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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

Employment law in Cyprus is a mixture of statutes and case law, based on Article 25 of the Cypriot Constitution which guarantees the right to work. The main statutory instruments are the Termination of Employment Law 1967, the Annual Paid Leave Law 1967, and the Social Insurance Law 1980. Specific matters arising from the employment relationship are governed by specific statutes such as the Protection of Maternity Law 1997, the Equal Treatment at Work and Employment Law 2004 and the Safety and Health at Work Law 1996. General contractual principles governing the employment relationship are derived from the Contract Law, Cap. 149.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Cyprus employment law distinguishes between a contract of service and a contract for services.

The former refers to the employment relationship and is protected by the various applicable employment laws. In accordance with the Termination of Employment Law 1967, an employee is a person who works for another physical or legal person (either a private or a public legal entity) under a contract of employment or apