the COVID-19 vaccination or a 12-month period where they have had the COVID-19 vaccination.
  - Negative result of a COVID-19 test, which covers the employee for a 48- or 72-hour period, depending on the test performed.

  In addition to that, and effectively as of 15 February 2022, self-employees and employees of the private sector over 50 are required to own and show the so-called "Super Green Pass" in order to access their workplace. The Super Green Pass is granted to those who have been vaccinated or have from COVID-19.

  The employer will verify the Green Pass or the Super Green Pass to allow employees access to the workplace. The obligation to own and show the Green Pass or the Super Green Pass will not apply to individuals exempted from the vaccination program (those with medical certification issued according to the criteria set forth by the Italian Ministry of Health). Failure to comply with such mandatory provisions of law poses the risk of administrative fines ranging from €600 up to €1,500 for the employee and ranging from €400 up to €1,000 for the employer.
- Ad hoc COVID-19 public schemes are no longer available, but the employers may be entitled to ordinary public schemes upon the fulfilment of certain requirements.
- The use of remote working and smart working has been enhanced. The emergency legislation strongly encourages smart working by setting out a simplified procedure to implement it within the company's organization.
- Employers are required to implement health and safety measures and anti-infection security protocols by reinforcing medical surveillance and involving the company doctor.
- Companies employing more than 250 employees and planning to make at least 50 employees redundant are required to trigger a special dismissal procedure 90 days in advance. If the employer fails to comply with such obligation, the so called "Dismissal Ticket" (i.e., the dismissal fee to be paid to the Italian Social Security body, INPS) will be doubled.

JAPAN

JAPAN

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Visa Requirements	Employers must ensure their employees are lawfully allowed to work in Japan by checking their visa status. This status can be confirmed by reviewing their passport or residence card. Foreign workers must have visas to live and work in Japan on either a temporary or permanent basis. There are different types of visas (e.g., skilled worker, engineer, instructor) administered by the Immigration Bureau of Japan. The permitted working period for foreign temporary workers varies depending on visa status but generally ranges from three months to five years.
Reference/Background Checks	Employers are not prohibited to contact a prospective employee's referrals and previous employers to gather and verify information.
Police and Other Checks	Police do not disclose any information requested by employers on prospective employees.
Medical Examinations	These are permitted, with the applicant's consent, if it is necessary to determine fitness for a particular job. Employers with 10 or more employees must set forth "Rules of Employment," which include provisions about documents that can be requested from employees (e.g., results of a medical check).
Minimum Qualifications	Employer may ask for relevant qualifications to ascertain an applicant's suitability for a role.
TYPES OF RELATIONSHIPS	
Employee	Employees in Japan can be classified into four categories. ***Regular employee*** An employee who is hired directly by his or her employer without a predetermined period of employment up to the prescribed retirement age. ***Fixed-term employee*** An employee who is hired directly by his or her employer with a fixed-term contract of employment. In most cases, the contract term is up to three years. There is a growing trend toward enhancement of protections for fixed-term employees in Japan. In response to this, the Labor Contract Act and relevant regulations have been amended to improve fixed-term employee rights. For example, a fixed-term employee who has worked more than five years by renewal of the term has the right to change his or her status from fixed-term to regular employee. ***Part-time worker*** An employee who is hired directly by his or her employer and works fewer hours in a day or week than a full-time employee. The employee is protected by the Act on Improvement, etc. of Employment of Management for Part-Time Workers. ***Dispatched worker*** A worker who is employed by third-party dispatching agencies and supplied

	to companies under a worker dispatch contract. The worker is protected by the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatching Workers.
Independent Contractor	Businesses often engage independent contractors on a fee-for-service basis. A business will engage the individual by means of a service agreement with the individual or with the individual's business. Unlike employees, independent contractors are not protected by labor laws. Independent contractors are determined by their actual conditions more than their "agreement." A major criterion is whether the independent contractor has discretionary power in performing assignments.

INSTRUMENTS OF EMPLOYMENT

Contracts	Employment contracts may be established by oral agreement. However, employers must provide a written notice to the employee setting out basic employment conditions, such as wages, working hours, holidays, and content of works. Any company that employs 10 or more workers on a continuous basis must establish Rules of Employment and submit them to the Labor Standard Office together with a written opinion from an employee who represents no fewer than half of the total employees. The Rules of Employment stipulate working conditions in detail. The main working conditions covered in the Rules of Employment are: • Matters relating to the time work begins and work ends, breaks, days off, and leave. • Matters relating to calculation and payment of wages (including overtime work salary), the date of payment, and pay raises. • Matters relating to termination, dismissal, disciplinary actions, retirement, etc.
Codes of Rules	N/A
Registered Agreements	N/A
Policies	Policies are not mandatory, but they are desirable. Policies that should exist include those relating to discrimination, harassment, bullying, work health, safety, anti-corruption, confidentiality, etc.

ENTITLEMENTS

Minimum Employment Rights	Minimum employment rights in Japan are provided in the Labor Standard Law as detailed below. ***Hours of work*** An employer must not require an employee to work more than 40 hours a week or more than eight hours a day, unless there is a written agreement between the employer and the representative of employees regarding overtime and working on holidays that has been submitted to the Labor Standards Inspection Office. In cases where a change to the working hours is required, special provisions governing such arrangements need to be set out in the Rules of Employment.

The employer shall pay increased wages for overtime work or holiday work. The rate of premium for overtime work is 25% (50% for overtime exceeding 60 hours per month). For work on a statutory holiday, the rate is 35%.

Annual leave

An employer is required to grant annual paid leave of 10 working days to all employees continuously employed for six months or more and who have worked not less than 80% of the total working days. Thereafter, the employer shall grant the following annual paid leave in addition to the 10 days' paid leave above:

- One year of service – additional day of leave.
- Two years of service – additional two days of leave.
- Three years of service – additional four days of leave.
- Four years of service – additional six days of leave.
- Five years of service – additional eight days of leave.
- Six years of service – additional 10 days of leave.

Wages

Principles applied to payment of wages:

- Wages must be paid in cash (special arrangements are required for payment by wire transfer to employee's bank account).
- Wages must be paid directly to the employee. Wages must be paid in full.
- Wages must be paid at least once a month on a definite date.

Guarantee of wages and minimum wages:

- No employer may hire an employee for less than the legal minimum wage. The minimum hourly wage is set by region. For Tokyo, that is JPY1,041 per hour as from 1 October 2021.

Parental leave

Maternity leave and childcare hour:

- Expectant female employees may take six weeks of maternity leave before childbirth and eight weeks after giving birth.
- Female employees nursing an infant aged up to 12 months are also entitled to take nursing breaks twice a day, each for at least 30 minutes, in addition to legally allowed break times. This nursing time can be taken by arriving at work 30 minutes late or leaving work 30 minutes early or taking 60 minutes off at one time.

Childcare leave:

- Childcare leave allows an employee, either male or female, to take up to one year off work to look after an infant under one year of age. If both parents decide to take a leave, each parent may take off up to one year until the child reaches 14 months old.

Short working hour system:

- An employer is required to offer a short working hour system to those employees with a child below three years of age.

	Family care-related rules Employees who look after a family member requiring full-time care are entitled to family care leave. This includes up to 93 days' leave per family member, per year. An employee with one or more family members in need of nursing care may take nursing leave of up to five days per year for one such family member and 10 days per year for two or more such family members, upon request to the employer. ***Community service leave*** Employers may grant community service leave, but this is not common in Japan. Japan introduced a quasi-jury system in 2009, but the system does not guarantee the right to take community service leave for lay judges. ***Long service leave*** Employers may grant long service leave. ***Notice of termination*** An employer must provide at least 30 days' advance notice if the employer wishes to dismiss an employee or pay 30 days' average salary in lieu of such advance notice for immediate dismissal. In order to dismiss an employee, there must be substantive and reasonable reasons as discussed in the "Termination of Employment" section below.
Discretionary Benefits	***Bonuses*** Incentive bonuses may be paid to employees at the discretion of the employer unless otherwise set out in the Rules of Employment. It is customary in Japan that employees are paid bonuses twice a year (in summer and winter).

TERMINATION OF EMPLOYMENT

GROUNDS

Termination can be effected by mutual agreement, upon expiry of a fixed-term contract, by termination by the employer with or without notice, and by termination (or resignation) by the employee.

Explicit reasons for dismissal

The employer should describe the situations or grounds for dismissal in the Rules of Employment, as well as detail the procedure for dismissal.

Legal grounds for dismissal

Article 16 of Labor Contract Law says that any dismissal that lacks reasonable grounds and is against good social "appropriateness" is regarded as an abuse of the employer's right and is accordingly null and void. Consequently, it is difficult for employers in Japan to unilaterally terminate an employment contract without careful precaution and consideration. Court precedents demonstrate that the following instances constitute "an objectively reasonable and socially appropriate reason":

- Physical or mental disability.
- Extremely poor performance.

	• Infringement of the internal disciplinary rules in the workplace. • Redundancy due to economic circumstances; provided that four established criteria are satisfied (see "Redundancy" below).
MINIMUM ENTITLEMENTS	
Payments/Notice	When an employer terminates or dismisses an employee, they are required to provide at least 30 days' notice of the termination date. Employers may dismiss an employee with immediate effect if the employee is paid an amount equal to 30 days' average salary. ***Restrictions on the dismissal of employees*** Employers may not dismiss an employee during either of the following periods: • Absence from work for medical treatment for injuries or illnesses suffered during the course of employment or within 30 days thereafter. • Before and after childbirth for female employees or within 30 days thereafter. The employee may resign at any time by serving 14 days' notice.
Statutory Entitlements	Payment on termination includes: • Outstanding wages for days and hours already worked. • (If applicable) 30 days' average salary in lieu of 30 days' notice. Employers are not required to pay out any accrued but not taken leave.
REDUNDANCY	
Genuine Redundancy	Redundancy is only available if the following four criteria are met: • There is a quite strong necessity to decrease the number of employees and no other alternatives are available but for decreasing the headcount. • Reasonable measures in order to avoid dismissal have been fully explored. • Employees whose employment contracts are to be terminated have been selected pursuant to reasonable criteria. • Due process has been ensured, including genuine dialogue with employees or labor unions. As it is often difficult to meet the above-mentioned criteria for redundancy, employers in Japan often solicit resignation from employees by offering a severance package (including payment of severance amount and other benefits).
Consultation	See above under "Genuine Redundancy" of this Japan guide.
Payment	An employee is only entitled to receive retirement wages in accordance with the retirement wage rules or the Rules of Employment (if any).

JAPAN

REMEDIES	
Dismissal Action	***Unfair dismissal*** Employees may bring an unfair dismissal claim against a former employer and seek reinstatement. The claim may be by way of formal lawsuit or labor reconciliation process.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS	
Transfer of Business	The Law Concerning the Succession of Labor Contract upon Company Split applies to all business restructures.

RESTRUCTURING	
Notification	There are no particular provisions regarding the protection of an employee upon restructuring of a corporate organization, provided that the termination process must be made in compliance with the Labor Standard Law and established court precedents (please see the above "Termination of Employment – Grounds").
Consultation	According to the law, employers are required to engage in genuine consultation, information sharing, and negotiations with employees and labor unions. Discrimination in dealing with employees is prohibited.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION	
	At the commencement of employment, employees are generally required by the Rules of Employment to acknowledge confidentiality obligations in writing, which should include provisions to protect the employer's confidential information, including intellectual property, clients, and the business' employees.

CONFIDENTIAL RESTRAINTS AND NON-COMPETES	
	Confidentiality provisions restrict employees from using confidential information for anything other than their duties. In general practice, either employment contracts or the Rules of Employment impose non-compete provisions on employees during employment. A retired or former employee does not have any non-compete obligations to a past employer unless there is an agreement to that effect or an obligation is contained in the Rules of Employment.

JAPAN

PRIVACY OBLIGATIONS

According to the Act of the Protection of Personal Information, employers will not disclose any personal information of an employee to a third party without consent of the employee.

WORKPLACE SURVEILLANCE

There is no law that regulates workplace surveillance. However, it is prohibited to conduct surveillance that leads to violation of privacy, such as employee monitoring in toilets, bathrooms, and changing rooms.

WORKPLACE INVESTIGATIONS

There is no law regulating workplace investigations.

WORKPLACE BEHAVIORS

MANAGING PERFORMANCE AND CONDUCT

Employment contracts, Rules of Employment, policies, and agreements provide for management of employee performance and conduct.

Poor performance

When employers intend to dismiss an employee due to poor performance, Japanese courts require that employers shall take reasonable measures to avoid dismissal. This includes considering alternatives such as providing training, reducing salary, a transfer to another job, secondment, and encouraging voluntary retirement. Dismissal is considered a last resort for employers.

Employee misconduct

An employer may take disciplinary action against employees who violate policies as long as the consequences are clearly stipulated in the Rules of Employment.

BULLYING AND HARASSMENT

Bullying

Bullying is prohibited by a guideline issued by the Ministry of Health, Labour and Welfare. A worker is bullied at work if they are:

- Assaulted (physical abuse).
- Intimidated, defamed, insulted, or slandered (mental abuse).
- Isolated, ostracized, or neglected (cut off from human relationships).
- Forced to perform certain tasks that are clearly unnecessary for the business of the company, impossible to be performed, or interfere with and interrupt his or her normal duties (excessive work demands).
- Ordered to perform menial tasks that are unreasonable in relation to the company's business or tasks that are far below

	the employee's ability or experience. This also includes not providing any work at all for the employee (insufficient work demands). • Recipient of excessive inquiry into his or her private affairs (invasion of privacy). Reasonable management action carried out in a reasonable way is not bullying.
Harassment	With regard to sexual harassment, the Equal Employment Opportunity Act mentions that an employer is under an obligation to take "necessary steps" to prevent: • Quid pro quo or retaliatory sexual harassment (defined as a worker suffering any disadvantage, such as dismissal, demotion, or a decrease in wages as a result of the worker's response to sexual harassment that occurs against his or her will in the workplace). • Hostile work environment sexual harassment (defined as a worker suffering a serious adverse effect on the exercise of his or her abilities because the working environment has become unpleasant due to sexual harassment that occurs against his or her will in the workplace). The administrative ordinance refers to guidelines detailing necessary steps for employers to take to prevent such conduct.
DISCRIMINATION	
	Gender discrimination in employment is prohibited by the Equal Employment Opportunity Act. The obligation imposed on employers to ensure equal treatment on the basis of race, nationality, creed, or social status is in accordance with the Employment Standards Act.
UNIONS	
Representation	A minimum of two employees are required to form a labor union. A labor union is entitled to request the employer to hold collective-bargaining sessions or to act in a collected manner in relation to an employment issue. The Labor Union Act contains the rights granted to labor unions and prohibits employers from engaging in unfair labor practices.
Right of Entry	Union officials (beyond employee union members) are not entitled to enter workplaces.
Industrial Disputation	It is only lawful to take industrial action (e.g., strikes, lockouts, slowdowns) under certain circumstances prescribed by the Labor Relations Accommodation Act.
COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS	
	It is general interpretation that employers shall be responsible to take necessary measures for protecting employees' health in the workplace. In this regard, though no specific laws are enacted, employers tend to amend their business practices by adapting remote working, partial or entire closure of business places, etc. The Japanese government has not

mandated work from home, business shutdowns, or avoidance of face-to-face meetings, but it has issued various requests or recommendations for the implementation of the foregoing measures. There are no clear guidelines on the allocation of costs incurred by employees for working from home (e.g., telecommunications costs, office supplies), and these should be negotiated and determined through bargaining with the labor union or the representative of employees. The Japanese government lifted the state of emergency as from 1 October 2021, but it still requests employers to take actions to continue working from home, have social distances in working environments, etc.

The Japanese government indicates repeatedly that vaccination is voluntary and should not be mandatory. In this regard, it warns that discrimination due to no vaccination may constitute harassment. For business employers, they may request their employees be vaccinated but cannot impose adverse sanctions against employees who refuse vaccination. In this regard, for business corporations providing public service or having high business needs for employees' vaccination, one measurement would be that the employer will amend its Rules of Employment so as to include relevant vaccination requirements, terms of exceptions, sanctions, etc., in accordance with legal requirements in amending the Rules of Employment.

Under Article 26 of the Labor Standards Law, if an employer suspends its business operations due to causes attributable to the employer, its employees would be entitled to an allowance equal to 60% of the employees' average wages during the suspension period (if the amount exceeds the amount of ordinary wages, the employer may pay ordinary wages), unless the business suspension is caused by natural disaster, war, or other similar unforeseeable or unavoidable events.

NEW ZEALAND

NEW ZEALAND

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Visa Requirements	Employers must ensure their employees are lawfully allowed to work in New Zealand. Foreign workers must have visas to live and work in New Zealand on either a temporary or permanent basis. There are a number of different types of visas, all of which are administered by Immigration New Zealand. One commonly used work visa is the Essential Skills visa. This visa enables an employer to employ a foreign worker for up to five years full time whose occupation is on an Essential Skills in Demand List. The employer must be able to demonstrate that it has made genuine attempts to recruit New Zealanders (i.e. that there are no suitably qualified New Zealanders available to perform the role required). For the time being, due to COVID-19 border restrictions, Immigration New Zealand is only processing limited work visas for foreign workers (e.g. critical workers (including health care workers) and partnership visas). Immigration New Zealand offshore offices remain closed. When the border reopens, the processing for foreign work visas will resume.
Reference/Background Checks	An employer is permitted to contact a prospective employee's referees and previous employers to gather and verify information. Offers of employment can be conditional on receiving this information (if not yet obtained when the offer is made).
Police and Other Checks	Criminal history checks may be undertaken with the authorisation of the applicant. Offers of employment can be conditional on receiving this information (if not yet obtained when the offer is made).
Medical Examinations	Permitted with the applicant's consent if necessary to determine fitness for a particular job. Offers of employment can be conditional on receiving this information (if not yet obtained when the offer is made).
Minimum Qualifications	Employers may ask for minimum qualifications to ascertain an applicant's suitability for a role.
TYPES OF RELATIONSHIPS	
Employee	Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis. Fixed-term and casual employees can only be employed in certain circumstances pursuant to the Employment Relations Act 2000. Termination obligations of the employer and other employee entitlements may be different depending on the basis on which employees are employed.
Independent Contractor	Businesses often engage "self-employed" independent contractors on a fee-for-service basis. A business will usually engage the contractor by means of an independent contractor or consultancy agreement with the individual or with the individual's business.
Labour Hire	Employers use labour hire workers most commonly for short-term periods of work and in industries such as construction. A business (the client) will

	usually engage a labour hire company by means of a service provider agreement with the labour hire company. Labour hire workers are employed by the labour hire company, not the client. However, the client can be joined to personal grievance claims against the labour hire company in some circumstances, where the client is determined to be a "controlling third party".

INSTRUMENTS OF EMPLOYMENT

Contracts	Every employee must have a written employment contract that has been negotiated in good faith and signed before the commencement of employment. Employment contracts can be either individual (i.e. agreed to between the employer and employee) or collective (i.e. agreed to between unions, employers and employees). Employment agreements cannot be unilaterally varied by an employer, and good faith bargaining obligations apply to bargaining for any variation. The Employment Relations Act 2000 provides for certain mandatory provisions in employment contracts, such as details relating to hours of work, provisions to deal with resolution of disputes and grievances, and provisions to protect employees during the sale, transfer or the contracting out of a business.
Codes or Rules	There are no centralised industrial instruments setting out industry-specific minimum pay and employment conditions.
Collective Agreements	Collective agreements are agreements that are binding on one or more unions, one or more employers, and two or more employees. The Employment Relations Act 2000 sets out mandatory requirements in relation to the content of collective employment agreements and the process for bargaining for such an agreement.
Policies	Policies are not mandatory, but they are strongly advised. Policies that should be in place include those relating to discrimination, harassment, bullying, privacy, and work health and safety.

ENTITLEMENTS

Minimum Employment Rights	New Zealand legislation prescribes various minimum employment rights that apply to employers and employees. Employees cannot be asked to agree to less than these minimum rights. ***Minimum wage*** The Minimum Wage Act 1983 provides for the setting of minimum wage rates. The applicable minimum wage rate will generally depend on the age and experience of the employee, and it is typically increased yearly by way of a minimum wage order. ***Annual holidays*** The Holidays Act 2003 provides for annual leave for all employees. Depending on their circumstances, employees are entitled to either: • Four weeks' paid annual leave per year (which is calculated on a pro rata basis for part-time employees). • An additional payment of 8% of their gross earnings to compensate them for absence of annual leave (i.e. for casual employees or fixed-term employees whose term is for less than

12 months).

Parental leave

The Parental Leave and Employment Protection Act 1987 provides for eligible employees to receive up to 26 weeks' of government-funded paid primary carer leave and 52 weeks of unpaid extended leave (less any primary carer leave taken) when a child is born or adopted. Other entitlements include partner leave, special maternity leave and a presumption that the employee's position can be kept open whilst on parental leave (other than certain limited exceptions).

Flexible working arrangements

Employees have the right under the Employment Relations Act 2000 to request flexible working arrangements. Employers have a duty to consider seriously any requests from their employees.

Bereavement leave

Under the Holidays Act 2003, eligible employees are entitled to three days' paid bereavement leave on the death of specified persons or in the event of a miscarriage or still-birth. In addition, eligible employees are entitled to one day's paid bereavement leave on the death of any other person that the employer accepts that the employee suffered bereavement as a result of the death.

Long service leave

There is no statutory entitlement to long service leave in New Zealand; however, long service leave may be agreed to as a matter of contract.

Public holidays

Under the Holidays Act 2003, if an employee is required to work on a public holiday, the employee must be paid time and a half of the hours worked on the public holiday. In addition, employees are entitled to one day's paid leave (an alternative holiday) if the public holiday in which the employee worked would otherwise be a working day for the employee.

Notice of termination and redundancy pay

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, it must provide contractual notice or payment in lieu of that notice. "Reasonable" notice must be given where the contract is silent regarding notice.

There is no statutory entitlement to redundancy pay; however, redundancy pay may be agreed to as a matter of contract.

KiwiSaver

There is no compulsory superannuation scheme in New Zealand. However, all employers are required to enrol new employees automatically in KiwiSaver (a government-implemented long-term savings initiative). There are certain exceptions, including where the employee is not a New Zealand resident, is under a temporary contract for less than 28 days or is on a secondment. Employers are also required to provide new employees with an information pack prepared by the Inland Revenue Department. Employers are required to contribute 3% of the gross salary or wage of eligible employees who have opted into the KiwiSaver scheme.

Family violence leave

Under the Family Violence Act 2018 and the Holidays Act 2003, eligible employees affected by family violence are entitled to up to 10 days of paid family violence leave per year in order to deal with the effects of family violence. They can also request short-term flexible working arrangements

	under the Employment Relations Act 2000.
Discretionary Benefits	***Bonuses*** Employers may choose to incentivise employees by including bonus provisions in employment agreements or in a company policy. Discretionary bonuses can also be offered without any formal documentation. Bonuses are usually dependent on individual, department or business performance and are usually paid at the employer's discretion. ***Paid parental leave*** Some employers offer paid parental leave schemes that either supplement the income provided by the legislated paid parental leave scheme (paid for by the government) or offer additional periods of paid parental leave.

TERMINATION OF EMPLOYMENT

GROUNDS

Employers considering termination of ongoing employment are required to undertake a procedurally fair process when making a decision.

Termination can be brought about by mutual agreement or when a fixed-term contract expires, provided the statutory requirements have been met.

Termination may be initiated by the employer, with or without notice, or by the employee (resignation).

MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates a full-time or part-time employee's employment for reasons other than serious misconduct, they must provide the contractual notice or payment in lieu of notice.

When an employee resigns, they have to provide the notice specified in the relevant employment contract.

"Reasonable" notice must be given where the contract is silent regarding notice.

Statutory Entitlements

Payment on termination includes:

- Outstanding wages/salary for hours already worked.
- Accrued annual leave and any alternative holidays not taken.

Employers are not required by statute to pay out accrued sick leave.

REDUNDANCY

Genuine Redundancy

Redundancy is only available in circumstances where an employer no longer needs a full-time or part-time employee's job to be done by anyone.

Consultation

If an employee's position is being made redundant, statutory good faith obligations regarding consultation must be followed prior to the decision being made that an employee's position is redundant.

Payment	An employee is entitled to redundancy pay only if it is provided for in his or her contract.

REMEDIES

Dismissal Action	***Unjustified dismissal*** Unless a small business employee (in a business with 19 or less employees) is employed on a 90-day trial period as statutorily specified and dismissed during that trial period, he or she is eligible to bring a personal grievance claim against a former employer alleging unjustified dismissal. Personal grievances must be raised within 90 days of the date that the alleged action occurred or came to the employee's attention, whichever is later. Remedies can vary and may include reinstatement, payment for lost wages (generally not more than three months) and an award for compensation for injury to feelings. A successful party will also receive a contribution to their legal costs. ***Unjustifiable action*** Employers are prohibited from taking "unjustifiable action" or subjecting an employee to an "unjustified disadvantage". This occurs where an employee's employment or conditions of employment are affected to the employee's disadvantage due to an unjustified action of the employer. As noted above, a personal grievance must be raised within the statutory time frame, subject to exceptions. Remedies for unjustifiable action can vary and may include an award for compensation (with no maximum amount) and a contribution to legal costs.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business	When restructuring occurs, New Zealand legislation prescribes rights to certain categories of employees (such as cleaners, food caterers, laundry workers, caretakers, orderlies and security guards) whose work is to be performed by another entity. Should they elect to do so, protected categories of employees have a right to transfer to the new employer on the same terms and conditions they have under their current employment agreement.

RESTRUCTURING

Notification	Every collective agreement and every individual employment agreement must contain an "employee protection provision" that outlines the process the employer will follow in restructuring situations (including the sale, transfer or contracting out of a business).
Consultation	Every collective agreement and every individual employment agreement must contain an "employee protection provision" that outlines the process the employer will follow in restructuring situations (including the sale, transfer or contracting out of a business).

The Employment Relations Act 2000 includes a statutory obligation of good faith, which imposes minimum consultation requirements where there is a decision which could impact the continuation of an employee's employment. At a minimum, the employer is required to provide employees with access to all information relevant to the proposal (with the exception of certain confidential information) and an opportunity to comment on the information (and the proposal more generally). The employer should consider all feedback before a decision as to whether or not to proceed with the proposal is made.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property and information regarding clients and the business's employees.

Contractual confidentiality provisions typically restrict employees from using confidential information for anything other than their duties. These provisions can continue post-employment.

CONFIDENTIAL RESTRAINTS AND NON-COMPETES

Employment agreements typically contain provisions restraining employees from using confidential information or soliciting clients or other employees after the termination of employment.

Most employment contracts for senior employees contain non-compete provisions intended to protect an employer's legitimate proprietary interests and can be enforced if reasonable in the circumstances.

PRIVACY OBLIGATIONS

The Privacy Act 2020 imposes obligations with respect to how employers, (referred to as "agencies") collect, use, disclose, store and give access to personal information.

If an agency has a privacy breach that either has caused or is likely to cause a person (or persons) serious harm, there is a duty on that agency to notify the Privacy Commissioner and any affected person (or persons).

WORKPLACE SURVEILLANCE

Workplace surveillance in New Zealand is largely unregulated; however, the Privacy Commissioner recommends that employers consult with employees before introducing surveillance measures. Employers will generally be entitled to take reasonable steps to monitor employee performance, to safeguard working conditions and to secure the place of business.

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WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict-resolution tool to determine policy breaches, misconduct or misuse of confidential information (amongst other alleged issues that may arise in, or related to, a workplace). The conduct of these investigations is determined by common law obligations of procedural fairness, Section 103A of the Employment Relations Act 2000 and the statutory obligations of good faith. Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment (or take other disciplinary action).

WORKPLACE BEHAVIOURS

MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies and agreements may provide for management of employee performance and conduct.

Unjustified dismissal cases in common law require an employer to fairly warn an employee before terminating his or her employment because of poor performance (other than extreme incidents of negligence, which may be treated as serious misconduct).

Employee misconduct may also warrant a warning, disciplinary action or, if the conduct is serious, termination of employment. Employees summarily terminated for serious misconduct do not receive all of their contractual-notice entitlements on termination of employment.

BULLYING AND HARASSMENT

Bullying

Bullying is defined by the New Zealand workplace safety regulator, WorkSafe, as repeated unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm, and employers are required to take all reasonably practicable steps to ensure that workplace bullying does not put workers' health and safety at risk. Bullying can amount to misconduct or serious misconduct.

Bullying at work may also be a basis for employee claims of unjustified (constructive) dismissal or unjustified action.

Harassment

Harassment is behaviour that is insulting, intimidating, humiliating, malicious, degrading or offensive. There are specific definitions for sexual harassment and racial harassment in the Employment Relations Act 2000 and Human Rights Act 1993. Failing to properly manage issues of harassment may cause an employer to breach the Health and Safety at Work Act 2015.

DISCRIMINATION

The Employment Relations Act 2000 makes it unlawful to discriminate against an employee on the basis of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, sexual orientation, union

	membership or being affected by family violence. Employees also have recourse for unlawful discrimination through the protections in the Human Rights Act 1993. However, employees cannot pursue an unlawful discrimination claim in both the Employment Relations Authority and Human Rights Review Tribunal (an election must be made).
UNIONS	
Representation	Employees have the right to decide whether they want to join a union or not. It is illegal for an employer or any other person to put unreasonable pressure on an employee to join (or not join) a union or to discriminate against someone on the basis of union membership.
Right of Entry	Union representatives are legally allowed to enter a workplace for purposes related to the employment of members or the union's business with the prior consent of the employer. The employer's consent may not be unreasonably withheld. Both the employer and union should deal with union visits in good faith.
Industrial Disputation	Strikes and lockouts are only lawful under the Employment Relations Act 2000 in prescribed circumstances, such as where a collective agreement has expired and the parties have already entered a period of bargaining or where the action is justified on safety or health grounds. Employers may suspend striking employees without pay and may request other employees to perform the work of striking or locked-out employees. Employers may not discriminate against employees for participating in a lawful strike.
COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS	
Employers and Employees Subject to Mandatory Vaccination Order	The COVID-19 Public Health Response (Vaccinations) Order 2021 details specified types of work that are required to be performed only by vaccinated workers. As at 17 January 2022, this includes specified border-related, health, disability, education and prison work. It also includes work where a COVID-19 vaccination certificate is required for persons to enter or receive a service such as workers at a food and drink business or service, workers who carry out work at gyms, workers who carry out work at permitted events, workers at close-proximity businesses or services, or workers carrying out work at a tertiary education provider. A previous version of the order set different dates by which a worker in the specified sector must have obtained his or her first and second dose of a COVID-19 vaccination. These dates have already passed for all specified workers.
Employers and Employees Subject to Mandatory Testing Order	The COVID-19 Public Health Response (Required Testing) Order 2020 imposes a requirement on workers in certain roles to obtain regular COVID-19 testing (and to provide evidence of test results to their employer). As at 17 January 2022, this order applies to all workers performing specified border-related work.
Mandatory Vaccination for All Other Employers	Employers may justifiably impose a requirement that certain roles (that are not covered by the mandatory vaccination order) may be performed only by vaccinated persons in accordance with the COVID-19 Public Health

	Response Act 2020 and the COVID-19 Response (Vaccinations) Legislation Act 2021. Employers can impose such a requirement if: • A health and safety risk assessment (which has been undertaken in consultation with all affected workers and unions) shows that there is a high likelihood of a worker being exposed to COVID-19 while performing his or her role or there are significant potential consequences of that exposure on others, and, therefore, the role cannot be safely performed unless the employee is vaccinated. • The employer has consulted with impacted workers prior to imposing this requirement. The New Zealand government has introduced a vaccination assessment tool to help businesses make decisions about vaccinations in the workplace. This tool is a simplified risk assessment mechanism, is optional to use and does not replace any risk assessments that have already been conducted by an employer. Specific requirements apply under Schedule 3A of the Employment Relations Act 2000 in relation to the dismissal of any employee who is unvaccinated (but whose work is subject to a vaccination order or mandatory vaccination policy).
Privacy Considerations for Collecting Vaccination/Testing Information	The collection of COVID-19 vaccination or testing information is the collection of "personal information" under the Privacy Act 2020. Employers collecting this type of personal information must comply with relevant privacy obligations relating to the collection, use, disclosure, storage and granting of access to personal information. The mandatory vaccination and mandatory testing orders also impose specific requirements on employers relating to how they collect and record this personal information.


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EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Visa Requirements	Non-Qatari employees must be sponsored by an employer that is duly established in Qatar in order to obtain work visas and residency permits to work and reside in Qatar. Non-Qatari employees with valid residency permits earning monthly salaries of QAR10,000 and above may sponsor their spouses and dependents to reside in Qatar.
Reference/Background Checks	An employer may request a reference from an employee's previous or current employer directly; however, there is no statutory obligation for the previous employer to respond to the information request. Law 14 of 2004 (Qatari Labor Law) entitles an employee to request and obtain, upon termination or expiry of the employment, a certificate from the employer setting out: • The period of the employment. • The nature of the work performed by the employee during the employment. • Details of the employee's remuneration package.
Police and Other Checks	Police checks are carried out by the Qatari immigration authorities (through the Criminal Evidence and Information Department) prior to the granting of residency permits.
Medical Examinations	Non-Qatari employees are required to undergo a medical exam for the screening of certain statutory-prescribed diseases in order to qualify for a residency permit in Qatar.
Minimum Qualifications	Non-Qatari employees must provide their educational qualifications (and any other relevant professional accreditations) as supporting documentation for the work visa application by the employer. The educational qualifications will need to commensurate to the job description in the work visa application, e.g., a work visa application for an engineer will need to be supported by engineering educational qualifications and accreditations from any other relevant professional accrediting bodies.
TYPES OF RELATIONSHIPS	
Employee	Employees may be employed on a temporary, full-time, fixed-term, or open-ended contract. Each type of employment relationship carries different rights and obligations for the employer and the employee.
Independent Contractor	Due to the requirements of immigration and sponsorship in Qatar, it is very rare to come across non-Qataris acting as independent contractors in their own right. At the very least, independent contractors must be duly licensed to carry out their services, and in order to do so, they will need to be under the sponsorship of a Qatari person or company that is so licensed. It is therefore likely that an independent contractor's services would be provided within the context of a service agreement with the duly licensed Qatari company or person.

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Labor Hire	Temporary manpower supply is a highly regulated commercial activity that can only be carried out by properly licensed entities in Qatar. There are, however, various instances of companies hiring out workers (mainly unskilled laborers, cleaners, or domestic workers) under their sponsorship to third parties on an unregulated basis. Due to criticism that Qatar has previously received for the treatment of non-Qatari workers, there has been much stricter enforcement by the Qatari authorities to clamp down on such unregulated manpower supply.

INSTRUMENTS OF EMPLOYMENT

Contracts	The terms and conditions of employment must be in writing, in Arabic, executed by the employee and employer, and filed with the Labor Department within the Ministry of Administrative Development, Labor and Social Affairs (MADLSA) as part of the immigration process. The Labor Department regularly issues a template employment contract for use, and changes to such template will need to be approved by the Labor Department before its registration.
Codes or Rules	The Qatari Labor Law applies to all employment relationships within Qatar, (whether contracted in writing or orally) with the exception of employment relations in the Qatar Financial Centre. The Qatar Financial Centre is a special economic zone established by the government of Qatar to provide a platform for investment with 100% foreign ownership in the state. The Qatar Financial Centre is not a defined geographic area; however, it has its own employment regulations governing employment relations between employer entities registered in the Qatar Financial Centre and their employees.
Registered Agreements	As per “Contracts” above.
Policies	Policies are generally not mandatory. Any proposed disciplinary policies or procedures to be introduced by the employer must be approved by the Labor Department before they can be implemented.

ENTITLEMENTS

Minimum Employment Rights	The Qatari Labor Law sets out the minimum rights and obligations of employers and employees and governs all employment relationships in Qatar, except for the following: • Employment in the public sector. • Employment with Qatar Petroleum or any of its affiliates. • Employment in companies engaged in oil and gas exploration and production and petrochemical industries. • The Qatar Armed Forces, other military authorities, and the police. • Employment at sea. • Domestic services (such as maids, drivers, cooks, gardeners, and similar roles). • Employment in the agricultural sector.

Hours of work

The maximum normal hours are eight hours per day. Employees are also entitled to a minimum of one rest day per week (which in most cases is Friday). Employees can also be requested to work overtime hours, although the maximum number of hours worked in one day cannot exceed 10.

Reduced work hours apply during the month of Ramadan, when maximum normal work hours are six hours per day. The maximum number of hours worked during Ramadan (including overtime) cannot exceed eight hours per day.

Annual leave

Minimum entitlement of three weeks per annum for an employee who has worked for one year and whose period of service is less than five years. Minimum entitlement of four weeks per annum for an employee whose period of service is five years or more.

Maternity leave

Female employees (who have completed a full year's service) are entitled to 50 days of maternity leave with full pay. Such maternity leave includes the period before and after the birth, provided that the period following the birth is not less than 35 days.

Sick leave

Employees are entitled to sick leave (only after completing a period of three months in employment and only if supported by a certificate from a licensed physician approved by the employer) as follows:

- First two weeks with full pay.
- If the illness extends for a further four weeks, the employee will receive half pay during this period.
- Any subsequent period with no pay.
- If after 12 weeks the employee is unable to return to work, the employer may seek to terminate employment if it can prove (via a competent physician) that the employee is no longer able to resume work.
- If an employee resigns due to illness (with the approval of a competent physician) before the end of the six weeks in which they are entitled to paid sick leave, the employer will pay out the remaining amount of the employee's entitlement.

Public holidays

Employees are entitled to leave with full pay on public holidays as announced by MADLSA for the public sector on the following occasions:

- Eid al-Fitr – three days.
- Eid al-Adha – three days.
- Independence Day – one day.
- National Sports Day – one day.
- Designated days at the discretion of the employer – three days.

Special leave

Muslim employees are entitled, during the course of service (only permitted once), to special leave of up to 20 days without pay for the Hajj pilgrimage.

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Wages/Discretionary Benefits	***Wages*** Without prejudice to any agreement providing higher wages to the employees, employers are obliged to comply with the minimum wage rules specified by a decision of MADLSA. Currently, the minimum wage is QAR1,000 per month for basic salary and, unless provided by the employer, monthly accommodation and food allowances of QAR500 and QAR300, respectively. Past employment contracts where employees have been employed at less than the prescribed minimum wage scheme must be updated in light of this change. ***Bonuses*** Employers are free to choose to incentivize employees by including bonus provisions in employment contracts. Bonuses are usually dependent on individual, department, or business performance and are usually paid at the employer's discretion. ***Allowances*** Employers are required to indicate the allowances provided to the employees in the employment contract. Typically, the standard template contract of employment will set out categories of housing and transportation allowances that must be completed. Along with the implementation of the minimum wage scheme as described above, employers must also provide certain minimum allowances for housing and for food.

TERMINATION OF EMPLOYMENT

GROUNDS

	Unlimited-term contract Can be terminated by mutual agreement of the parties. Either party may also unilaterally terminate the contract by giving written notice (or payment in lieu) to the other party. ***Fixed-term contract*** Employment terminated either by mutual agreement or at the expiry of the agreed term. ***Dismissal for cause*** An employer may terminate the employment without providing any notice, any termination entitlement (such as end-of-service gratuity payment), or compensation in the event of serious misconduct, including, but not limited to: • If the employee commits a violation of the employer's disciplinary procedures (that have previously been approved by the Labor Department) and such violation permits dismissal for cause. • If the employee assumes a false identity or nationality or submits false certificates or documents. • If the employee commits an act which causes gross financial loss to the employer. The Labor Department needs to be notified of the

incident within 24 hours of it taking place.

- If, on more than one occasion, the employee violates the employer's policies on the safety of the employees and the workplace despite being notified in writing. Policies must be posted in a conspicuous place.
- If, on more than one occasion, the employee fails to carry out his or her essential duties under the service contract or Qatari Labor Law despite being notified in writing.
- If the employee discloses the secrets of his employer.
- If, during working hours, the employee is drunk or under the influence of drugs or commits an assault.

MINIMUM ENTITLEMENTS

Payments/Notice

In the case of an unlimited-term contract (and where the employee receives his or her salary on a monthly or yearly basis), the minimum notice period must be at least one month during the first and second year of employment.

Where the employee has been employed for more than two years, the minimum notice period must be at least two months.

The employer and employee may also terminate the employment contract during the probation period by serving notice as below:

- An employer may dismiss an employee during the probation period if such person is unfit to carry out his or her duties, provided that notice of at least one month is provided.
- In the case of an employee:
  - If he or she has secured alternative employment in Qatar, he or she must serve at least one month's notice to the employer. The new employer is under an obligation to compensate the previous employer a portion of the recruitment fees and air ticket incurred, if any, provided that such amount does not exceed two months of the employee's basic salary.
  - If he or she intends to leave the country, an employee must serve notice in accordance with the period agreed between the parties, provided that such notice does not exceed two months.

If a party fails to comply with the above-mentioned notice periods, it may be liable to compensate the other party for an amount equivalent to the employee's basic salary for the notice period.

In both cases, the employer can choose to terminate the contract immediately by paying the employee in lieu of notice.

For fixed-term contracts, there are no prescribed statutory minimum notice periods for termination by either party.

Employees remain entitled to their contractual rights during the notice period, provided that they continue to perform their duties during such period.

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Statutory Entitlements	Accrued but unused vacation. Accrued salary and allowances up to the date of employment. ***End-of-service gratuity payment*** Upon completion of one year of continuous employment with the same employer, the employee is entitled to an end-of-service gratuity calculated (pro rata) on the basis of three weeks' basic salary (excluding all allowances and discretionary payments) for each year of service. This is a non-waivable entitlement of the employee payable on or around the date of termination of the employment contract. The only way employers can avoid paying an end-of-service gratuity is if they offer an equivalent or better end-of-service benefit than the one prescribed by the Qatari Labor Law.

REDUNDANCY

Genuine Redundancy	The Qatari Labor Law does not contain detailed provisions on redundancy and, at law, employers are generally allowed to terminate the employment contract (subject to its terms) without providing a reason for doing so. Recent changes, however, were made to the Qatari Labor Law that permit an employer to terminate employment contracts due to economic or restructuring reasons, provided that it serves 15 days' prior notice to MADLSA that details: (i) the supporting reasons for the employer's decision, (ii) the number of employees likely to be affected by such decision, and (iii) the time frame for carrying out such exercise.

REMEDIES

Dismissal Action	All disputes must be referred to the Labor Department. If the dispute does not settle, the matter may be transferred to the Labor Courts.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Employment	Transfer of employment from one employer to another requires the approval of the Labor Department. On occasion, such transfers of employment may be blocked by the Labor Department where the new employer has been found by the Labor Department to be non-compliant with its obligations under the Qatari Labor Law. Transfer of employment of non-Qatari employees generally also requires a transfer of sponsorship to the new employer (unless the non-Qatari individual is sponsored by a spouse or parent). Transfers of sponsorship are subject to the approval of the Ministry of Interior, but an employee is no longer required to produce a no-objection certificate from the current employer.

RESTRUCTURING

Notification	Any variation to the employment contract will require mutual agreement between the employee and the employer. If the employment needs to be shifted to another group entity, the employment contract will need to be

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	terminated and the employee rehired by the other entity.
Consultation	The Qatari Law is silent on consultation.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Employees are barred from divulging confidential information (i.e., trade secrets and information not in the public domain) relating to their employer either for their personal benefit or for benefit to a third party. Disclosure of confidential information could give rise to both civil and criminal liability.

CONTRACTUAL RESTRAINTS AND NON-COMPETES

For non-compete clauses to be enforceable, proof would need to be provided to the Labor Department that the future employment of the employee is in direct competition with the previous employer's business and that the employee has been privy to the previous employer's trade secrets. Non-compete undertakings or covenants by an employee cannot exceed one year in duration.

PRIVACY OBLIGATIONS

Unless the employee has provided a written waiver, employers have a duty not to disclose confidential information relating to their employees, even if such information was obtained through a third party.

WORKPLACE SURVEILLANCE

Considering the potential sanctions under the Qatari Penal Code for intrusion into an individual's private life, a key consideration for employers is if the employees have a legitimate expectation of privacy in their workplace. If so, employers may need an employee's consent for surveillance.

WORKPLACE INVESTIGATIONS

Revealing the details of an investigation that may involve sensitive personal information relating to an employee without that employee's consent may arguably lead to sanctions under the Qatari Penal Code.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

Employment contracts may provide for management of employee performance and conduct.

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BULLYING AND HARASSMENT

Bullying	There are no specific anti-bullying provisions within the Qatari Labor Law; however, if the employer has issued a code of conduct or disciplinary procedures that have been approved by the Labor Department, these could include anti-bullying provisions and related disciplinary sanctions.
Harassment	If the employer has issued a code of conduct or disciplinary procedures that have been approved by the Labor Department, these could include anti-harassment provisions and related disciplinary sanctions. Harassment of females can also be deemed to be a violation of the Qatari Penal Code in some circumstances.

DISCRIMINATION

Priority in employment is given to Qatari nationals over non-Qataris. Furthermore, it is relatively common practice in Qatar for different pay scales to apply to Qataris and to non-Qataris.

The Qatari Labor Law requires that female employees be paid and given the same opportunities for training and promotion as their male counterparts performing the same work. However, the Qatari Labor Law also includes specific provisions regulating the employment of women in the workplace. For example, employers are not allowed to employ women in "dangerous or arduous works, works detrimental to their health, morals or other works specified by a decision of the Ministry of Labor (*now MADLSA*)."

UNIONS

Representation	Qatari employees in establishments employing at least 100 employees can form a Workers Committee. Individual Workers Committees can join larger groupings or a "General Committee," which represents workers across the same or interrelated industries. Strikes are permitted, provided they follow the rules of the Qatari Labor Law. Notwithstanding this, industrial action by Qataris is extremely rare.
Right of Entry	Only Qatari nationals can become members of a Workers Committee or General Committee.
Industrial Disputes	All disputes between employers and employees are initially heard by a joint committee comprising representatives of the employer and the employees. If the joint committee fails to settle the dispute, the dispute is referred to the Labor Department for mediation between the parties. If the mediation fails, the dispute is then referred to an arbitration committee comprising the Minister of Administrative Development, Labor and Social Affairs; the Qatar Chamber of Commerce and Industry; and a representative nominated by the general Union of Workers in Qatar. The arbitration committee has the power to render a final ruling on the dispute.
Labor Dispute Settlement Committee	One or more Labor Dispute Committees may be formed by MADLSA and tasked to receive claims relating to and arising from the employment contracts, and such committees may issue their decisions within three weeks from the date of the first hearing.

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COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS	
Restriction Status	Currently, there are no longer any restrictions on the number or percentage of employees permitted in a workplace. From 3 October 2021, all employees in the public and private sector may return to work in the office. Even though COVID-19 cases are on the rise in Qatar, the government reaffirmed in early January 2022 that 100% of employees are still permitted to work from the office.
Compliance Officer	Every office is obligated to appoint a designated employee to act as a compliance officer to ensure implementation and monitoring of all COVID-19 health and safety guidance at the workplace, including: • Maintaining physical distancing. • Implementation of infection prevention and control measures.
Risk Assessment and Response Plan	All offices are required to develop and update a COVID-19 response plan to deal with suspected or confirmed cases of COVID-19 in the workplace. Risk assessments on health and safety must also be carried out before any plan to return to the workplace is implemented. Offices will also be required to maintain a record of all participants in any group activity, meeting, or service that requires multiple staff so as to facilitate contact tracing, if needed.
Regulating Entry and Exit	All employees and visitors are required to have downloaded the Ehteraz app, and entry to workplace will only be granted to those with a "green" health status on the app.
Physical Distancing	A minimum distance of 1 meter between staff during work must be maintained. Floor and furniture markings must be used to maintain appropriate distancing. If distance cannot be maintained, offices are required to implement physical barriers to separate employees. Hot-desking should be avoided. Visible signs must be put up to remind employees to maintain physical distance at a workplace. Where access to offices requires the use of elevators, signs should be used to restrict the number of persons in each elevator. Offices are required to limit the presence of maintenance teams inside the premises during working hours. Maintenance teams will also be required to comply with health and safety requirements, including installing the Ehteraz app on their mobile devices and wearing face masks.
Infection Prevention and Control	Office spaces are required to provide hand sanitizer for use by staff in several locations within the premises to promote regular hand hygiene and disinfection. All employees are required to wear face masks at all times and avoid handshakes, touching, hugging, and any other forms of physical contact. All regularly touched surfaces must be cleaned and disinfected frequently using standard disinfection products. Toilets must be cleaned and disinfected after each use. All offices are required to maintain good ventilation in the workspace, either through natural methods or air conditioning. Air conditioning filters must be

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	cleaned or replaced frequently to optimize effectiveness. Offices are advised to limit the handling of paperwork as much as possible, including internal circulars and exchange of files. With the exception of employees who have been vaccinated or have recovered from COVID-19 in the last 12 months, all employees are required to undergo regular testing in accordance with the guidance of the Ministry of Public Health. Staff should refrain from coming into work if they come into contact with suspected or confirmed COVID-19 patients and should request to leave work if they develop any symptoms or signs of sickness. Staff should be encouraged to notify management if they feel any COVID-19 symptoms or are caring for a COVID-19-positive relative. The use of disposal cups and utensils is recommended when serving food or drink.
Meetings and Professional Activities	Meetings should be conducted online. Face-to-face meetings should only be conducted if absolutely necessary and must be limited to a maximum of 30 people. All attendees must wear masks at all times and maintain a minimum physical distance of 1 meter. Meeting times should be as short as possible.
Mental Health and Awareness	Offices should advise employees who may be experiencing COVID-19-related stress or anxiety to contact the mental health hotline.
Education and Awareness	Offices are required to keep employees updated on COVID-19 safety and prevention information and guidelines, including any new measures that are put into place in the workplace.
Money Handling	Offices are advised to limit any cash transactions and encourage the use of bank cards. Card readers or other related equipment should be cleaned after each use.

SINGAPORE

SINGAPORE

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT

Immigration/Visa Requirements	Employers must ensure employees who are not Singapore citizens or permanent residents have a valid work pass or requisite approvals allowing them to work in Singapore. One of the more common work passes is the Employment Pass, which allows foreign professionals, managers, and executives to work in Singapore. Employment Pass applicants who are not employed in the financial services sector will need to earn a fixed monthly salary of at least SGD4,500, while Employment Pass applicants in the financial services sector will need to earn a fixed monthly salary of at least SGD5,000. Older, more experienced applicants are expected to command higher salaries to qualify, in line with their qualifications, work experience, and skill sets. Employers must apply for an Employment Pass on behalf of a job candidate. Any change of employer will require a new application, except in limited circumstances. Other work passes and approvals include: • The Personalized Employment Pass for high-earning existing Employment Pass holders (earning more than SGD12,000 per month) or overseas foreign professionals (with a fixed monthly salary of at least SGD18,000 last drawn no more than six months prior to application). • The EntrePass (for eligible foreign entrepreneurs wanting to start and operate a new business in Singapore). • The S Pass (for mid-level skilled staff who earn a fixed monthly salary of at least SGD2,500 and meet certain assessment criteria). • The Work Permit (for semi-skilled foreign workers in the construction, manufacturing, marine shipyard, process, or services sector). • The Letter of Consent (for eligible spouses or unmarried children under the age of 21 of Singapore citizens or Singapore permanent residents who hold a Long-Term Visit Pass/Long-Term Visit Pass Plus issued by the Immigration and Checkpoints Authority).
COVID-19 Additional Requirements and Responsibilities	In light of the COVID-19 pandemic, employers have additional requirements and responsibilities when a new or existing employee on a work pass enters or returns to Singapore. Before an employee's arrival in Singapore, employers who wish to bring construction, marine shipyard, or process sector workers into Singapore must request and receive the Ministry of Manpower's entry approval to allow the employee entry into Singapore. For employers with employees in all other sectors, entry approval must be obtained from the Immigration and Checkpoints Authority to allow the employee and his or her family members a Dependant's Pass or Long-Term Visit Pass (if any) entry into Singapore. There are different travel and health control measures that apply to arrivals in Singapore from different countries and regions, and employers are responsible for ensuring that employees comply with the travel and health control measures applicable to them, including the measures stated on

	any notices and letters issued to the employee. Additionally, employers must ensure that prior to the employee's departure for Singapore: • The employee has a Singapore mobile number for the Ministry of Manpower to contact them. • The employee has a suitable place of residence secured for the employee to serve his or her Stay-Home Notice (SHN) period, unless the employee is required to serve his or her SHN at a dedicated facility. • The employee fully understands and agrees to comply with the additional conditions that may be imposed by the Ministry of Manpower, the Ministry of Health, or the Immigration and Checkpoints Authority for the SHN period Once the employee has entered Singapore, employers must: • Ensure that the employee complies with the SHN upon arrival. • Make arrangements to send the employee directly from the airport to the SHN residence, unless the employee is required to serve SHN at a dedicated facility. • Pay for the employee's COVID-19 swab test and stay at the dedicated SHN facility (if applicable). • Ensure that the employee downloads the WhatsApp mobile phone application and will respond to the Ministry of Manpower's phone calls, WhatsApp video calls, or SMSes within one hour during the SHN period. • Ensure that the employee follows the instructions in the SMSes to download the Homer mobile phone application. • Arrange to provide the employee with food and other daily essentials during his or her SHN period, unless the employee is serving the SHN period at a dedicated facility. • Reschedule non-emergency medical needs (if any). • Ensure that the employee goes for his or her COVID-19 swab test during the assigned slot. • Arrange for the employee to travel using designated taxis or their own vehicles between their SHN residence and the testing facilities, as they must not take public transport. • Ensure that the employee returns immediately to their SHN residence immediately after the test. Note that the above requirements are accurate as of the time of publication, but they are subject to change at any time due to the dynamic nature of the pandemic.
Reference/Background Checks	An employer is generally permitted to contact a prospective employee's referees and previous employers to gather and verify information. It is also common to expressly provide for this right in the relevant employment agreements. However, employers owe a duty of care to both former and present employees to prepare a reference that is true and accurate. The reference, taken as a whole, must not be unfair or misleading.

SINGAPORE

TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis.

Effective from 1 April 2019, The Employment Act 1968 (the Act) applies to all employees regardless of their salary and position who are under a contract of service except:

- Any seafarer.
- Any domestic worker.
- Any person belonging to any other class of persons who the minister may, from time to time by notification in the government gazette, declare not to be an employee for the purposes of the Act and that currently includes any person employed by a statutory board or the government.

Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will usually engage the individual by means of a service agreement with the individual or with the individual's business.

Workmen

A "workman" includes the following classes of persons:

- Any person, skilled or unskilled, who has entered into a contract of service with an employer to which he or she is engaged in manual labor, including any artisan or apprentice, but excluding any seafarer or domestic worker.
- Any person, other than clerical staff, employed in the operation or maintenance of mechanically propelled vehicles used for the transport of passengers for hire or for commercial purposes.
- Any person employed partly for manual labor and partly for the purpose of supervising any workman in and throughout the performance of his or her work.
- Any person specified in the first schedule to the Act.
- Any person who the minister may, by notification in the government gazette, declare to be a workman for the purposes of the Act.

INSTRUMENTS OF EMPLOYMENT

Contracts

Employers will be required to issue Key Employment Terms (KETs) and itemized payslips to their employees (covered by the Act). These KETs must be included as part of an employee's employment contract.

KETs must include items such as:

- Full name of employer.
- Employer's trade name if different from its full name.
- Full name of employee.
- Job title, main duties, and responsibilities.
- Start date of employment.
- Duration of employment (if employee is on a fixed-term

	contract). • Working arrangements, such as daily working hours, number of working days a week, and rest days. • Salary period. • Basic salary, fixed allowances, and fixed deductions. • Overtime payment period (if applicable). • Overtime rate of pay (if applicable). • Other salary-related components, such as bonuses and incentives. • Leave entitlement (e.g., annual leave, sick leave, maternity leave, childcare leave, paternity leave, adoption leave, shared parental leave, infant care leave) • Other medical benefits (e.g., insurance, medical, dental benefits). • Probation period (if applicable). • Notice period. • Place of work if the work location is different from the employer's address (optional but recommended to include). Employers must also issue itemized payslips to all their employees covered by the Act at least once a month. Employers must also keep a record of all payslips issued.
Policies	Policies that should be in place include those relating to discrimination, harassment, bullying, and workplace health and safety.
ENTITLEMENTS	
Minimum Employment Rights	The Act provides for certain minimum employment rights. A contract of service that contains less favorable terms than those prescribed by the Act is illegal, null, and void to the extent that it is less favorable. Some of these rights are contained in Part IV of the Act, which only applies to: • Workmen earning not more than SGD4,500 basic monthly salary. • Other employees (other than workmen) earning less than SGD2,600 basic monthly salary. (Note: Basic salary excludes overtime, bonus, annual wage supplement, productivity incentive payment, reimbursement for special expenses, and any allowances.) ***Hours of work*** There are maximum hours of work provided for employees covered by Part IV of the Act. Generally, an employee is not allowed to work more than 12 hours a day. However, an employer can ask an employee to work more than 12 hours a day in the following circumstances: • An accident or threat of accident. • Work that is essential to the life of the community, national

defense, or security.

- Urgent work to be done to machinery or the plant.
- An interruption of work that was impossible to foresee.

If an employer requires employees to work more than 12 hours a day (up to a maximum of 14 hours), they must apply for an overtime exemption. Further, an employee can only work up to 72 overtime hours in a month, although employers can apply for an exemption if they require employees to work more than 72 hours of overtime in a month. Certain work activities, however, will not be granted any such exemption.

Annual leave

An individual employed for a period of three months or more is entitled to paid annual leave of seven days in the first 12 months of continuous service with the same employer and an additional one day of paid annual leave for every subsequent 12 months of continuous service with the same employer (up to a maximum of 14 days of leave). Such leave is in addition to the rest days, holidays, and sick leave to which the employee is entitled and is calculated on a pro rata basis.

An individual employed for a period of not less than three months, but who has not completed 12 months of continuous service, is entitled to paid annual leave in proportion to the number of completed months of service.

Maternity protection and benefits/childcare leave for parents

Maternity leave, adoption leave, childcare leave, paternity leave, shared parental leave, and infant care leave are provided for either under the Act or under the Child Development Co-Savings Act 2001 (CDCSA). For all the leave entitlements below (with the exception of shared parental leave), the individual must be employed for a minimum of three continuous months or self-employed for at least three months to be eligible.

In general, a female individual is entitled to paid maternity leave, with such paid maternity leave period being either eight or 16 weeks (depending on whether the child is a Singapore citizen and certain other criteria), which must be taken within 12 months of the child's date of birth (inclusive of the date of birth). Where the female individual is only entitled to eight weeks of paid maternity leave, she is entitled to claim a further four weeks of unpaid maternity leave. Employers cannot contract out of this entitlement.

An individual who has a child below the age of seven is entitled to childcare leave of six days per annum if the child is a Singapore citizen and two days of childcare leave per annum where the child is not a Singapore citizen. In total, an individual is only entitled to 42 days of childcare leave in respect of any qualifying child.

In general, a male individual is entitled to two weeks paid paternity leave if the child is a Singapore citizen, and the male is or has been lawfully married to the child's mother between conception and birth. Adoptive fathers who adopt a Singapore citizen child will also be entitled to two weeks of paid paternity leave.

An individual who has a Singapore citizen child below the age of two years old is entitled to six days a year of unpaid infant care leave, over and above any childcare leave entitlement he or she may have.

Subject to eligibility criteria, a female individual may be entitled to 12 weeks of paid adoption leave. A working father can apply to share up to four weeks of his wife's maternity or adoption leave entitlement, subject to his wife's agreement. The wife's maternity leave will then be reduced by

	the corresponding amount. To be able to share parental leave, the child must be a Singapore citizen, the father must be lawfully married to the child's mother, and the child's mother must qualify for maternity leave.
	
	Sick leave
	
	Individuals employed for a period of three months or more are entitled to paid sick leave. Employees who have worked for a period of more than six months are entitled to the full entitlement of paid sick leave of:
	
	• Fourteen days in each year if no hospitalization is necessary.
	• If hospitalization is necessary, the lesser of the following:
	  • Sixty days in each year.
	  • The aggregate of 14 days plus the number of days they are hospitalized.
	
	A medical certificate from a medical practitioner is required in order to claim the entitlement. Failure to obtain such a certificate or failure to inform, or attempt to inform, the employer of such sick leave within 48 hours is deemed to be an absence from work without permission and without reasonable excuse.
	
	Public holidays
	
	Employees are entitled to 11 paid public holidays a year.
	
	Notice of termination
	
	Either party to a contract of service may, at any time, give to the other party notice of their intention to terminate the contract.
	
	The length of such notice is the same for both employer and employee and is determined by the relevant contractual provision or, in the absence of such provision, the following minimum notice:
	
	• One day's notice if employed for less than 26 weeks.
	• One week's notice if employed for 26 weeks or more, but less than two years.
	• Two weeks' notice if employed for two years or more, but less than five years.
	• Four weeks' notice if employed for five years or more.
	
	Both parties must have the option to pay salary in lieu of serving out the notice period.

Discretionary Benefits	***Bonuses*** Employers may choose to incentivize employees by including bonus provisions in employment contracts. Bonuses are usually dependent on individual department or business performance and are usually paid at the employer's discretion. ***Paid parental leave*** Some employers offer paid parental leave schemes that either supplement the income provided by the legislated parental leave pay scheme or offer additional periods of paid parental leave.

SINGAPORE

TERMINATION OF EMPLOYMENT

GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice, or termination (or resignation) by the employee.

MINIMUM ENTITLEMENTS

Notice

Under the Act, when either party terminates the employment for reasons other than a willful breach of a condition of service by the other, they must provide the requisite notice of termination (see "Notice of termination" section above).

Notice does not need to be provided when a party terminates the contract for willful breach of a condition of the contract of service by the other party.

Where an employer intends to dismiss an employee without notice on the grounds of misconduct (misconduct being a failure to fulfill the conditions of employment in the contract of service), the employer should conduct an inquiry before deciding whether to dismiss the employee or to take other forms of disciplinary action. If, however, the obligation is to make "due inquiry" (whether under the employment contract or by operation of the Act), the employee must be accorded an opportunity to present his or her case and defend himself or herself. Further, the more informal the process, the greater the risk that "due inquiry" may be viewed as not having been sufficiently undertaken.

REDUNDANCY

Payment

Under the Act, employees who have more than two years' continual service and are covered under Part IV of the Act are entitled to retrenchment benefits on their dismissal on the ground of redundancy or by reason of any reorganization of the employer's profession, business, trade, or work.

Where the employee is entitled to retrenchment benefits, the amount of compensation is not fixed by law. It will have to be negotiated between employee and employer.

Notification

For retrenchment exercises taking place before 1 November 2021, employers who employ at least 10 employees must notify the Ministry of Manpower if five or more employees are retrenched within any six-month period. This applies to permanent employees as well as contract workers with full contract terms of at least six months. The notification must contain the company's unique entity number, company contact person details, size of workforce before retrenchment (Singaporean, permanent resident, foreigner), and details of workers to be retrenched or who have been retrenched. Failure to provide the notification may result in a fine of SGD1,000 for the first occasion and SGD2,000 for each subsequent occasion.

For retrenchment exercises taking place on or after 1 November 2021, employers who employ at least 10 employees must notify the Ministry of Manpower of all retrenchments, regardless of the number of employees affected.

SINGAPORE

REMEDIES

Claims, Complaints, and Investigations

Effective from 1 April 2019, the Employment Claims Tribunal (ECT) can hear the following types of claims:

For employees:

- Statutory salary-related claims from all employees covered under the Act, the Retirement and Re-employment Act 1993, and the CDCSA.
- Contractual salary-related claims by all employees covered by the Act.
- Wrongful dismissal claims from all employees covered by the Act and the CDCSA.

For employers:

- Claims for salary in lieu of notice.

Parties with any dispute should first register their claims with the Tripartite Alliance for Dispute Management, which will provide advisory and mediation services. Claims that cannot be resolved through mediation will then be referred to the ECT.

The maximum claim amount for disputes before the ECT is SGD20,000, or up to SGD30,000 if relevant parties go through the Tripartite Mediation Framework or mediation assisted by their recognized unions under the Industrial Relations Act 1960.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business

Under the Act, in a transfer of business scenario, where a transferring employee (covered by the Act) moves to another employer, continuity of service will not be broken by the transfer.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and the business' employees.

CONFIDENTIAL RESTRAINTS AND NON-COMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than their duties. These provisions typically restrain employees from using confidential information during, and for a period of time after, termination of employment.

It is not uncommon for executive employment contracts to contain non-

compete provisions that protect an employer's legitimate business interests that can be enforced if reasonable under the circumstances.

WORKPLACE SURVEILLANCE

Under the Personal Data Protection Act 2012 (PDPA), employers should inform the employees of the purposes for the collection, use, and disclosure of their personal data (which includes any closed-circuit television surveillance footage at the workplace) and obtain their consent prior to the collection, use, and disclosure (as the case may be).

One exception is that the collection by employers of personal data from their employees for the purpose of managing or terminating their employment relationships, and the use or disclosure of such personal data for consistent purposes, would not require the consent of their employees. However, the PDPA still requires employers to inform their employees of the purposes of such collection, use, or disclosure, even though their consent is not required.

WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict resolution tool to determine policy breaches, misconduct, or misuse of confidential information. The conduct of these investigations is determined by policy. Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment.

WORKPLACE BEHAVIORS

MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies, and agreements provide for management of employee performance and conduct.

Employee misconduct may warrant a warning, disciplinary action, or, if the conduct is serious, termination of employment. Employees terminated for serious misconduct do not receive the usual notice and other entitlements.

BULLYING AND HARASSMENT

Bullying

Workplace bullying, and the sanctions thereof, are usually covered in the employer's policy documents and differ from workplace to workplace.

Harassment

The Protection from Harassment Act 2014 prescribes a range of civil remedies and criminal sanctions to protect people from harassment and related anti-social behavior. The Tripartite Alliance for Fair and Progressive Employment Practices has also issued a Tripartite Advisory on Managing Workplace Harassment, which sets out some guidelines to employers on managing workplace harassment.

Increasingly, workplace policies also specifically address the issue of harassment at the workplace and the sanctions therefor.

SINGAPORE

DISCRIMINATION

Under Article 12 of the Constitution of Singapore, all persons must be guaranteed equality and equal protection under the law. More specifically, there must not be discrimination against a Singapore citizen on the ground of religion, race, descent, or place of birth.

Furthermore, under the Tripartite Guidelines on Fair Employment Practices, employers are required to adopt fair employment practices.

It is also common (and indeed good practice) for employers to implement anti-discrimination policies at the workplace.

UNIONS

Representation

The Trade Unions Act 1940 and the Industrial Relations Act 1960 govern the registration, operation, and recognition of trade unions in Singapore.

Industrial Disputation

It is only lawful to take industrial action (e.g., strikes, lockouts, slowdowns) under certain circumstances, which are prescribed by the Trade Disputes Act 1941.

COVID-19 RESUMING BUSINESS AND VACCINATION CONSIDERATIONS

Resuming Business

From 15 January 2022, employers may allow up to 50% of employees who can work from home to return to the workplace, provided that the relevant employees are either one of the following:

- Fully vaccinated with a vaccine under the National Vaccination Programme or WHO Emergency Use Listing and their respective post-vaccination duration.
- Certified to be medically ineligible or have recovered from COVID-19 within the past 180 days.

As a concession, between 15 January 2022 and 31 January 2022, partially vaccinated employees (i.e., employees who have taken at least one dose of a COVID-19 vaccine but who are not yet fully vaccinated) will be permitted to enter the workplace if they have tested negative for COVID-19 within 24 hours before the expected end of work at the workplace via a Pre-Event Test administered by a COVID-19 test provider approved by the Ministry of Health.

Safe Management Measures

Employers who have employees (including contractors and vendors) who attend at the workplace must comply with the Safe Management Measures issued by the Ministry of Manpower, the National Trades Union Congress, and the Singapore National Employers Federation, which include:

- Implementing a detailed monitoring plan to ensure compliance with the applicable Safe Management Measures and timely resolution of outstanding issues.
- Appointing a safe management officer to assist in the implementation of Safe Management Measures.
- Staggering start times and allowing flexible workplace hours for employees working at the workplace.
- Not cross-deploying employees across more than one worksite and, where cross-deployment cannot be avoided, ensuring that

	additional safeguards are taken to minimize the risk of cross-infection and that there is no direct contact between any cross-deployed employees. • Visually demarcating safe distances of at least one meter in work areas, meeting rooms, pantries, etc. • Using TraceTogether-only SafeEntry to record the entry of all employees and visitors at the workplace. • Requiring employees and visitors to wear face masks at all times at the workplace. • Minimizing the need for physical touchpoints and, where physical contact is required, ensuring that additional safeguards are in place to minimize the risk of cross-infection. • Encouraging employees to observe good personal hygiene. • Ensuring that the relevant Safe Management Measures guidelines governing work-related events are observed. • Ensuring no social gatherings take place at the workplace. • Cleaning common spaces regularly and making disinfecting agents available. • Where possible, increasing ventilation by increasing mechanical airflow and opening windows or doors to facilitate higher exchange of air. • Measuring carbon dioxide levels at the workplace to keep within the National Environment Agency's guidelines of 800 parts per million. • Taking care of employees who become unwell at the workplace. • Actively monitoring unwell employees to guard against incipient outbreaks of COVID-19 at the workplace. The Safe Management Measures apply to workplace settings in general, while workplaces in certain sectors may have to fulfill additional requirements.
Restricting Entry of Certain Employees at the Workplace	Employers should ensure that an employee who is subject to a movement control measure requiring the employee to not leave a place of accommodation does not enter the workplace, as pursuant to the Infectious Diseases (COVID-19 – Stay Orders) Regulations 2020, such individuals must not leave their place of accommodation.

KOREA

KOREA

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT

Immigration/Visa Requirements	Korea offers long-term and short-term general work visas for business-related purposes. The appropriate visa depends on the nature of the employment and type of entity with which the employee seeks to work. Some of the visas available to work in Korea include: • C-4: Short-Term Employment – designed for temporary work that lasts less than 90 days. • E-1: Professorship – required where academics that meet certain qualification requirements under the Higher Education Act intend to give lectures or conduct research in their field of study at educational institutions beyond college level. • E-2: Foreign Language Instructor – allows visa holder to teach foreign languages at schools, companies, broadcast organizations, and similar facilities. Candidates can teach only their first language and must be educated to degree level. • E-3: Research – for research and development in advanced technology, natural and social sciences, humanities, arts, music, and physical education. • E-4: Technology Transfer – for individuals who are invited to Korea to provide technical expertise in the natural sciences or advanced technology fields. • E-5: Professional Employment – for individuals who hold an international qualification for their profession that is recognized by the Korean government. Examples include law and medicine. • E-6: Arts and Performances – for sports, music, literary, art, or fashion performances for profit. • E-7: Special Occupations – designed for specific types of work. • E-8: Seasonal Worker – for individuals who are invited to Korea to work in farming and fishing villages. • H-1: Working Holiday – for citizens of countries that have entered into a "Memorandum of Understanding or Agreement on Working Holidays" with Korea. It is a short-term visa allowing the visa holder to earn money to cover traveling expenses. Visa holders are allowed to live in Korea for the period of stay prescribed in the foregoing Memorandum of Understanding or Agreement on Working Holidays.
Reference/Background Checks	Background screening is allowed in Korea. Under the Personal Information Protection Act, consent must be obtained by the applicant for background checks that go beyond the scope generally required to enter into an employment agreement.
Police and Other Checks	An employee's consent is required for an employer to obtain an employee's criminal records.

KOREA

Medical Examinations	An employee's consent is required for an employer to obtain an employee's health information.
Minimum Qualifications	Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.

TYPES OF RELATIONSHIPS

Employee	Under the Labor Standards Act, employees can be categorized as permanent employees, fixed-term employees, and part-time employees. Under the Act on the Protection of Fixed-Term and Part-Time Workers, fixed-term employees are employed for a maximum period of two years. A fixed-term employee is deemed to be a permanent employee if employed for longer than two years. Part-time employees are entitled to the same working rights as full-time employees in accordance with the proportion of hours worked. Employees are entitled to statutory employment rights, such as statutory severance pay and paid annual leave.
Independent Contractor	Independent contractors may be engaged. The primary factor that distinguishes employees from independent contractors is the degree of supervision and control exerted by the company over the individual. Independent contractors are not entitled to statutory employment rights.
Labor Hire (Agency Worker)	Under the Act on the Protection of Temporary Agency Workers, agency workers are employed by a temporary work agency, which provides services for a user company. While the employment relationship is with a temporary work agency, the agency workers are employed in accordance with the terms and conditions of a contract executed between the temporary work agency and the user company. The user company can employ agency workers for a maximum period of two years. After this time, the user company is required to employ the agency worker as a permanent or fixed-term employee. Agency workers are entitled to statutory employment rights, such as statutory severance pay and paid annual leave.

ENTITLEMENTS

Minimum Employment Rights	***Working hours and recess*** Under Article 50 of the Labor Standards Act, working hours are not to exceed 40 hours per week, and daily working hours are not to exceed eight hours per day. Employees in managerial or supervisory positions, as well as those employees handing confidential information, are not subject to the statutory limitation on working hours. A flexible working-hour system has been implemented in the Labor Standards Act to allow an employer to have an employee work in excess of the statutory working hours, provided the company obtains the consent of the affected employee. An employee is eligible for a 30-minute recess period for a four-hour shift

	and an hour for a standard working day of eight hours. ***Wages*** The minimum wage is determined by the Ministry of Employment and Labor based on recommendations from the Minimum Wage Council. The minimum wage can be fixed on an hourly, daily, weekly, or monthly basis. The minimum wage for all workers is KRW 8,720 per hour as of 1 January 2021. The minimum wage incorporates fixed allowances to basic pay but does not include discretionary bonuses, overtime, or other fringe benefits. ***Overtime*** Overtime is limited to 12 hours per week paid at 150% or more of the employee's ordinary wage. A seven-day week is counted inclusive of holidays. Overtime includes extended work, night work (between the hours of 10:00 p.m. and 6:00 a.m.), or holiday work. ***Paid time off for work-related injuries*** Under the Labor Standards Act, employers are required to provide paid leave for work-related injuries and illnesses. Employers are required to compensate an employee for any work-related injury, disease, or death by compensating for medical expenses, survivor's compensation, and funeral expenses. ***Annual leave*** Under the Labor Standards Act, an employee is entitled to one paid day off per week. Of the two days each weekend (i.e., Saturday and Sunday), one of the days is legally considered to be a paid day off, while the other is considered to be an unpaid day off. Fifteen days of paid annual leave must be provided to an employee who has been employed with the company for one year and has at least 80% attendance during the year. An additional day is provided for every two years of service thereafter, which is capped at 25 days. ***Public holidays*** Labor Day (1 May) and holidays under the Regulations on Holidays of Government Offices are mandatory paid holidays for employees under the establishment of the Labor Day Act. However, holidays under the Regulations on Holidays of Government Offices will not be applicable to workplaces with five or more but less than 30 employees until January 1, 2022.
Maternity/Paternal Leave and Pay	Under Article 74 of the Labor Standards Act, an employer must grant a pregnant female employee a total of 90 days, or 120 days if pregnant with two or more babies, of paid maternity leave, to be used before or after childbirth. Forty-five days, or 60 days if pregnant with two or more babies, of maternity leave must be allocated after childbirth. The first 60 days, or 75 days if pregnant with two or more babies, of leave are to be paid by the employer, and the remaining 30 days, or 45 days if pregnant with two or more babies, are to be paid from the Employment Insurance Fund. Maternity leave must be allowed for premature births, miscarriages, and

	stillbirths. Under the Gender Equality Employment and Work-Family Balance Support Act, male employees are entitled to 10 days of paid leave within 90 days of the child's birth. ***Caregiver's leave*** Employers are required to provide a minimum of 30 and a maximum of 90 days' family care leave per year for an employee with sick, injured, or elderly family members who require the employee's care. ***Parental leave*** The Gender Equality Employment and Work-Family Balance Support Act entitles employees to a one-year leave of absence for childcare for any male or female employee with a child under the age of eight years. An employee can choose from a variety of methods when utilizing their childcare leave. This includes a one-time or multiple-time use of leave, a one-time or multiple-time use of work-hour reductions, or a combination of childcare leave and work-hour reductions. An employee who is eligible for parental leave is also allowed to use the "work hour reduction system" for up to one year, subject to exceptions, and an employee who chooses to use the "work hour reduction system" in lieu of parental leave may use the system for up to two years. This system allows the employee to work 15–35 hours per week without the employer being able to dismiss or take any adverse action measures against the employee as a result of these reduced working hours for childcare. Following the period of reduced working hours, the employer is obligated to restore the employee back to the same level job at the same pay level.
Discretionary Benefits	***Sick leave and pay*** There is no legal requirement for employers to provide paid leave to employees for non-work-related illnesses or injuries. While employees generally use their annual leave payment for personal sick days, it is not uncommon for companies to provide paid sick leave for non-work-related injuries and illnesses. ***Overtime*** An employer may grant leave to the employee in lieu of paying additional wages for extended, night, and holiday work if a written agreement is entered into with the employee. ***Bonuses*** There are no restrictions or guidelines that govern the payment of bonuses apart from any that may be contained in the company's rules of employment, the applicable collective-bargaining agreement, or the individual employee's employment contract. However, it is common practice in Korea for employers to grant employees some form of bonus, whether it is a fixed bonus or a discretionary bonus based on an employee's individual performance.

KOREA

TERMINATION OF EMPLOYMENT

GROUNDS

Terminations are often implemented through mutual agreements.

Under Article 23 of the Labor Standards Act, an employee cannot be dismissed without justifiable reasons. However, while justifiable reasons are not defined in the act, the courts have generally held that such reasons exist only in limited circumstances and can include continuous unsatisfactory performance on the part of the employee, criminal acts, and grave misconduct, as well as improper relationships with other employees. Employees on sick leave due to employment-related illnesses or injuries or employees on maternity leave cannot be dismissed during their period of absence or within 30 days after their return to work.

MINIMUM ENTITLEMENTS

Payments/Notice

An employer must give 30 days' advance notice of dismissal to an employee or provide the employee with 30 days' ordinary wages in lieu of notice in specific instances.

Notice of termination of employment must be given in writing and specify the reason for the termination and the effective date.

A termination will be invalid if the employee has not been given the opportunity to defend himself or herself, no matter how serious the employee's conduct has been.

Under Article 26 of the Labor Standards Act, advance notice of dismissal is not required in specific circumstances, such as a worker employed for a fixed period of no more than three months; an employer being unable to continue with its business operations due to natural disaster, war, or other unavoidable circumstances; or certain cases in which a worker has intentionally caused a substantial interference with, or loss of, the employer's business or assets.

Statutory Entitlements

The statutory severance pay system entitles employees who have been employed for at least one year a severance payment of 30 days' average wages for each year of continuous service. This applies to those employees who are terminated for any reason, including an employee's decision to resign.

REDUNDANCY

Genuine Redundancy

Redundancies are permitted under Article 24 of the Labor Standards Act. Redundancies are permitted during times of urgent managerial necessity subject to certain procedural requirements.

An employer must make every effort to avoid redundancies. The Korean courts have interpreted this requirement to include the exhaustion of other options, such as early retirement packages, a hiring or wage freeze, the reduction of work hours, transferring employees to other departments, and any other reasonable measures according to the circumstances. An employer must establish rational and fair criteria for dismissing employees.

An employer must file a report with the Minister of Employment and Labor at least 30 days before the effective date of redundancy where more than 10% of the total number of employees are being dismissed. If the employer

	decides to reinstate the same job from which an employee was dismissed within three years of the dismissal, the employer must first offer the job to the previously dismissed employee before hiring a new employee for the role.
Payment	The employer must pay statutory separation pay to departing employees who have worked in the company for at least a year, irrespective of whether their departure was voluntary or involuntary. The employer is obligated to pay the employee 30 days' "average wage" for each consecutive year of service. "Average wage" includes all wages paid by the employer to the employee for the three-month period before the redundancy divided by the total number of working days in the three-month period. The statutory separation pay must be paid to the employee within 14 days of the employee's redundancy. No other benefits are required to be provided to employees who are made redundant; however, as a matter of practice, additional payments are often made in exchange for the employee's resignation.

REMEDIES

Dismissal Action	If an employer dismisses an employee unfairly, the worker may apply for remedy to the Regional Labor Relations Commission. The commission will conduct the necessary investigations and is governed by the Labor Relations Commission Act. The commission may offer reinstatement with back pay, or a lump-sum payment may be granted where the employee does not wish to be reinstated. When an employee is dismissed without cause, he or she may initiate civil proceedings in the district court.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business	In the event of a business transfer, employees automatically adopt the working terms, conditions, and liabilities of the transferor, unless the employees agree otherwise. Employees will be protected against dismissal in the event of a business transfer, unless there is just cause to dismiss an employee.

RESTRUCTURING

Notification	Where an employment agreement contemplates that the employer can change an employee's work duties or place of work, a notice to the employee about the change becomes effective upon the employee's receipt of the notice, regardless of the timing or method of such notice. In order to change the terms and conditions of employment, the employer must notify the employee of such changes. When an employer makes any changes to the components of payroll, how wages are calculated, how payment will be made, work hours, holidays, or annual paid leave, employees must be clearly notified of the changes in

	writing.
Consultation	A change of work duties or the place of work does not require consultation with an employee (i.e., a unilateral decision by the employer is permitted). However, if such a change is substantially unfavorable to the employee, it could be considered an abuse of the employer's power and invalidated. Under Article 657, paragraph 1 of the Civil Act, the transfer of an employee (from the original employer to another employer) requires the employee's consent. Such transfer may be permitted without the employee's consent if: • There was an implied consent given by the employee. • The transfer is to certain entities that were previously identified in an employment agreement and there was a comprehensive consent provision agreeing to the transfer of employees to those entities contained within the employment agreement. • Such transfer is a customary practice. Under Article 94 of the Labor Standards Act, in order for an employer to change the Rules of Employment, the employer must first solicit the opinions of a labor union comprised of a majority of the employees, or, if there is no labor union comprised of a majority of the employees, the employer must first solicit the opinions of a majority of the employees. If the Rules of Employment are to be amended in such a way that results in a disadvantage to the employees, the employer must first obtain consent of the employees.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

The company owns all intellectual property rights that are created by an employee in the course of his or her employment, provided that proper notification is provided and reasonable compensation is provided to the employee.

Confidential information and trade secrets are protected either by the contract of employment or under the Unfair Competition Prevention and Trade Secret Protection Act.

While confidentiality provisions are generally included in employment contracts or work rules, there also is an implied duty of loyalty and confidentiality between employer and employee.

CONTRACTUAL RESTRAINTS AND NON-COMPETES

Non-competes are binding and enforceable in Korea if they are reasonable for the type of employment concerned. Generally, Korean courts tend to limit the period of a non-compete to between six and 12 months.

PRIVACY OBLIGATIONS

Under the Personal Information Protection Act, an employee is entitled to request of his or her employer access to the employee's own personal

information in the employer's personnel files for the purpose of updating or deleting that personal information.

Under the Labor Standards Act, an employer should preserve important documents regarding a specific employment contract for a period of three years.

The Personal Information Protection Act also restrains an employer from providing an employee's personal information to a third party without the consent of the employee.

Internal policies and plans to manage all employees' personal information must be implemented.

WORKPLACE SURVEILLANCE

An employer must obtain express consent from employees to monitor emails. Notice of monitoring is insufficient.

According to the Act on the Promotion of Workers' Participation and Cooperation, any business having 30 or more employees should establish a labor management council to consult on labor matters, such as installation of surveillance equipment in the workplace.

Article 93 of the Labor Standards Act requires an employer of 10 or more employees to prepare rules of employment, including a code of conduct and working conditions that are applicable to all employees (Rules of Employment). If there is a provision relating to workplace investigations in the Rules of Employment, the employer should comply with it.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

If employee performance and conduct are covered under the company's Rules of Employment, the management of employees' performance and conduct is governed by those rules. In practice, companies generally establish personnel management guidelines and follow the guidelines.

BULLYING AND HARASSMENT

Bullying

Under Article 76-2 of the Labor Standards Act, workplace bullying is prohibited. An employer that becomes aware of workplace bullying or receives a complaint about workplace bullying is required to conduct an investigation into the matter. If workplace bullying is confirmed, the employer is required to, at the request of the victim, take appropriate steps such as reassignment of the victim, change of the victim's work location, or paid leave, and also take appropriate steps against the wrongdoer, such as disciplinary action or change of work location.

Harassment

The Gender Equality Employment and Work-Family Balance Support Act strictly prohibits sexual harassment in the workplace.

KOREA

DISCRIMINATION

Under Article 6 of the Labor Standards Act, an employer is prohibited from discriminating against an employee on the basis of gender, nationality, religion, or social status. Age discrimination is also prohibited.

Discrimination is also prohibited against disabled employees, female employees, foreign workers, and non-regular workers.

An employee who has been discriminated against can bring a claim before the National Human Rights Commission. The commission can make a recommendation for the discriminatory behavior to cease or award damages.

UNIONS

Representation

Under Article 33 of the Constitution, employees have the right to freedom of association, collective bargaining, and collective action.

An employee has a right to establish, operate, or join a trade union. Collective bargaining will have a binding effect.

The Trade Union and Labor Relations Adjustment Act regulates the formation of trade unions and collective bargaining.

Industrial Disputation

Labor unions retain the right to bargain with and take industrial action against the employer under certain circumstances.

Under Article 45 of the Trade Union and Labor Relations Adjustment Act, mediation must be conducted before industrial action is taken.

COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS

Business Suspension Allowance

Under Article 46 of the Labor Standards Act, if an employer suspends its business operations due to causes attributable to the employer, its employees would be entitled to an allowance equal to 70% of the employees' average wages during the suspension period (if the amount exceeds the amount of ordinary wages, the employer may pay ordinary wages), unless the business suspension is caused by natural disaster, war, or other similar unforeseeable or unavoidable events.

If an employer suspends its business operations at its own discretion to prevent the spread of communicable disease in the absence of requests for leave by the employees, the employer would be required to pay the business suspension allowance. However, an employer would have no such obligation if its business is suspended by government order (e.g., quarantine order) or other unforeseeable or unavoidable events.

Work From Home; Shutdown; Face-to-Face Meetings

The Korean government has not mandated work from home, business shutdowns, or avoidance of face-to-face meetings, but it has issued a recommendation for the implementation of the foregoing measures.

There are no clear guidelines on the allocation of costs incurred by employees for working from home (e.g., telecommunications costs, office supplies), but the Korean labor authority has taken the position that such costs should in principle be borne by the employer and recommended that the employers and employees reach a clear agreement on the allocation of such costs.

TAIWAN

TAIWAN

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT	
Immigration/Visa Requirements	Employers are responsible for ensuring their employees have legal status to work in Taiwan and are required to file applications for work permits on behalf of all foreign workers they employ. Foreign workers must have visas to live and work in Taiwan, on either a temporary or permanent basis. When a foreign worker is required to stay in Taiwan for more than 180 days, he or she will need to obtain a resident visa.
Reference/Background Checks	An employer must obtain an employee's consent to gather his or her personal data.
Police and Other Checks	The Personal Data Protection Act (PDPA) requires an employee's written consent to gather personal information of this nature. Furthermore, pursuant to the Employment Service Act, an employer is not allowed to force its employees or candidates for employment to submit themselves to background checks or to provide personal information that is not related to the jobs that they are performing or for which they are applying.
Medical Examinations	The PDPA requires an employee's written consent to gather personal information of this nature.
Minimum Qualifications	Employers may set minimum qualifications to ensure applicants are suitable for an advertised job. However, pursuant to the Employment Service Act, for the purpose of ensuring every national's equal opportunity in employment, employers are prohibited from discriminating against any job applicant or employee on the basis of race, class, language, ideology, religion, political party, place of origin, place of birth, gender, sexual orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union, unless otherwise stated clearly in other laws.
TYPES OF RELATIONSHIPS	
Employee	Part-time and full-time employment agreements are both allowed under Taiwanese labor law; however, compensation paid to either type of employee must reach the minimum standards required by the government, which are NTD158 per hour and NTD23,800 per month, respectively. Fixed-term employment agreements may be permitted by the government authorities subject to certain conditions required by Taiwanese labor law.
Independent Contractor	Businesses can engage an individual to provide services under a service agreement; such individuals will not be classified as employees and, therefore, will not be entitled to employee benefits.
Dispatching Relationship	The employment agreement between an employee who is employed by a dispatching entity but actually works for the dispatch-requiring entity and the dispatching entity must be under an agreement without a fixed term. Before the dispatching entity and the dispatched employee sign an employment agreement, the dispatch-requiring entity is prohibited from

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	interviewing or appointing the specific dispatched employee.
Labor Hire	It is not common for businesses to engage contractors for a short-term project or during a temporary labor shortage.

INSTRUMENTS OF EMPLOYMENT

Contracts	There is no mandatory requirement for the format of an employment agreement.
Codes or Rules	In Taiwan, there are no specific requirements on the format of employment agreements. However, it is very common for employment agreements to refer to the Labor Standards Act (LSA) if the clauses in the employment agreement are not comprehensive.
Registered Agreements	Foreign workers must file an employment agreement when the employer is applying for a work permit on their behalf. Other than the above, there is no legal requirement for registration of an employment agreement.
Policies	Work rules must be established and filed with government authorities if a business has 30 or more employees.

ENTITLEMENTS

Minimum Employment Rights

Maximum working hours

The maximum working hours an employee can be required to work are eight hours per day and 40 hours per week, unless certain exceptional conditions exist.

Annual leave

All employees are entitled to be paid annual leave based on their length of employment as stipulated below:

- Three days when employed for six months or more but less than one year.
- Seven days when employed for one or more but less than two years.
- Ten days when employed for two or more but less than three years.
- Fourteen days when employed for three or more but less than five years.
- Fifteen days when employed for five or more but less than 10 years.
- One additional day for each year of service over 10 years, up to a maximum of 30 days.

Parental leave

Parents are entitled to a maximum of two years of parental leave without pay, which must be taken before the child reaches three years of age.

Birth leave

Mothers are entitled to a maximum of eight weeks of paid birth leave per child.

Employers must pay an employee's full salary if the employee has worked for more than six months and half salary if the employee has worked for less than six months.

Miscarriage leave

Female employees who have worked for the employer for more than six months are entitled to four weeks of paid miscarriage leave if they miscarry after three or more months of pregnancy and half pay if the employee has worked for the employer for less than six months.

Employees who have a miscarriage after a pregnancy of more than two months but less than three months will be entitled to one week of leave without pay.

Employees who have a miscarriage after a pregnancy of less than two months will be entitled to five days of leave without pay.

Personal leave

Employees are entitled to take a maximum of 14 days unpaid personal leave per year.

Compassionate leave

Employees are entitled to take:

- Eight days of paid wedding leave.
- Three to eight days of paid compassionate leave.
- Thirty days of sick leave not involving hospitalization (at half pay).
- One year of sick leave involving hospitalization (without pay) every two years.
- Total sick leave with and without hospitalization of up to one year.

Special holidays

Employees are entitled to some special holidays on specific dates regulated by Taiwanese labor law.

Redundancy pay

Employees are entitled to a redundancy payment based on length of service.

Retirement pay

Employees are entitled to retirement payments based on length of service.

Compensation for professional injuries

Employees or their survivors are entitled to receive:

- Compensation based on their preexisting wages, or the equivalent of 40 months' salary, if the employee completely loses the ability to work.
- Compensation subject to the degree of their injuries.

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	• Compensation equivalent to 45 months' salary in the event of death.
Discretionary Benefits	Employers are required to give a discretionary bonus to employees if the employer enjoys a net profit after tax.

TERMINATION OF EMPLOYMENT

GROUNDS	
	Termination of employment by an employer must comply with Articles 11, 12, and 13 of the LSA. Termination of employment by an employee (resignation) can be solely "at will" subject to prior notice as required by Taiwanese labor law. Termination by mutual consent of the parties is permitted.
MINIMUM ENTITLEMENTS	
Payments/Notice	Employers are not responsible for any payments when a fixed-term employment agreement expires. In the event of termination of a non-fixed-term employment agreement, an employer will pay redundancy based on the employee's length of service.
Statutory Entitlements	Employees are entitled to be given a certificate for their services from their employer after termination of the employment agreement.
REDUNDANCY	
Genuine Redundancy	Redundancy can be on the circumstances listed in Article 11 of the LSA or by mutual consent.
Consultation	Within 10 days from the date of submission of the mass redundancy plan, the employees and the employer will enter into a consultation process.

Payment	Payment for redundancy will be calculated and paid based on an employee's length of service.
	• Employees who were employed before 30 June 2005:
	  • If the employees continue to work for a business entity owned by the same employer, the severance pay will be equal to one month's average wage for each year of service.
	  • The severance pay for the months remaining after calculation in ac based cordance with the preceding subparagraph, or for workers who have been employed for less than one year, will be calculated proportionally; any period of employment less than a month will be calculated as one month.
	• Employees who were employed after 1 July 2005:
	  • Employees will have their severance pay paid by the employer based on their seniority. The payment will be half a month of average wages for every full year of employment

	and prorated for periods of employment less than one full year.

REMEDIES

Dismissal Action	In Taiwan, an unfair dismissal constitutes an illegal termination of the employment agreement, and the employee may claim compensation. Courts are able to grant provisional injunction orders for continuous monthly payments to an employee during any relevant litigation period.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business	If the transfer of business is consummated in accordance with the Business Mergers and Acquisitions Law or the LSA, the procedures for employment transfer stated therein apply. If not, then the employee transfer, including the terms of such transfer, is subject to separate agreements between the new employer and transferred employees.

RESTRUCTURING

Notification	If the transfer of business is consummated in accordance with the Business Mergers and Acquisitions Law, notification should be given 30 days before the reference date of the merger/consolidation and acquisition. If the transfer of business is consummated in accordance with the LSA, there are no regulations regarding notification.
Consultation	Not regulated in Taiwan.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

	Employees are required to protect trade secrets under the Trade Secrets Act. Employees will not necessarily be required to protect information outside the scope of a “trade secret.”

CONTRACTUAL RESTRAINTS AND NON-COMPETES

	An employer will not enter into a post-employment, non-competition agreement with employees unless the following requirements have been met: • The employer has proper business interests that require protection. • The position or job of the employee entitles him or her to have

access to or to be able to use the employer's trade secrets.

- The period, geographic area, scope of restricted occupational activities, and prospective employers with respect to the business competition limitation will not exceed a reasonable range.
- The employer will reasonably compensate the employee concerned who does not engage in business competition activities for the losses thereby incurred by him or her.

PRIVACY OBLIGATIONS

The gathering and use of an employee's personal information is subject to the PDPA and its regulations.

WORKPLACE SURVEILLANCE

Workplace surveillance is not specifically regulated in Taiwan; however, certain workplace areas cannot be "monitored," including toilet/bathroom and changing room areas.

WORKPLACE INVESTIGATIONS

Workplace investigation is not specifically regulated in Taiwan; however, only authorities (police/prosecutor) with a search warrant can search a person's personal property. Employers are not allowed to implement an inspection of employees' properties.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

In order to encourage the spirit of hard work and to ensure the progress of work, the employer may, depending on the needs thereof, conduct performance reviews of employees.

BULLYING AND HARASSMENT

Bullying	Not specifically regulated.
Harassment	Employers will prevent and correct sexual harassment. For employers having more than 30 employees, measures for preventing and correcting sexual harassment, related complaint procedures, and disciplinary measures must be formally established. All these measures will be openly displayed in the workplace.

DISCRIMINATION

Sexual discrimination is prohibited under the Act of Gender Equality in Employment.

TAIWAN

UNIONS	
Representation	Establishment of a labor union is not mandatory under Taiwanese labor laws.
Right of Entry	All employees are entitled to join a union if it exists.
Industrial Disputes	Not applicable.

COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS	
Occupation Health and Safety	Employers will take necessary management measures for protecting employees based on the Workplace Safety and Health Protection Guideline for COVID-19. For example, employers will provide adequate face masks in the workspace for employees. If employees choose to return to the office but their employer does not provide necessary preventive equipment or measures, employees may refuse to provide services. If the employer further forces employees to return to the office resulting in injury to their rights and interests, the employees may terminate the labor contracts and require the employers to pay severance.
Occupational Safety and Health on Working from Home	Employers are required to implement necessary safety and health management measures for work-from-home (WFH) employees, including necessary preventive equipment and measures, supplies for home workspaces and work-related facilities, physical and mental health management, education and training, and communication and management.
Leave and Entitlements	Employers will provide leave for isolation or quarantine for employees who are required to stay at home to take home isolation or home quarantine based on the requirements from the health authorities, and they will not treat it as a non-attendance.
Return to the Office	Employers may require mandatory testing or disclosure of vaccination status as a condition to return to the office. However, employers may not require mandatory testing or disclosure of vaccination status as a condition to continuous employment. Employees have rights to work. Employees who have not been vaccinated but refuse to take the testing may be required to WFH or to take proper isolation measures in the office. However, employers cannot impose any disciplinary actions or terminate their employment.
Mandatory Vaccination	Except for specific industries designated by the Taiwan Centers for Disease Control, employers are prohibited from requiring their employees to become vaccinated or to make vaccination a condition of employment. In addition, if employers would like to ask job applicants/employees to provide vaccination information, the consent of job applicants/employees to provide such information is required.

UAE

UAE

EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT

Immigration/Visa Requirements	Employers must ensure that their employees are lawfully allowed to work and reside within the United Arab Emirates (UAE). Foreign workers must have residency or work permits to work and reside in the UAE. Residency/work permits are issued to foreign workers who are sponsored either by their spouse, family member, or by their employer. Recent reforms to the residency system in the UAE have made it possible for foreign workers to potentially apply for residency by sponsoring themselves under the "freelancer" visa or the "green visa". Further information on how to apply and the requirements for both the freelancer visa and the green visa are expected to be issued by the UAE government in due course.
Reference/Background Checks	An employer may request a reference from an employee's previous or current employer directly. There are no statutory obligations for the employer to provide a reference. An employee has the right to request and obtain a certificate from his or her employer setting out the period of employment, the nature of the work performed by the employee during the employment, and details of the employee's last pay package.
Police and Other Checks	Foreign workers from certain countries may be required to provide a police clearance certificate from their home country in order to qualify for a residency/work permit within the UAE. An employer may request that a UAE national, or a foreign worker residing in the UAE for a long period, obtain a police clearance certificate from the UAE authorities.
Medical Examinations	Foreign workers are required to undergo a medical exam in order to qualify for a residency/work permit within the UAE, for screening of certain statutory-prescribed diseases.
Minimum Qualifications	In relation to certain professions or management positions, employees must verify their education qualifications as part of the sponsorship process in order to qualify for a residency/work permit within the UAE.

TYPES OF RELATIONSHIPS

Employee	The UAE recently published the New Labor Law No. 33 of 2021 (New Labor Law), which repeals Federal Labor Law No. 8 of 1980 (Previous Law). The New Labor Law comes into effect on 2 February 2022 and provides the requirement to have employment contracts with fixed terms only, removing the possibility to have unlimited term contracts. The New Labor Law states that the term of fixed employment contracts must not exceed three years. The term may be extended or renewed, any number of times, for similar or shorter terms. Any extension or renewal of the term will be added when calculating an employee's period of continuous service (i.e., with respect to calculating any applicable end of service gratuity). Where parties do not expressly renew or extend the term but continue performing the contract, the term is deemed automatically

	extended on the same terms and conditions. The New Labor Law sets out different work models including Full-time, Part-time, temporary and flexible working. Employees attract different entitlements depending on the basis of their employment.
Independent Contractor	Previously, foreign workers were not permitted to work as independent contractors, as they needed to be under the sponsorship of their employers in order to live and work legally within the UAE. Following recent reforms to the UAE residency system, foreign workers may now apply for a freelancer visa or green visa, both of which may allow them to sponsor themselves and their families to live and work in the UAE without the need for an employer. Further information and guidance on applying for these new types of visas are expected to be issued soon.
Labor Hire	Not applicable.
INSTRUMENTS OF EMPLOYMENT	
Contracts	Terms and conditions of employment must be written (in at least Arabic), executed by the employee and employer, and filed with the relevant government agency.
Codes or Rules	The New Labor Law applies within the UAE except within the Dubai International Financial Centre and the Abu Dhabi Global Market, which have their own employment laws and regulations. Free zone regulations (if applicable).
Registered Agreements	The employment contract must be registered with the relevant government agency in order to obtain a work permit for the employee.
Policies	The Regulations of the Work, Disciplinary Measures, Complaints and Grievances, Incentives and Promotions, Safety guiding and Awareness policy.
ENTITLEMENTS	
Minimum Employment Rights	The New Labor Law sets out the minimum employment rights of foreign and domestic employees. ***Hours of work*** The maximum working hours are eight hours per day or 48 hours per week. An employer may require an employee to work additional hours over the maximum working hours provided they do not exceed two hours a day, unless the work is necessary to prevent the occurrence of a serious loss or accident or to eliminate or mitigate its effects. In any event, the total working hours must not exceed 144 hours every three weeks. The Executive Regulations of the New Labor Law (Executive Regulations) provide that working hours will be reduced by two hours during the holy month of Ramadan. The maximum working hours for youth employees (employees aged between 15 and 18) is six hours per day, with a minimum of one hour at least as a break time. Youth employees may not work for more than four hours consecutively.

The following categories of work and employees will be excluded from the provisions relating to the maximum number of working hours set by the New Law and the Executive Regulations:

- Chairpersons and members of the board of directors.
- Individuals holding supervisory positions if such positions give their holders powers of the employer.
- Naval vessel employees and employees working at sea who are subject to special conditions of service due to the nature of their work.
- Technical work that requires continuous work through consecutive shifts, provided that the average working hours per week do not exceed 56 hours.
- Preparatory or complementary work that must be performed outside of the working hours established for work at the establishment.

Annual leave

Every full-time employee is entitled to 30 calendar days' annual leave per annum once their period of service is at least one year and two days per month where their period of service is more than six months but less than one year.

Part-time employees shall be entitled to an annual leave according to the actual working hours spent by the employee with the employer, the duration of which shall be determined in the employment contract in accordance with the Executive Regulations.

An employee can only carry over up to half of their unused annual leave to the next year or agree with their employer to be paid in lieu thereof based on the basic pay received at the time the leave entitlement was accrued.

Maternity leave

Under the New Labor Law, female employees are entitled to maternity leave of 45 days with full pay, and 15 days with half pay.

The New Labor Law also states that a female employee will be entitled to her maternity leave as stipulated if delivery takes place six months or more after pregnancy, even if the child is stillborn or is born alive but dies.

A female employee shall be entitled, in the event where she gives birth to a sick or disabled child "people of determination" and whose health condition requires a constant companion according to a medical report issued by the Medical Entity, to a leave of 30 days with full pay starting after the end of the period of maternity leave. She shall have the right to extend the leave for 30 days without pay.

Paternity Leave

Parental leave is also offered for both parents for five days for child care to be taken within six months from the date of birth.

Sick leave

Employees are entitled to 90 days of sick leave (three months after completion of the probationary period) as follows:

- First 15 days with full pay.

- Next 30 days with half pay.
- Any subsequent period with no pay.

Public holidays

Employees are entitled to leave with full pay on public holidays as announced by the Ministry of Human Resources and Emiratization (Ministry) for the private sector.

Special leave

The New Labor Law introduces five days of paid bereavement leave for the death of a spouse and three days for the death of a parent, child, sibling, grandchild or grandparent, commencing from the date of death.

The New Labor Law does not make provisions for Hajj leave.

Repatriation

An employer must repatriate the employee if the employee does not secure alternative employment within 30 days of termination. Unless something more was agreed, the employer shall pay for the employee's flight back to his or her home country. If the employee, upon the termination of the employment relationship, is employed by another employer in the UAE, the new employer would be liable for the repatriation expenses of the employee.

Health insurance

The New Labor Law requires employers to bear healthcare costs in accordance with the applicable legislation. It also requires employers to bear the costs of insurances, contributions and securities specified by any applicable legislation in force.

In Dubai (Dubai Health Insurance Law No. 11 of 2013), employers are required to put in place health insurance coverage for all of their employees that meet the minimum requirements of the Health Insurance Law.

The Dubai Health Authority has specified a minimum level of benefits that must be provided in any health insurance plan.

The same is required in Abu Dhabi, where employers or sponsors are required to provide health insurance for their employees.

Discretionary Benefits

Bonuses

Employers may choose to incentivize employees by including bonus provisions in employment contracts or in internal policies. Bonuses are usually dependent on individual, departmental, or business performance and are usually paid at the employer's discretion.

Allowances

Employers may choose to provide certain allowances to their employees, including housing, transportation, travel, and education.

Accommodations

Employers employing employees in areas remote from towns and not connected with them by means of normal transportation must provide the employees with adequate means of transport and a suitable living accommodation.

UAE

TERMINATION OF EMPLOYMENT

GROUNDS

Unlimited term contract

Unlimited term contracts are no longer permissible under the New Labor Law.

Fixed-term contract

The New Labor Law provides a list of events that would terminate an employment contract. These include (without limitation):

- The mutual written agreement of the parties.
- Expiration of the term of the contract (unless it is renewed or extended).
- Upon the decision of either party subject to the requirements relating to termination and notice periods.
- If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
- The permanent closure of the establishment or if the employer becomes bankrupt, insolvent or unable to continue the business for any economic or exceptional reasons. These reasons are to be considered in accordance with the conditions, controls and procedures set by the Executive Regulations and applicable legislation in force at the time.

Either party may terminate the employment contract for a legitimate reason by giving the other a prior written notice, provided that such notice is not less than 30 days and not more than 90 days.

The New Law also provides that parties to an unlimited term employment contract that was entered into before the New Labor Law comes into effect may terminate such contract for a legitimate reason by giving the other:

- 30 days' written notice if the period of services is less than five years;
- 60 days' written notice if the period of service exceeds five years; and
- 90 days' written notice if the period of service exceeds 10 years.

Dismissal for cause

The New Labor Law provides the following list of events that would terminate an employment contract:

1. By mutual written agreement of the parties.
2. The expiration of the term of the contract, unless it is extended or renewed pursuant to the provisions hereof.
3. Upon the will of either party, subject to the provisions of the New Labor Law in relation to termination of employment contract and Notice Period agreed upon in the contract.
4. Employer's death if the subject of the contract is connected with his person.
5. Employee's death or permanent total disability, as evidenced

by a certificate from a licensed medical institution.

6. If the employee is convicted by a final order to a custodial penalty for a term of not less than three months.
7. The permanent closure of the establishment, pursuant to the legislation in force in the UAE.
8. If the employer becomes bankrupt, insolvent or unable to continue in business for any economical or exceptional reasons, in accordance with the conditions, controls and procedures set by the Executive Regulations and the legislation in force in the UAE.
9. If the employee does not meet the conditions for renewal of the Work Permit for any reason outside the control of the employer.

An employer may terminate the employment without providing notice in certain serious circumstances. The New Labor Law provides a similar list of termination without notice events that were present in the Previous Law with some variations. These are listed below:

1. If the employee assume false identity, or submits false certificates or documents.
2. If the employee commits an error resulting in gross material losses to the employer, or deliberately cause harm to the property of the employer, and admits the same, provided that the employer notifies the Ministry of the incident within seven working days of being aware of the occurrence thereof.
3. If the employee violates the policies in relation to Work and employees safety or the workplace, provided that such instructions are in writing and posted in a visible place, and the employee has been advised thereof.
4. If the employee fails to perform his main duties in accordance with the employment contract, and fail to remedy such failure despite a written investigation with him on the matter and two warnings that he will be dismissed in case of recidivism.
5. If the employee divulges the business secrets in relation to industrial or intellectual property, which results in losses to the employer or loss of opportunity or a personal benefit for the employee.
6. If the employee is found during the working hours in a state of drunkenness or under the influence of a narcotic or psychotic substance or commits any act against morals at the Workplace.
7. If the employee commits a verbal, physical or other form of assault punishable by legislation in force in the UAE against the employer, the responsible manager, his supervisor or co-employee.
8. If the employee absents from Work without legal cause or justification acceptable to the employer for more than twenty interrupted days in a year, or more than seven consecutive days.
9. If the employee abuses his position with the aim to obtain

personal gains and profits.

10. If the employee joins another employer without complying with the controls and procedures prescribed in this regard.

An employee may resign without notice in the event that the employer breaches his obligations towards the employee, as set out in the contract or the law. The New Labor Law provides the following list of events where an employee can resign without providing notice:

1. If the employer commits a breach of his obligations to the employee stated in the employment contract or in the New Labor Law or its implementing resolutions, provided that the Ministry is notified by the employee fourteen working days before the date of leaving the work, and the employer's failure to remedy the breach though being notified by the Ministry.
2. If the employee is subject to assault, violence or harassment at the workplace by the employer , or his legal representative, provided that the employee reports such acts to the concerned authorities and the Ministry within five working days from the date on which he is able to report.
3. If the workplace poses a serious threat to the safety or health of the employee, provided that the employer is aware thereof, and has not taken the actions necessary to eliminate such threat. The Executive Regulations determine the requirements for serious threats.
4. If the employer entrusts the employee with a work that is substantially different from the work agreed upon in the employment contract, without the written consent of the employee, except in cases stated in article 12 of the law.

Arbitrary termination

Following the termination of employment, employees in the UAE may pursue claims for arbitrary dismissal under the UAE Labor Law. Whether an employee will be successful with any such claim will depend on the reason for the termination and the process the employer undertook prior to terminating the employment.

An employee's employment will be deemed to have been arbitrarily terminated if the reason for the termination was "irrelevant to the work".

The maximum compensation that can be awarded to an employee pursuant to an arbitrary dismissal claim is three months' pay, calculated based on the last pay received by the employee prior to dismissal.

MINIMUM ENTITLEMENTS

Payments/Notice

At least 30 days' and no more than three months' notice (or payment in lieu).

The New Labor Law provides that parties to an unlimited term employment contract that was entered into before the New Labor Law comes into effect may terminate such contract for a legitimate reason by giving the other:

- 30 days' written notice if the period of services is less than five years;
- 60 days' written notice if the period of service exceeds five years;

	and • 90 days' written notice if the period of service exceeds 10 years. Under the Previous Law, an employer was able to terminate an employee during the probation period without giving any notice. The New Labor Law introduces a notice period of 14 days' prior written notice for terminating an employment contract by the employer during the probation period (which is capped at six months). In addition, the New Labor Law provides an employee who wants to move on to another employer in the UAE during the probationary period shall notify his current employer in writing at least one month before the date on which he intends to terminate the Contract, and unless agreed otherwise the new employer shall compensate the first employer for recruitment or contract costs. The New Labor Law also states that a foreign worker wishing to terminate the employment contract during the probationary period in order to leave the UAE shall notify his employer in writing at least fourteen days prior to date determined for termination of the contract. If the employee wants to return to the UAE and obtains a new work permit within three months from the date of his departure, the new employer shall pay the compensation mentioned above, unless agreed otherwise by the employee and the original employer.
Statutory Entitlements	An employee shall be entitled to be paid for his days of leave if he leaves work before the use, irrespective of the length, for the period for which he did not use his leave. The employee shall be entitled to the leave pay for the fractions of the year in proportion to the period of service, and the same is calculated on the basis of the basic pay. ***Gratuity payment*** The New Labor Law clarifies that a foreign worker who completes at least one year of continuous service will be entitled to gratuity pay, which is calculated on the basis of their basic pay. The New Labor Law expressly provides that the basic pay excludes any other allowances or benefits. Upon termination of employment, for every year of service, the employee is entitled to 21 working days' basic pay for the first five years of service and 30 working days' pay for each additional year of service. The total severance pay must not exceed two years' pay (which includes the basic pay plus any allowances or benefits).

REDUNDANCY

Genuine Redundancy	In the event that the employment is terminated for reasons not related to the work, the employee is entitled to compensation of up to three months' wages depending on seniority and length of service, as compensation for arbitrary termination. However, the courts may find that a genuine redundancy (whereby the duties are not undertaken by another employee) is a valid reason for the termination and the employer is not required to pay compensation.

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REMEDIES	
Dismissal Actions	All disputes must first be referred to the Ministry of Human Resources and Emiratization. If the dispute is not settled, the matter may be transferred to the UAE labor courts.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS	
Transfer of Business	Not applicable in the UAE.

RESTRUCTURING	
Notification	The employment contract will remain valid.
Consultation	Not applicable.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION	
	Employees are barred from divulging confidential information (i.e. trade secrets and information not in the public domain) relating to their employer, either for their personal benefit or the benefit to a third party. Disclosure of confidential information attracts both civil and criminal liability.

CONTRACTUAL RESTRAINTS AND NON-COMPETES	
	As with the Previous Law, the New Labor Law allows employers to agree on non-compete clauses with their employees. However, the New Labor Law provides clarity as to the conditions for such clauses to be enforceable. For instance, non-compete clauses are only enforceable for a maximum of two years after the expiry or termination of an employment contract. Non-compete clauses must also specify the place and type of work, to the extent necessary, to protect the legitimate business' interests of the employer. The statute of limitation to file a claim for breach of a non-compete clause in an employment contract is one year from the date on which the breach is discovered. The Executive Regulations provide additional clarity on the application of a non-compete clause in an employment contract, including situations where the non-compete clause will not apply due to an employer's breach and in situations where both parties agree in writing to dis-apply the clause after the employment contract ends.

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PRIVACY OBLIGATIONS	
	Unless the employee has provided a written waiver, employers have a duty to not disclose confidential information relating to their employees, even if such information was obtained through a third party. The employee's personal data is subject to the provisions of the Personal Data Protection Law

WORKPLACE SURVEILLANCE	
	The New Labor Law is silent as to workplace surveillance. However, it is against the Penal Code and Cybercrimes Law to tape-record, videotape, or photograph individuals without their consent.

WORKPLACE INVESTIGATIONS	
	Investigations are permitted.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT	
	Employment contracts and internal policies may provide for management of employee performance and conduct.

BULLYING AND HARASSMENT	
Bullying	The New Labor Law expressly prohibits sexual harassment, bullying or any verbal, physical or mental abuse against employees by their employer, manager or colleagues.
Harassment	The New Labor Law expressly prohibits sexual harassment, bullying or any verbal, physical or mental abuse against employees by their employer, manager or colleagues

DISCRIMINATION	
	The New Labor Law expressly prohibits discriminating against a person on the ground of race, color, sex, religion, national origin, ethnic origin or disability.

UNIONS	
Representation	Not applicable in the UAE.
Right of Entry	Not applicable in the UAE.
Industrial Disputation	Not applicable in the UAE.

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COVID-19 RETURN TO WORKPLACE / MANDATORY VACCINATION CONSIDERATIONS

Vaccinations	To date, the UAE government has not made any announcement making it mandatory for citizens or residents of the UAE to be vaccinated. That said, the provisions of Federal Law No. (27) of 1981 Concerning Communicable Disease Prevention (the Prevention of Communicable Disease Law), and Cabinet Resolution No. (17) of 2020 Regulating the Violations of Precautionary Measures and Instructions and Duties Imposed to Curb the Spread of Novel Coronavirus (the Cabinet Resolution) are applicable. Article 22(1) of the Prevention of Communicable Disease Law, states: "the Ministry may issue an announcement to be published in the Official Gazette and other media, specifying the infected area and compelling any person in the area to receive mandatory vaccination and immunisation for the prevention of the disease." Article 1(1) of the Cabinet Resolution, states: "A natural or legal person shall not violate the precautionary and preventive measures and instructions and duties regarding health and safety preservation in order to control the risk of spread of Covid-19". In light of the above Prevention of Communicable Disease Law and the Cabinet Resolution, and the general obligation of employees to follow the directions of their employer, employers may require employees to get vaccinated in order to adhere to the relevant safety measures as part of their overall business operations, and to manage the health and safety of all their employees as well as their customers and clients. When requiring employees to get vaccinated, employers should consider the role of the employee, the levels of risk of contracting or passing on the virus in the workplace as well as the employee's personal/medical situation.
Return to the Workplace	Over the past year, the UAE government and the Dubai Health Authority have issued several circulars and guidance concerning COVID-19 guidelines for employer s. As companies in the UAE are now able to operate at 100% capacity, employers are required to follow the issued guidance to maintain the health of their employees and prevent the spread of the virus. The guidelines cover risk assessment, minimizing the risk of COVID-19, taking care of employees/visitors who may be suspected cases, and emergency response procedures.
COVID-19 Related Sick Pay and Redundancies	If an employee is infected with COVID-19, this is treated in the same way as any other sickness absence in terms of payment, as set out above in the Entitlements section. If employees are in a position to work from home and they do work from home during any quarantine period, they need to be paid their full salaries. In respect of termination and redundancies, Ministerial Resolution No. 279 of 2020 allows employers in the private sector to enact temporary precautionary measures as a result of COVID-19 including temporary amendments to the employee's terms and conditions. Although this Ministerial Resolution permits employers to make redundancies/terminations as a result of COVID-19 subject to certain conditions, it does not explicitly provide that employer s can dismiss employees due to the current pandemic by reason of redundancy without

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	compensation being payable. Under the UAE Labor Law, where an employee's termination arises for reasons not related to the employee's work performance, the employer is required to provide compensation in accordance with the UAE Labor Law capped at three months' pay, as well as in accordance with Ministerial Resolution No. 279 of 2020.

Content current as of March 2022

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EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT

Immigration ements	Employers must ensure that their employees are lawfully allowed to work in the United Kingdom (UK). Freedom of movement between the UK and the European Union (EU) ended on 31 December 2020. The UK has now implemented a points-based immigration system which applies equally to EU and non-EU citizens. Employees from outside the UK, excluding Irish citizens, will need to meet certain requirements and apply for permission in advance of working in the UK. The routes under the points-based system that will be most commonly used for overseas companies that wish to establish their business in the UK, include: • A skilled worker route – for workers who have a job offer in an eligible skilled occupation from an approved sponsoring employer. • An intra-company transfer route – for employers who want to transfer a worker from part of their business overseas to work in the UK. Employers will now need a sponsor licence to hire most eligible employees from outside the UK. This includes citizens of the EU, Iceland, Liechtenstein, Norway and Switzerland who arrived in the UK after 31 December 2020. Companies wishing to establish their first presence in the UK may also use a sole representative visa to allow a senior employee, with extensive and relevant industry experience, to migrate to the UK.
Reference/Background Checks	An employer is permitted to contact a prospective employee's referees and previous employers to gather and verify information. However, it is becoming increasingly common for previous employers to confirm dates of employment only. An employer should also take account of its UK General Data Protection Regulation (UK GDPR) obligations when considering or undertaking background checks.
Police and Other Checks	Permitted with the applicant's consent, if necessary, to determine suitability for a particular job, such as working in the financial sector or working with children and vulnerable adults. An employer should also take account of its UK GDPR obligations when considering or undertaking criminal records checks.
Medical Examinations	Permitted with the applicant's consent, if necessary, to determine fitness for a particular job. However, employers who seek medical examinations must ensure that they do not: • Breach UK GDPR or data protection rules regarding the sensitive personal data which they receive as a result of making those checks. • Discriminate on the basis of any ground (most obviously disability, but see further the "Discrimination" section of this UK guide below) revealed by the results of the examinations or searches.

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Minimum Qualifications	Businesses may ask for minimum qualifications to assess an applicant's suitability for a role.

TYPES OF RELATIONSHIPS

Employee	Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis. Employees are entitled to a variety of employment rights, such as holiday and sick pay, and their employers must pay national insurance contributions (NICs) to HM Revenue and Customs (HMRC) in addition to their employees' wages.
Independent Contractor	Businesses often engage self-employed contractors on a fee-for-service basis. However, contractors do not have any employment rights, and businesses do not need to pay NICs in addition to their consultancy fees. Employment tribunals and HMRC will scrutinise the relationship between any contractor and the organisation for which the contractor performs services to ensure that the relationship is not used to avoid tax or to "contract out" of giving an individual employment rights. On 6 April 2021, new "off-payroll working" rules (commonly known as IR35) came into force, which increase the tax risks for end-user companies who use independent contractors who contract through their personal service companies.
Labour Hire	Agency workers are often engaged by hiring businesses for short periods and are common in industries such as building and construction or information technology. Agency workers are not employed by the hirer and may not even be employees of the agency. However, agency workers must be given the same access to communal facilities, such as canteens, car parks, and childcare. They also acquire certain rights after working for the hirer for more than 12 weeks and must be given the same basic rights (such as pay, hours, rest periods and annual leave) as the hirer's own employees.
Worker	UK employment law also recognises a third, hybrid category called a "worker". A worker is someone who provides services personally and is not in business on his or her own account but who is not an employee. Workers qualify for certain limited rights, for example, the right to be paid the National Minimum Wage and the right to paid holiday leave.

INSTRUMENTS OF EMPLOYMENT

Contracts	Employment contracts can be oral or in writing, although there is a statutory requirement that an employee receives a written Statement of Terms and Conditions of Employment (Statement) within two months of commencing employment. This Statement must contain certain specified information, for example, details of pay, notice periods, duties, holidays, training, paid leave and hours of work. The Statement must also contain a reference to the employer's disciplinary and grievance procedures (see the "Policies" section of this UK guide below). As of 6 April 2020, all workers as well as employees were given the right to a written statement of terms and it became a "day-one" right for those employed after 6 April 2020. Failure to provide an employee with a Statement in accordance with Section 1 of the Employment Rights Act 1996 can lead to an employee being awarded two to four weeks' salary.

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Codes or Rules	Trade unions may negotiate collective agreements with employers within a certain industry. Such an agreement may cover: • Terms and conditions of employment and conditions of work. • Hiring, firing and suspension. • Allocation of work. • Discipline. • Union membership. • Union recognition. • Facilities agreements. • Procedures. • Other machinery of collective bargaining. Collective agreements are legally binding where they are in writing and stated to be so or where the agreement is incorporated into the worker's contract. Employers can also establish internal employee works councils in order to consult with their employees about economic and employment-related matters, although these work councils are relatively rare in the UK. In the absence of the employer recognising a trade union or works council, there are no industry-wide collective bargaining agreements which apply by default as there are in some other countries.
Registered Agreements	UK employment law does not recognise this concept.
Policies	Employers must provide employees with their disciplinary and grievance policies, either in the employee's contract of employment itself or in a separate policy or handbook. A written health and safety policy is also legally required for businesses that employ five or more people. While there is no other requirement for employers to put other policies in place, it is strongly advised that employers establish an employee handbook that contains details of all other relevant policies. Employers should have an anti-bribery policy, as this will help them demonstrate that they have put adequate procedures in place designed to prevent bribery and, therefore, defend any corporate prosecution under the Bribery Act 2010.

ENTITLEMENTS

Minimum Employment Rights	***Hours of work*** There is a statutory restriction on the number of hours that an employee can work. Employees may not, on average, work more than 48 hours per week. However, employers can ask that employees consent in writing to "opt out" of the 48-hour weekly working limit. If employees opt out, they must be able to "opt in" on no more than three months' notice. ***Holidays*** Employees have a statutory entitlement to paid holiday leave of 5.6 weeks per year inclusive of the UK's eight public holidays (i.e. 28 days for an

employee who works five days per week). They cannot be paid in lieu of this entitlement, except on termination, and employees must take four weeks of their statutory entitlement in each holiday year, but they can carry any remaining holiday over to another holiday year if their employer is in agreement.

Maternity leave

All employees are entitled to paid leave to attend antenatal appointments and one year's statutory maternity leave, regardless of length of service. This is made up of 26 weeks' Ordinary Maternity Leave (OML) and 26 weeks' Additional Maternity Leave (AML). All employees who qualify for OML will qualify for AML.

A pregnant employee has the right to Statutory Maternity Pay (SMP) if she has been continuously employed by her employer for at least 26 weeks as at the date that is 15 weeks before the due date for the birth. SMP is paid for 39 weeks from the time the employee starts maternity leave and is payable at two rates:

- The first six weeks are payable at 90% of the employee's average weekly earnings.
- The remaining 33 weeks at the lower of the "prescribed rate", currently £151.97 per week or 90% of the employee's average weekly earnings.

Employers often offer enhanced maternity pay.

An employee who has taken OML has the right to return to the same job on the same terms and conditions as those under which she was employed before her absence.

An employee who returns to work after AML is also entitled to return to the same job on the same terms and conditions as if she has not been absent. However, in this case, if it is not reasonably practicable for her employer to offer the employee her original job, she is entitled to be offered another suitable alternative position.

Paternity and shared parental leave

Employees who support a child's mother or adopter (whether male or female) also have an entitlement to either one whole week or two consecutive weeks of paid paternity leave (at the set amount) within 56 days of a child's birth or placement for adoption, provided they have 26 weeks of continuous service with their employer at the end of the 15th week before the expected week of childbirth/placement and continue to work for the employer until the baby is born/placed with them for adoption.

Under the UK's shared parental leave regime, these employees can also share up to 50 of the 52 weeks of the other parent's statutory maternity or adoption leave and up to 37 of the 39 weeks' statutory maternity or adoption pay provided:

- The employee has 26 weeks' continuous service with his or her employer at the end of the 15th week before the expected week of childbirth/placement.
- The other parent must have worked in at least 26 of the 66 weeks before the expected week of childbirth/placement and had average weekly earnings of at least £390 in total across any 13 of those weeks.

Parental leave

Employees (whether male or female) who have one year's service are entitled to take time off work to look after a child or make arrangements for his or her welfare. They may take up to 18 weeks' unpaid leave per child up to the child's 18th birthday. No more than four weeks may be taken in any one year (unless the child is disabled), and leave must be taken in multiples of one week. Parents of disabled children are entitled to take single days of leave.

Since 6 April 2020, all employed parents have the right to two weeks' leave if they lose a child under the age of 18 or suffer a miscarriage or still birth. Parents are also able to claim statutory pay for this period, subject to meeting eligibility criteria.

In addition, there is a statutory right for employees to take time off for dependants, which gives all employees, regardless of service, a right to take a reasonable period of time off to deal with an emergency involving a dependant. Again, this is unpaid.

Flexible working arrangements

All employees with at least 26 weeks' continuous employment can request flexible working arrangements that support a work-life balance, irrespective of whether or not they have caring responsibilities (see the "Personal/Carer's leave and compassionate leave" section in the UK guide below). The government recently announced a consultation on whether to extend this right to all employees from the beginning of their employment.

Personal/Carer's leave and compassionate leave

Other than the parental bereavement leave referred to above, employees do not have statutory rights to personal and compassionate leave; however, employers will usually have policies permitting employees to take such leave.

Employees who care for dependants (including their spouses or civil partners, children or parents) are entitled to unpaid time off to provide assistance where a dependant falls ill, gives birth or is injured or assaulted to make provision for the care of that dependant or in consequence of the death of a dependant. Employees can take time off because of unexpected disruption, and parents can also take time off to deal with unexpected incidents involving their children while they are at school.

Community service leave

Employees in the UK are not granted a direct right to take time off for jury service; however, they are protected from being subjected to a detriment or being dismissed as a result of being summoned to attend or being absent from work on jury service. Employers are not required to pay employees during absence for jury service and (unless the contract provides for payment) this does not constitute a detriment.

Long service leave

There is no statutory entitlement to a period of leave after employees have worked for an employer for a particular length of time. Employers may choose to grant employees a period of sabbatical and, if so, would normally set this out in their staff handbook.

Public holidays

Employees are entitled to paid leave for each day which is proclaimed a public holiday in countries in which they work. If an employer requests an employee to work on a public holiday, they are usually entitled under the

	contract of employment to additional pay or time off in lieu, although this is not legally required. ***Sick pay*** The employer does not have to continue to pay normal salary during illness (unless the employer has agreed to do so in the contract of employment). Instead, employees are entitled to be paid statutory sick pay from the employer for the first 28 weeks of linked absence in any period of three years. The first three days of absence do not count; the employee only becomes entitled to statutory sick pay on the fourth day of absence. The current rate of statutory sick pay is £96.35 per week. ***Remuneration (minimum remuneration, rules for variable remuneration)*** As of April 2021, the minimum hourly wage is £8.91 per hour for an adult worker over the age of 23 and is £8.36 per hour for an adult worker over the age of 21. Different rates apply to younger workers. These rates are reviewed each year. ***Notice periods*** After one month's service, an employee is entitled to receive a minimum of one week's notice of termination of employment from the employer. Once an employee has been employed for at least two years, an employer is required to give one week's notice per complete year of service up to a maximum of 12 weeks after 12 years' service. The minimum notice period required to be given by an employee (regardless of length of service) is one week. The employer and employee can agree to longer notice periods (and often do so) but never less than the statutory minimum. An employer can dismiss without notice if the employee is guilty of gross misconduct. ***Pension*** All employers must automatically enrol all eligible workers in a pension scheme that meets certain requirements and to make minimum contributions to that scheme in respect of those workers (except where a worker chooses to opt out of the scheme). This regime has been phased in over a number of years. There are no provisions to allow employees to take time off in relation to national disasters.
Discretionary Benefits	There is no legal obligation on employers to provide any other form of benefit other than salary and pension contributions (except where the worker chooses to opt out of the scheme), although it is common for employers to do so to remain competitive in the recruitment market. Employers will often pay contractual sick pay in excess of the statutory minimum and provide additional holiday leave entitlements, as well as other commonly provided benefits, such as private health insurance, life assurance and critical illness cover. In relation to bonuses, employers may also choose to incentivise employees by including bonus provisions in employees' contracts, dependent on the employee achieving certain defined aims, or offering discretionary non-contractual bonus schemes, payable by reference to a wider variety of factors, such as team or business performance. Many employers also operate tax-efficient benefits, such as cycle to work and childcare voucher schemes.

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TERMINATION OF EMPLOYMENT

GROUNDS	
	An employee's employment can be terminated by the expiry of a fixed contract by the employer with or, in cases of gross misconduct, without notice or by the employee giving notice or resigning.
MINIMUM ENTITLEMENTS	
Payments/Notice	When an employer terminates an employee's employment for reasons other than serious misconduct, it must give the employee his or her contractual notice period or the statutory minimum (calculated as described in the "Entitlements" section of this UK guide) if greater. Employers may be able to pay the employee in lieu of notice if the contract provides for this. Notice does not need to be provided when an employer terminates an employee for gross misconduct. When an employee resigns, he or she has to give contractual notice period.
REDUNDANCY	
Statutory Entitlements	Payment on termination includes: • Outstanding wages for hours already worked. • Accrued but untaken annual leave. • Payments in lieu of notice and payments in respect of any contractual entitlements that would have been payable during the notice period (if applicable). • Redundancy pay (if applicable).
Genuine Redundancy	Once an employee has completed two years' continuous employment, he or she is entitled to a statutory redundancy payment if dismissed "by reason of redundancy". A genuine redundancy situation will arise where: • An employer has stopped, or intends to stop, carrying on the business either altogether or in the place where the employee is employed. • There is no longer a requirement for an employee or employees to carry out work of a particular kind.
Consultation	Employers must follow a fair procedure and consult with their employees before making them redundant. The scope of employers' consultation duties depends on the size of the business, and employers who are considering making more than 20 employees redundant have more onerous consultation obligations. Further details of employers' consultation rights are provided in the "Restructuring" section of this UK guide.
Payment	The amount of the statutory redundancy payment is calculated in the same way as the basic award for unfair dismissal (see the "Dismissal Actions" section of this UK guide). An employee's weekly pay, up to the statutory limit currently capped at £544, and a maximum of 20 years' service can be taken into account when calculating the statutory redundancy payment,

which as at 6 April 2021 is capped at a maximum of £16,320.

REMEDIES

Dismissal Actions

Employees with two years' service can challenge the fairness of their dismissal by bringing a claim against their employer for unfair dismissal in an Employment Tribunal. In order to successfully defend such a claim, the employer has to demonstrate that it has a fair reason for dismissal and that it has followed a fair procedure.

There are five potentially fair reasons:

- Redundancy.
- Misconduct.
- Capability (including performance or illness).
- Potential breach of a legislative requirement if the employer were to continue to employ the employee (for example, if they did not have a visa).
- Some other substantial reason that justifies dismissal.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS

Transfer of Business

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) prescribes a number of rules that apply if there has been a "relevant transfer".

These rules apply in relation to:

- Asset purchases, where there is a transfer of a business, or part of a business, that is an economic entity (defined as an organised grouping of resources that has the objective of pursuing an economic activity, which includes divisions of businesses) and that economic entity retains its identify following the transfer.
- Service provision changes by which a client:
  - Outsources work by engaging a contractor to do work on its own behalf.
  - Transfers outsourced work from one contractor to another.
  - Brings an outsourced contract "in house", provided that in all cases the activities carried on after the change in service provider are fundamentally or essentially the same as those carried on before the change and that the client (where relevant) remains the same throughout.

TUPE does not apply in relation to share purchases, as there is only a change in the shareholders of a company and there is no transfer of the economic entity's business. However, if there is an internal reorganisation involving the transfer of assets, such as a hive-up or hive-down of assets as a precursor to a share purchase, then TUPE will apply to those transfers.

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RESTRUCTURING

Notification

Employers can dismiss an employee by reason of "redundancy" because they are closing down a particular division or business or the physical location where the employee worked or where they have a reduced requirement for that employee.

Employees are entitled to a statutory redundancy payment, which is calculated by reference to their pay, age and their length of service. An employee's weekly pay, up to the statutory limit, and a maximum of 20 years' service can be taken into account when calculating the statutory redundancy payment, which as at 6 April 2021 is capped at a maximum of £16,320.

Consultation

Where 20 or more employees are being made redundant over a period of 90 days or less at one establishment, an employer must inform and consult employee representatives over a period of 30 days before the first dismissal takes effect. Where 100 or more employees are being made redundant over the same period at one establishment, the required consultation period increases to 45 days. Employers must also inform the government of their intention to make more than 20 employees redundant.

Employers who fail to comply with these information and consultation requirements may be liable to pay up to 90 days' pay in respect of each employee whose rights were breached and could be subject to fines for failure to notify the government. Employers who are proposing to make less than 20 employees redundant must follow a fair procedure and consult with them in an appropriate fashion so as to minimise the risk of unfair dismissal claims being brought against them.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property and trade secrets.

CONTRACTUAL RESTRAINTS AND NON-COMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than the performance of their duties. These provisions restrain employees from using confidential information during and after termination of employment (although, if employment contracts do not include this prohibition, employees will have a limited implied duty not to use or disclose their ex-employers' trade secrets but would be free to use or disclose all other types of confidential information).

As a general principle, an employer can potentially enforce clauses preventing the employee from working for a competitor or from soliciting the employer's employees and customers. These restrictive covenants must protect a legitimate business interest of the employer (such as trade secrets or client connections) and must be reasonable in all the circumstances. Restrictive covenants may be enforceable for a reasonable period of up to 12 months (as appropriate, which will be based on the employee's seniority and position) after termination of an employee's

employment.

PRIVACY OBLIGATIONS

Information that an employer stores about its employees will constitute "personal data" under the UK GDPR. In summary, it is legitimate for an employer to store and to process personal data to the extent that such information is necessary for the purposes of administering the employment contract or for another legal basis. Employers should not generally rely upon employees' consent as a legal basis for processing their personal data because such consent cannot usually be demonstrated to be "freely given", due to the imbalance of power between the parties and because consent may be withdrawn at any time. Additional legal bases, one of which is that the processing is necessary for compliance with employment laws, apply to the processing of special categories of personal data, which is particularly private personal data, including health information and trade union membership. Processing of employees' criminal records similarly requires an additional legal basis. A number of principles apply to the processing of personal data, including that the data must always be kept up to date, secure and may not be transferred outside the UK unless a legal basis applies and certain conditions are met. The employee has several rights in relation to his or her personal data, including rights to access and to correct his or her data.

Employees must be provided with information about what information the employer collects about them and how it is used and processed. Personal data should be retained for no longer than necessary for the purposes for which it is processed, and the employer should put in place a retention policy in relation to its employment records.

WORKPLACE SURVEILLANCE

The records or recordings made as a result of workplace monitoring are likely to contain personal data. Workplace monitoring is subject to the UK GDPR, and relevant matters in relation to workplace monitoring must be taken into account, including whether a legal basis applies to the monitoring and processing of the resulting personal data.

Employers should consider whether workplace surveillance is the right thing to do in all circumstances, proportionate and necessary in order to achieve a legitimate aim, limit the areas in which monitoring takes place to protect employees' privacy adequately and limit the people who have access to such recordings. Covert recording is rarely justifiable and should only be used in exceptional circumstances. Employers should aim to introduce data protection "by design" and should carry out a data protection impact assessment when contemplating any new data processing activity, including surveillance of employees, and employees must be informed about the personal data collection and processing involved in workplace monitoring. The records and results of workplace monitoring should be subject to a retention policy and should be deleted if it is no longer necessary to keep them in order to fulfil the purposes for which they were collected.

WORKPLACE INVESTIGATIONS

Employers must have disciplinary and grievance procedures that set out how they must approach, deal with and investigate complaints or issues they have with their employees. These procedures will provide for the employer to investigate any disciplinary or grievance issue by, for example,

interviewing witnesses and taking witness evidence, as well as reviewing factual evidence.

MANAGING PERFORMANCE AND CONDUCT

Where an employer is contemplating dismissing an employee or taking other relevant disciplinary action (for example, a written warning) in relation to misconduct or poor performance, it should follow a disciplinary process that includes:

- Sending the employee a statement setting out the reasons why the employer is contemplating disciplinary action or dismissal together with the basis of those reasons.
- Holding a meeting to discuss the matter.
- Informing the employee of the decision.
- Holding an appeal meeting if the employee requests an appeal.

Failure by the employer to follow this procedure may result in an Employment Tribunal finding any subsequent dismissal to be procedurally automatically unfair, and damages can be increased by up to 25%.

BULLYING AND HARASSMENT

Bullying

Employers are expected to recognise and protect the dignity of their employees. It is recommended that employers have anti-bullying and anti-harassment policies in place that clearly state:

- That all forms of bullying and harassment are unlawful and will not be tolerated in the workplace.
- The steps that the organisation will take to prevent bullying and harassment.
- That those found to have taken part in bullying or harassing behaviour will be subject to the company's disciplinary procedure.

Employees who make a complaint after being bullied or harassed will be raising a "grievance", which the company must investigate in accordance with its grievance policy.

Harassment

Harassment is defined as unwanted conduct related to a relevant protected characteristic (see the "Discrimination" section of this UK guide below) that violates or intends to violate an individual's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Sexual harassment is prohibited in the UK.

If an employer does not adequately respond to an employee's allegations of harassment, especially if a grievance has been raised, the employee may be entitled to resign and then bring a claim against his or her employer for unfair constructive dismissal and discrimination.

DISCRIMINATION

All employees, regardless of length of service, have the right to not be discriminated against on the grounds of race (including colour, nationality or ethnic origin), sex, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership, or

	age. This applies when offering employment, in the course of employment or in respect of its termination. Damages for discrimination are uncapped and include an award for injury to feelings where applicable. Employees who bring, or might bring, discrimination claims or complaints about harassment or become involved in another employee's discrimination complaint are protected from suffering any detriment because of their actions or potential actions. If an employee is subject to detriment, they can also bring a claim for victimisation.
UNIONS	
Representation	Trade unions can be recognised by an employer voluntarily or by the union following a statutory procedure which, if successful, enables the trade union to negotiate collective bargaining agreements on certain employees' behalf. It is not mandatory for employees to be recognised by a trade union.
Right of Entry	Trade union members can accompany employees on disciplinary and grievance hearings.
Industrial Disputation	It is only lawful to take industrial action (e.g. strikes, lockouts, slowdowns, overtime bans) under certain circumstances prescribed by the Trade Union and Labour Relations (Consolidation) Act 1992.
COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS	
	COVID-19-related legislation and government guidance for employers is being updated as the situation develops. It is important for employers to keep informed of any changes which may affect them. This section highlights some key legal considerations for employers as of 11 January 2022.
Returning to the Workplace	In response to the risks of the Omicron variant, the government implemented Plan B under the COVID-19 Response – Autumn and Winter Plan 2021. Some COVID-19 restrictions have been reintroduced, such as legally mandating face coverings in certain public indoor settings and requiring certain venues to check the COVID-19 status of customers. As of 13 December 2021, office workers who can work from home should do so. Employers must seek to be flexible in designing their business operations and should ensure workplaces are safe for anyone who cannot work from home. The workplace environment should be adapted and continually monitored to ensure continuing compliance with health and safety obligations. Employers have a duty of care to take all reasonable steps to make the workplace safe and, in particular, consider those who are most vulnerable. Employers must, therefore, undertake appropriate COVID-19 risk assessments in their workplaces. The government has published non-statutory COVID-19 working safely guidance, which aims to help employers ensure the safe operation of workplaces. Employers should seek to follow this guidance, which is regularly updated. Employers can require employees or potential employees to be vaccinated, but doing so runs the risk of claims being brought by employees or job applicants who are either unable to comply or do not wish to comply with

	the vaccination requirement. From 11 January 2022, workers in the UK who receive a positive lateral flow test will be required to self-isolate immediately but will not need to take a confirmatory PCR test. This is a temporary measure while COVID-19 rates remain high across the UK. Workers who are fully vaccinated no longer need to self-isolate if they have had close contact with someone who has COVID-19, but they are advised to take lateral flow tests every day for seven days.
Government Support for Employers and Employees.	The Coronavirus Job Retention Scheme furlough ended on 30 September 2021.
Changes to Statutory Sick Pay	The eligibility criteria for changes to statutory sick pay (SSP) has been extended to include employees who are self-isolating in accordance with government guidelines. To be eligible, the employee must have been unable to work for at least four days. This can be claimed from a person's first day away from work, rather than from the fourth day. However, SSP does not extend to employees who are self-isolating after entering or returning to the UK and do not need to self-isolate for any other reason.
Other Employee Rights	The Working Time Regulations 1998 have been temporarily amended to allow workers to carry over an untaken holiday where it was not reasonably practicable for a worker to take it in the current leave year as a result of COVID-19 (note that this is unlikely to extend to a situation where an employee chooses not to take holiday due to being unable to travel abroad). The amendment applies only to the four-week statutory leave period. A worker will be entitled to carry it forward into the two holiday years immediately following the holiday year in which the holiday was due.

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EMPLOYMENT RELATIONSHIP

PRE-EMPLOYMENT

Immigration/Visa Requirements	Employers must ensure that their employees are lawfully authorized to work in the United States. Employers must have employees complete a Form I-9 to verify employment eligibility and collect evidence of eligibility to work in the United States. Employees typically must complete their Form I-9 on or before the first day of work, and the employer must complete verification within three days of their date of hire. Foreign workers are eligible to live and work in the United States with the proper work permits/visas.
Reference/Background Checks	An employer may contact an applicant's previous employers and personal references before extending an offer of employment. Some states provide protections to employers against defamation lawsuits stemming from information provided in response to such inquiries, but many do not. An employer may run background and credit checks if it complies with the Fair Credit Reporting Act (FCRA). The requirements include (but are not limited to) seeking written permission from the applicant/employee and taking steps to notify the applicant/employee of the results prior to taking adverse action. Some state laws and local ordinances heighten the requirements of the FCRA. The Equal Employment Opportunity Commission (EEOC) requires that employers make decisions based on background checks in a manner that does not discriminate against applicants and employees because of any trait protected by Title VII of the Civil Rights Act (Title VII), the Age Discrimination in Employment Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act, or other categories protected by law. The EEOC warns that, in certain circumstances, background check policies (such as those containing guidelines for what crimes will automatically cause denial of employment) can have a disparate impact on protected individuals, and, if that is true, such policies must be consistent with business necessity. Some state laws and local ordinances prohibit or limit employers from asking certain questions regarding an applicant's criminal background or require employers to follow certain procedures when an applicant discloses criminal background information.
Medical Examinations	Under the ADA, an employer may not require any medical examination or make any disability-related inquiries prior to making an offer of employment. After an offer is extended, but prior to employment beginning, an employer may require medical examinations and make disability-related inquiries so long as it does so for every applicant for such job category. After employment begins, an employer may not require medical examinations or ask disability-related enquiries unless they are job-related and consistent with business necessity.
Drug and Alcohol-Free Workplace Policies	With certain exceptions, employers may implement policies and programs intended to take action against drug and alcohol use in the workplace, including, but not limited to, pre-employment and during-employment drug testing. Applicable law will require some types of private employers, including, but not limited to, federal contractors, to impose such programs.

	All employers should ensure their drug and alcohol-free programs, including their testing policies, comply with applicable state law requirements. Employers should also ensure that their hiring, firing, and promotion policies do not discriminate against individuals with histories of substance abuse or individuals enrolled in rehabilitation programs. Employers should also refrain from asking employees about their legal prescription drug use during the pre-hiring or pre-promotion drug testing process.
Minimum Qualifications	An employer may set minimum qualifications for a position and ascertain an applicant's qualifications through pre-offer questioning and requests for proof that the applicant has obtained such qualifications.

TYPES OF RELATIONSHIPS

Employee	Generally, employers engage employees on an "at-will" basis, meaning that both the employer and the employee may end the employment relationship at any time, for any legal reason, with or without notice, and the employer may change the terms and conditions of the employee's employment. Montana, however, only recognizes the concept of at-will employment during an initial probationary period. Employers and employees may enter contracts setting terms and conditions of employment or otherwise alter the at-will nature of employment, i.e., setting a term for the length of employment, restricting the reasons for which an employee may be terminated, or setting certain terms and conditions of employment. The COVID-19 global crisis has resulted in the furlough of many workers. A furlough is a temporary unpaid leave of absence. In general, an employer has discretion to furlough its employees who are employed on an at-will basis (meaning that both the employee and employer have reserved the right to terminate the employment relationship at any time and for any legal reason). If an employee has an individual contract of employment or is covered by a collective bargaining agreement, the terms of the contract will govern whether a furlough is permitted. Furloughed workers are eligible to receive unemployment benefits while on furloughed status. Furthermore, many states have expanded the eligible period of time employees may receive unemployment benefits.
Independent Contractor	An individual who is classified as an independent contractor is generally afforded fewer rights than one who is classified as an employee. Workers may be engaged as independent contractors, as opposed to employees, if the relationship meets certain legal requirements. This relationship is usually documented in a written agreement, although the labels used by the parties themselves do not control the issue. Government agencies and courts increasingly disfavor the independent contractor relationship and impose strict standards, analyzing the overall job duties of the individual and the relationship between the individual and the employer to determine the proper category. Each state varies in its common law and legislative standards for classifying an independent contractor, with states like California being particularly strict. Misclassification of an employee as an independent contractor can create significant liability for the employer.
Labor Hire	Employers may hire employees as seasonal or temporary workers. Employers may also work with an employee leasing company, which temporarily assigns the leasing company's employees to the employer. The relationship between employers and employee leasing companies is

	sometimes regulated by state laws and must meet certain legal requirements. These arrangements create the risk that the leasing company and hiring company may be found to be joint employers.

INSTRUMENTS OF EMPLOYMENT

Contracts	Employment contracts can be oral or in writing. Most employers rely on the at-will nature of employment and do not enter into employment contracts with employees (although they frequently provide offer letters to employees confirming the terms of their employment, such as their position, supervisor, pay rate, and benefits). However, employers will often enter into contracts with employees designed to protect their confidential, trade secret, and proprietary information. Such contracts may contain non-disclosure, non-compete, non-solicit, and anti-raiding provisions, the strength and terms of which depend on state law. These contracts often expressly preserve the at-will nature of the employment relationship though.
Registered Agreements	The National Labor Relations Act (NLRA) provides employees with the ability to engage in collective activity and form labor unions. Employees that choose to do so and can meet certain requirements can request that the National Labor Relations Board (NLRB) conduct an election to determine whether the employer must set the terms and conditions of employment through negotiating with the employees' chosen union. The Labor Management Relations Act requires that an employer must abide by any terms and conditions agreed to with the employees' chosen labor union.
Policies	Employers typically provide employees with a handbook or policies, which discuss the terms and conditions of employment and rules governing workplace conduct. Such handbooks or policies are not required (although the lack of such policies—for instance, in the case of a sexual harassment policy—may expose the employer to increased liability). Some states also require employers that decide to create employee handbooks to include certain policies within those handbooks. Handbooks typically provide that they are not contractually binding. Various federal and state laws require employers to post certain notices in breakrooms or other employee-accessible areas that inform employees of their rights under such laws.

ENTITLEMENTS

Minimum Employment Rights	The Fair Labor Standards Act (FLSA) requires that employers pay employees a specified minimum wage rate and provide overtime premium payments on all hours worked beyond 40 hours in a workweek. State and local law may increase (but not decrease) the minimum wage and may provide for additional overtime premiums (for instance, for work over eight hours in one day, work over 12 hours in one day, or after a certain number of days are worked in a week). In certain circumstances, an employee's "rate" may need to factor in commissions, incentives, and bonuses. The FLSA also describes which employees are "exempt" from overtime using a test that combines a minimum compensation level and a duties test. Federal law prohibits discrimination against employees on the basis of certain characteristics, such as sex, pregnancy, religion, color, race,

	national origin, veteran status, age, disability, genetic information, etc. State and local law may provide for other protected traits. Many states and municipalities already prohibit discrimination on the basis of sexual orientation or gender identity, and the U.S. Supreme Court recently held that Title VII's prohibition of sex discrimination includes discrimination on the basis of sexual orientation. Employers that meet minimum size requirements must provide 12–26 weeks of leave under the Family and Medical Leave Act (FMLA) to employees in certain circumstances, including to care for their own serious medical condition or the serious medical condition of a family member, to bond with a natural born or adopted child, and, in certain circumstances, to care for or be with military personnel. FMLA leave is unpaid. Employers may not discriminate against or terminate employees for exercising their FMLA rights. Some state laws provide leave in addition to that which is available under the FMLA and may require payment during certain leaves. Those state laws often have different minimum size requirements than what exists for FMLA leave. In some instances, even if an employee is not eligible for FMLA leave at all or if the employee has already exhausted FMLA, the employer is still required to engage in an interactive process with the employee to determine the feasibility of providing leave as a reasonable accommodation under the ADA. The Occupational Safety and Health Administration (OSHA) regulates workplace health and safety for covered employers by setting certain minimum standards, which can vary by industry, and requiring adequate training, notice, and recordkeeping requirements. States may have their own approved state workplace health and safety plan that may set additional workplace safety regulations. State law may require employers to maintain or offer some benefits to employees who sustain workplace injuries. State law typically provides some level of unemployment insurance benefits for employees that are terminated for certain reasons, including through layoff or no fault of the employee. State law also typically provides for temporary disability benefits. State law may provide for additional minimum employment rights.
Discretionary Benefits	Most terms and conditions of employment are provided to employees at the employer's discretion. Below are a few examples of discretionary benefits that may be provided by employers. ***Paid vacation*** Employers may provide paid vacation benefits to their employees. Such benefits allow the employee to be absent from work for personal reasons without losing pay. If an employer chooses to provide vacation pay, it must comply with the applicable state's laws. For example, some state laws require that employers pay employees for all accrued, but unused, vacation upon termination; other states do not. Some states allow employers to maintain "use it or lose it" policies, which require that employees use the vacation benefits within a certain time frame or forfeit the same, while other states do not. Other states allow employers to place a ceiling on how much vacation an employee may accrue but may require that ceiling be set at a certain level. ***Sick leave*** Employers may also provide paid sick leave to their employees. Such benefits are typically available when the employee must be absent from

work due to a medical condition. If an employer chooses to provide paid sick leave, it must comply with the applicable state laws. Some states and local municipalities require minimum amounts of paid sick leave. Some states allow for employers to provide "paid time off" policies that cover both paid vacation and paid sick leave amounts so long as they comply with state law requirements.

Holidays

Employers may provide paid or unpaid holiday benefits to employees. Employers commonly use federal holidays, or some subset thereof, as the basis for such benefit.

Bonuses

Employers may provide bonuses to employees separate from their typical wage payments. Such bonuses are typically earned based on personal or company performance milestones or provided at certain times of the year, e.g., Christmas.

Paid medical/parental leave

Some employers voluntarily provide for income replacement during FMLA or other medical or personal leaves. Some states provide insurance benefits to employees who are on certain types of leave.

Other leave

Employers may voluntarily provide for other paid or unpaid leave. Some states require that leave be given for reasons that include (but are not limited to) civil air patrol or firefighter duty, being a victim of crime or domestic violence, volunteering, jury duty, children's school activities, voting, organ donation, bereavement, and being a witness in a legal proceeding.

Retirement benefits

Employers may provide for pensions (less common now as compared to previous years) or 401(k) plans (more common). These benefits assist employees in retirement planning. Some employers that maintain 401(k) plans "match" part or all of the employee's contribution.

Insurance

Employers that meet certain minimum size requirements must offer health insurance to employees or pay penalties. Employers typically provide insurance for employees, including health, dental, vision, life, and disability. Often, employers offering such insurance benefits will pay all or a portion of the premiums.

Flexible/Alternative work arrangements

It is increasingly more common for employers to offer part-time positions and telecommuting options, which allow employees to work from home.

COVID-19

The COVID-19 global health crisis is constantly and rapidly evolving. There are a myriad of federal, state, and local laws and orders applicable to the crisis. Legal guidance and advice is strongly recommended, as the individual circumstances of the situation and venue must be taken into account.

At the federal level, the Families First Coronavirus Response Act (FFCRA) requires private employers with fewer than 500 employees to provide

employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The provisions expired as of 31 December 2020.

Generally, the FFCRA provides: (i) employees are eligible for two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because he or she is quarantined or experiencing COVID-19 symptoms and seeking a medical diagnosis, and for those entitled to full regular rate of pay, the pay is capped at US$511 per day and US$5,110 in the aggregate over the two-week period; (ii) employees are eligible for two weeks (up to 80 hours) of paid sick leave at two-thirds of the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine or to care for his or her child whose school or child care program is closed or unavailable for reasons related to COVID-19, and for those entitled to two-thirds of the employee's regular rate of pay, the pay is capped at US$200 per day and US$2,000 in the aggregate over the two-week period; and (iii) up to an additional 10 weeks of paid expanded family and medical leave at two-thirds of the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for his or her child whose school or child care provider is closed or unavailable for reasons related to COVID-19, and for these employees, the employee is entitled to pay at two-thirds of their regular rate up to US$200 per day and US$12,000 in the aggregate over a two-week period.

Small business with less than 50 employees may be exempt from the requirements under the FFCRA to provide leave due to school closings or child care unavailability if the leave requirement would jeopardize the viability of the business as a going concern.

Many states and local governments have more comprehensive paid sick leave laws that are applicable to a broader range of employers for a longer length of time and cover the current crisis.

TERMINATION OF EMPLOYMENT

GROUNDS

In the typical at-will employment situation, an employee may be terminated for any reason, with or without notice, although employers may not terminate employees for any illegal reason. Statutes typically govern what constitutes an "illegal" reason. For example, Title VII prohibits employers from terminating employees on the basis of their race and gender (among other things). State public policies and common law often create other exceptions. For example, employees typically cannot be terminated for failing to perform an illegal act.

Employment contracts may limit the grounds for termination and require that a certain amount of notice be provided.

MINIMUM ENTITLEMENTS

Payments/Notice

Employers typically are not required by law to provide payments to terminated employees. However, some employers voluntarily provide severance benefits to departing employees in certain situations, such as

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	reductions in force or in exchange for a release of potential claims the employee may have against the employer.
Statutory Entitlements	Employers must pay all owed compensation to a terminated employee. State laws typically require that it be paid within a certain number of days from the date of termination. Some state laws require that certain vested or accrued benefits (such as vacation pay) are part of owed compensation and must be paid on or after termination. Federal law requires employers meeting certain minimum size requirements to provide information to employees about how to temporarily continue their insurance benefits following employment (at the employee's cost but under the employer's plan). Certain states have similar laws (typically lowering the minimum size threshold).
REDUNDANCY	
Layoff/Downsizing Notices	An employer may eliminate/consolidate positions and engage in reductions in workforce at its discretion. The Worker Adjustment and Retraining Notification Act (WARN Act) requires covered employers to provide 60 days' advance notice of a mass layoff or a plant closing (as those terms are defined by the WARN Act), as well as for certain layoffs. State laws may expand the notice requirements in other situations.
Payment	Employers typically are not required by law to make payments to employees selected for a reduction in workforce or a layoff. However, some employers voluntarily provide a severance package to laid-off employees, usually in exchange for a release of potential claims the employee may have against the employer.
REMEDIES	
Dismissal Action	Since employment is generally at-will in the absence of an employment contract, a claim for wrongful termination typically must be based on an argument that the employment contract was breached or that the employer terminated the employee due to a protected trait (such as gender, pregnancy, religion, color, race, national origin, veteran status, age, disability, or genetic information). State and federal claims also include actions based on a retaliation theory, i.e., the employer retaliated against the employee for opposing discrimination or harassment in the workplace, complaining about the employer's failure to pay minimum wage or overtime, exercising FMLA rights, or exercising an NLRA right to participate in protected concerted activity. State laws often prohibit retaliation against employees who apply for benefits related to a workplace injury or who are forced to take leave because of a workplace injury. State laws may provide for claims in circumstances where the employer terminated the employee for refusing to commit a criminal act or where the employer has breached the covenant of good faith and fair dealing. Both federal and state laws also provide protections to certain categories of whistleblowers, including those who report financial misconduct of a company or its employees. For many unlawful termination claims, there is a federal or state agency

	dedicated to investigating and resolving such claims. Plaintiffs are also typically able to bring their claims in court (sometimes providing they have exhausted their remedies at an agency level first). Successful plaintiffs in such actions can be awarded a variety of damages, including back pay, front pay, compensatory damages, punitive/exemplary damages, liquidated damages, attorneys' fees, court costs, and interest.

BUSINESS TRANSFER AND RESTRUCTURING

LEGAL REQUIREMENTS	
Transfer of Business	Employers are allowed to transfer, sell, or restructure businesses at their discretion. Typically, the contract regarding the transfer, sale, or restructuring addresses the impact of the transaction on the employees. While an employer is free to sell its business or go out of business altogether, other decisions (including by a purchaser of the business) may be penalized under the NLRA if unlawfully intended to rid the business of the obligation to negotiate with the employees' chosen union. Furthermore, such business decisions may also implicate the enforceability of non-competition agreements in some states.
RESTRUCTURING	
Notification	As stated above, the WARN Act may require that a covered employer provide 60 days' advance notice if the transaction results in a plant closing or mass layoff. State laws may impose differing requirements.

PROTECTION OF ASSETS

CONFIDENTIAL INFORMATION	
	Employers typically maintain a confidentiality policy that defines what confidential information is and prohibits employees from using or disclosing it, except for the employer's business purposes. Employers should be careful to ensure that the policy does not infringe on employees' rights to share information about the terms and conditions of their employment or make protected disclosures to government agencies. Often, employers will require that employees sign confidentiality agreements, which are more detailed than the basic policies. Many states provide employers with the right to sue employees and former employees who misappropriate confidential, proprietary, and trade-secret information, even in the absence of a confidentiality agreement. The Defend Trade Secrets Act of 2016 provides a federal civil court remedy for acts of trade-secret misappropriation, which includes uniform definitions for "trade secrets" and "misappropriation," as well as a uniform set of procedural and evidentiary rules to be used in federal courts in such cases.

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CONTRACTUAL RESTRAINTS AND NON-COMPETES

Employers can typically require employees to sign non-competition provisions (restricting the employee's ability to work for a competitor post-employment), non-solicitation provisions (restricting the employee's ability to solicit customers post-employment), and anti-raid provisions (restricting the employee's ability to hire employees or contractors post-employment). State law governs such provisions and often requires reasonable restrictions on the temporal length, geographic scope, and subject matter. The laws regarding such provisions vary from state to state, and some states do not permit such restrictions at all except in narrow circumstances.

PRIVACY OBLIGATIONS

Federal law requires employers to keep employee medical information in a separate file that can be accessed only by those with the need to do so.

Some state laws provide employees with privacy protections with respect to their employment information.

Some state laws require that employees be allowed access to their personnel files upon request.

WORKPLACE SURVEILLANCE

Employers are allowed to monitor the workplace as well as electronic networks (i.e., email) for security purposes (although they should provide notice of such intent to eliminate any expectation of privacy).

The NLRA prohibits employers from implementing workplace surveillance in a manner that restricts employee participation in protected concerted activity (e.g., collective bargaining or unionization). For example, an employer may not begin surveillance in response to a union organizing campaign.

WORKPLACE INVESTIGATIONS

Employers can generally investigate misconduct in the workplace and manage, discipline, and terminate an employee's employment based on the same.

Employee complaints about violations of law (sexual harassment, discrimination, retaliation, etc.) should be investigated. In many cases, such investigations can serve as a defense to later claims.

WORKPLACE BEHAVIOR

MANAGING PERFORMANCE AND CONDUCT

Employers may set workplace conduct rules and production standards at their discretion.

Employers may manage, discipline, and terminate an employee based on an employee's failure to comply with workplace conduct rules or production standards.

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DISCRIMINATION

Employers may not make employment decisions based on membership in a protected group. Federally protected groups include, but are not limited to, sex, pregnancy, religion, color, race, national origin, veteran status, age (40 or older), disability, sexual orientation, and genetic information. States and municipalities will sometimes also protect other traits.

Employers may not maintain facially neutral employment policies that tend to have a disparate impact on (i.e., disproportionately affect) employees in a certain protected class.

The ADA, as well as many state laws, requires employers to reasonably accommodate qualified employees with disabilities so that they may perform the essential functions of their positions. Reasonable accommodation of religious practices is also required.

HARASSMENT

Federal law also prohibits harassment of employees based on protected traits.

Employers should provide training to employees on and maintain policies prohibiting harassment and discrimination to decrease the risk of such claims or provide affirmative defenses to them.

State laws often mirror or increase protections for employees against harassment.

Some states require anti-harassment training.

RETALIATION

Federal law prohibits retaliating against employees who:

- Make complaints regarding discrimination or harassment.
- Make complaints regarding payment of minimum wage and overtime.
- Exercise their rights under the FMLA.
- Exercise their rights under the NLRA.

State laws may provide for similar or greater protections.

State laws often prohibit retaliation against employees who are forced to take leave for a workplace injury.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, the Sarbanes-Oxley Act, and various state laws also protect “whistleblowers” in certain situations (particularly with regard to financial misconduct by a company or its employees and the reporting of such). Some state laws also prohibit retaliation against employees for reporting other violations of law or public policy.

BULLYING

Some states have enacted workplace bullying laws that prohibit abusive conduct of employees in workplaces even if the conduct is not based on the employee’s protected traits and, thus, is not otherwise prohibited by

	discrimination and harassment laws.

UNIONS

Representation	Under the NLRA, employees have the right to select a union to negotiate the terms and conditions of their employment. Employees may exercise this right by filing a petition for election with the NLRB. If the employees vote to have a union represent them during the election process, the employer is then obligated to negotiate with the union before making any changes (even favorable changes) to the employees' terms and conditions of employment. Unions are not as common as they used to be. Union activity tends to be concentrated in the manufacturing, government, teaching, health care, mining, and transportation industries. The Railway Labor Act governs the railway and airline industries, but similarly allows for employees to use unions to negotiate collectively.
Right of Entry	An employer can restrict a union's right of access to the employer's property but only so long as it does so consistently with how it restricts third parties. In other words, the employer may not restrict only a union's access to the facility while allowing access to other third parties.
Industrial Disputes	Generally, employers may use lockouts and employees may use strikes as economic weapons during the bargaining process. Typically, once a contract is entered into, the contract will prohibit use of such means during the term of the contract. The Railway Labor Act restricts use of such economic weapons for the railway and airline industries.

COVID-19 RETURN TO OFFICE / MANDATORY VACCINATION CONSIDERATIONS

FFCRA

From 1 April 2020 through 31 December 2020, the FFCRA required certain public employers and private employers with fewer than 500 employees to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. Small businesses with fewer than 50 employees could qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements jeopardized the viability of the business as a going concern.

Generally, the FFCRA provided that employees of covered employers were eligible for:

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee was unable to work because the employee was quarantined (pursuant to government order or advice of a health care provider) or experiencing COVID-19 symptoms and seeking a medical diagnosis.
- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee was unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to government order or advice of a health care provider) or to care for a child (under 18 years of age) whose school or child care provider was closed or unavailable for reasons related to COVID-19 or the employee was

experiencing a substantially similar condition.

- Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee, who had been employed for at least 30 calendar days, was unable to work due to a bona fide need for leave to care for a child whose school or child care provider was closed or unavailable due to COVID-19.

Under the FFCRA, employers could exclude employees who were either "health care providers" or "emergency responders," both of which Department of Labor regulations specifically defined.

Covered employers under the FFCRA qualified for tax credits equal to the amounts paid to employees to take leave for an FFCRA-qualifying reason. Covered employers were also eligible for tax credits to amounts paid or incurred to maintain health insurance coverage for the employees during their leave.

From 1 January 2021 through 30 September 2021, covered employers could voluntarily continue to provide leave under the FFCRA and qualify for tax credits to cover the costs of leave and health insurance associated with that leave.

Various state laws were also passed or rules enacted to require employers to provide additional leave, with varying effective and expiration dates.

American Rescue Plan Act (ARPA)

Effective 1 April 2021 through 30 September 2021, ARPA:

- Extended the tax credits available to covered employers voluntarily providing leave under the FFCRA (as discussed above).
- Expanded covered reasons for leave under the FFCRA to include obtaining COVID-19 vaccines, recovering from COVID-19 vaccine-related illness, and seeking or waiting for results of COVID-19 testing due to exposure or due to an employer's request that the employee be tested.
- Allowed employers to provide an additional 10 days of FFCRA leave to employees who previously took 10 days of emergency paid sick leave under the FFCRA in 2020.
- Raised the cap on emergency FMLA leave provided under the FFCRA from US$10,000 to US$12,000.
- Prohibited employers from obtaining tax credits for FFCRA leave if they discriminated in favor of highly compensated employees, full-time employees, or employees with more seniority when granting the leave.
- Extended unemployment insurance benefits created by the CARES Act.
- Required employers to subsidize 100% of COBRA premiums for employees who were involuntarily terminated or who experienced a reduction in hours and their covered dependents (unless the individual's maximum coverage period ends or the individual becomes eligible for another group health plan or Medicare).

- Provided employers with tax credits to cover the subsidized COBRA premiums.

EEOC's guidance on testing

Taking Temperatures

Generally, measuring an employee's body temperature is a medical examination. Because the Centers for Disease Control and Prevention (CDC) and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever and should not rely exclusively on temperature taking to protect against the spread of COVID-19 in the workplace.

COVID-19 Testing

The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take screening steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore, an employer may choose to administer COVID-19 testing to employees before initially permitting them to enter the workplace and periodically to determine if their presence in the workplace poses a direct threat to others. Testing administered by employers consistent with current CDC guidance will meet the ADA's "business necessity" standard.

Antibodies Testing

In light of CDC's interim guidelines that antibody test results "should not be used to make decisions about returning persons to the workplace," an antibody test at this time does not meet the ADA's "job related and consistent with business necessity" standard for medical examinations or inquiries for current employees. Therefore, requiring antibody testing before allowing employees to re-enter the workplace is not allowed under the ADA.

OSHA's guidance on returning to work

While covered employers are always responsible for complying with all applicable OSHA requirements, the agency's standards for personal protective equipment (PPE) (29 C.F.R. § 1910.132), respiratory protection (29 C.F.R. §.1910.134), and sanitation (29 C.F.R. § 1910.141) may be especially relevant for preventing the spread of COVID-19.

Reopening should align with the lifting of stay-at-home or shelter-in-place orders and other specific requirements of the federal, state, and local government. Employers should continue to consider ways to utilize workplace flexibilities, such as remote work (i.e., telework) and alternative business operations to provide goods (e.g., curbside pickup) and services to customers.

Based on evolving conditions, employers' reopening plans should address: (i) hazard assessment (i.e., determine when, where, how, and to what sources of COVID-19 workers are likely to be exposed in the course of their job duties), (ii) hygiene provisions (i.e., ensure proper hand hygiene, cleaning, and disinfection for high-traffic or shared areas), (iii) social distancing (i.e., practices to maximize and maintain distance between all people, including workers, customers, and visitors), (iv) identification and isolation of sick employees (i.e., establish practices for worker self-monitoring or screening and reporting for employees who become ill in the workplace), (v) process for

returning to work after illness or exposure (i.e., monitor and communicate CDC guidelines), (vi) controls selected as a result of an employer's hazard assessment, (vii) workplace flexibilities, (viii) training of employees regarding COVID-19 risk factors and exposure risks, and (ix) anti-retaliation. State law may also impose additional requirements for reopening plans.

OSHA has provided guidance on the recordability of COVID-19 cases in the workplace. COVID-19 can be recordable if a worker is infected as a result of performing work-related duties and all the following conditions are true: (i) the case is a confirmed case of COVID-19, (ii) the case is work-related (as defined by 29 C.F.R. § 1904.5), and (iii) the case involves one or more of the general recording criteria set forth in 29 C.F.R. § 1904.7 (e.g., the employee required medical treatment beyond first aid, days away from work).

EEOC's guidance on mandatory vaccination

Although the Supreme Court issued a 13 January 2022 ruling that struck down OSHA's emergency temporary standard for large employers (29 C.F.R. § 1910, Subpart U), which would have required private employers with 100 or more employees to implement a vaccine or test policy, employers are still permitted to impose mandatory vaccination programs, subject to reasonable accommodation provisions of the ADA, Title VII and other EEOC considerations, and provided the programs are not banned by state law. Because some laws, orders, and rules require certain types of employees to be vaccinated, such as health care workers, while others prevent employers from imposing mandatory vaccination requirements unless they allow for accommodations and opt outs, such as Florida's November 2021 legislation, it is essential that employers determine what state and federal laws they are subject to before imposing a mandatory vaccination program.

The ADA

Under the ADA, an employer may require an individual with a disability to meet a qualification standard applied to all employees, such as a safety-related standard requiring COVID-19 vaccination, if the standard is job-related and consistent with business necessity. If a particular employee cannot meet such a safety-related qualification standard because of a disability, the employer may not require compliance for that employee unless it can demonstrate that the individual would pose a "direct threat" to the health or safety of the employee or others in the workplace. Federal regulations define a "direct threat" as a "significant risk of substantial harm" that cannot be eliminated or reduced by reasonable accommodation. This determination can be broken down into two steps: (i) determining if there is a direct threat, and, if there is, (ii) assessing whether a reasonable accommodation would reduce or eliminate the threat.

To determine if an employee who is not vaccinated due to a disability poses a "direct threat" in the workplace, an employer first must make an individualized assessment of the employee's present ability to safely perform the essential functions of the job. The factors that make up this assessment are: (i) the duration of the risk, (ii) the nature and severity of the potential harm, (iii) the likelihood that the potential harm will occur, and (iv) the imminence of the potential harm. The determination that a particular employee poses a direct threat should be based on a reasonable medical judgment that relies on the most current medical knowledge about COVID-19. Such medical knowledge may include, for example, the level of community spread at the time of the assessment. Statements from the CDC provide an important source of current medical knowledge about COVID-19, and the employee's health care provider, with the employee's consent, also may provide useful information

about the employee. Additionally, the assessment of direct threat should take account of the type of work environment, such as: (i) whether the employee works alone or with others or works inside or outside, (ii) the available ventilation, (iii) the frequency and duration of direct interaction the employee typically will have with other employees and non-employees, (iv) the number of partially or fully vaccinated individuals already in the workplace, (v) whether other employees are wearing masks or undergoing routine screening testing, (vi) and the space available for social distancing.

If the assessment demonstrates that an employee with a disability who is not vaccinated would pose a direct threat to self or others, the employer must consider whether providing a reasonable accommodation, absent undue hardship, would reduce or eliminate that threat. Potential reasonable accommodations could include requiring the employee to wear a mask, work a staggered shift, making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees), permitting telework if feasible, or reassigning the employee to a vacant position in a different workspace.

As a best practice, an employer introducing a COVID-19 vaccination policy and requiring documentation or other confirmation of vaccination should notify all employees that the employer will consider requests for reasonable accommodation based on disability on an individualized basis.

Title VII

Under Title VII, employers do not need to engage in a direct threat assessment when determining whether to grant an accommodation request from an employee who has a sincerely held religious belief, practice, or observance that prevents the employee from getting a COVID-19 vaccine. Instead, employers can skip this step and consider whether the requested accommodation would pose an undue hardship on them. Under Title VII, "undue hardship" means that the accommodation would have a more than minimal cost or burden on the employer, which is a lower standard for employers to meet than the ADA's undue hardship standard. Examples of an undue hardship include causing the employer to incur direct monetary costs, burdening or disrupting the employer's business, impairing workplace safety, or diminishing efficiency in other jobs.

Considerations relevant to undue hardship can include, among other things, the proportion of employees in the workplace who already are partially or fully vaccinated against COVID-19 and the extent of employee contact with non-employees, whose vaccination status could be unknown or who may be ineligible for the vaccine. Ultimately, if an employee cannot be accommodated, employers should determine if any other rights apply under the EEOC laws or other federal, state, and local authorities before taking adverse employment action against an unvaccinated employee.

More on reasonable accommodations

Managers and supervisors responsible for communicating with employees about compliance with the employer's vaccination requirement should know how to recognize an accommodation request from an employee with a disability or a sincerely held religious belief, practice, or observance, as employees are not required to use any "magic words," such as reasonable accommodation, the ADA, or Title VII, to make an accommodation request. Managers and supervisors should also know to whom to refer the request for full consideration. As a best practice, before instituting a mandatory vaccination policy, employers should provide managers, supervisors, and those responsible for implementing the policy with clear information about

how to identify and handle accommodation requests related to the policy. Employers should also provide clear information to their employees about how to make accommodation requests.

Employers and employees typically engage in a flexible, interactive process to identify workplace accommodation options that do not impose an undue hardship (significant difficulty or expense for disability requests and more than a minimal cost or burden for religious requests) on the employer. This process may include determining whether it is necessary to obtain supporting medical documentation about the employee's disability or additional supporting information about the employee's sincerely held religious belief, practice, or observance. When it comes to religious accommodation requests, employers should assume that an employee's request is based on sincerely held beliefs, but they may make a limited factual inquiry to obtain additional information if they have an objective basis for questioning either the religious nature or the sincerity of a particular belief. For example, an employer can ask the employee for more information about the belief if it is unfamiliar to the employer, but the employer cannot deny the requested accommodation merely because the belief is unfamiliar or non-traditional.

Even if there is no reasonable accommodation that will allow the unvaccinated employee to be physically present to perform his or her current job without posing a direct threat or imposing an undue burden, the employer should consider if telework is an option for that particular job as an accommodation and, as a last resort, whether reassignment to another position is possible. Under the ADA and Title VII, information relating to the employee's requested accommodation must be kept confidential, and it is unlawful for an employer to retaliate against an employee for requesting an accommodation.

Screening questions

Mandatory vaccine program

For mandatory vaccination programs, the ADA's restrictions apply to the screening questions that must be asked immediately prior to administering the vaccine if the vaccine is administered by the employer or its agent. An employer's agent is an individual or entity having the authority to act on behalf of, or at the direction of, the employer.

The ADA generally restricts when employers may require medical examinations (procedures or tests that seek information about an individual's physical or mental impairments or health) or make disability-related inquiries (questions that are likely to elicit information about an individual's disability). The act of administering the vaccine is not a "medical examination" under the ADA because it does not seek information about the employee's physical or mental health.

However, because the pre-vaccination screening questions are likely to elicit information about a disability, the ADA requires that they must be "job related and consistent with business necessity" when an employer or its agent administers the COVID-19 vaccine. To meet this standard, an employer would need to have a reasonable belief, based on objective evidence, that an employee who does not answer the questions, and therefore cannot be vaccinated, will pose a direct threat to the employee's own health or safety or to the health and safety of others in the workplace. Therefore, when an employer requires that employees be vaccinated by the employer or its agent, the employer should be aware that an employee may challenge the mandatory pre-vaccination inquiries, and an employer would have to justify them under the ADA.

The ADA also requires employers to keep any employee medical information obtained in the course of an employer vaccination program confidential.

Voluntary vaccine programs

If the employer offers to vaccinate its employees on a voluntary basis, meaning that employees can choose whether or not to get the COVID-19 vaccine from the employer or its agent, the employer does not have to show that the pre-vaccination screening questions are job-related and consistent with business necessity. However, the employee's decision to answer the questions must be voluntary. The ADA prohibits taking an adverse action against an employee, including harassing the employee, for refusing to participate in a voluntary employer-administered vaccination program. An employer also must keep any medical information it obtains from any voluntary vaccination program confidential.

If an employer or its agent offers voluntary vaccinations to employees, the employer must comply with federal employment nondiscrimination laws. For example, not offering voluntary vaccinations to certain employees based on national origin or another protected basis under the EEOC laws would not be permissible.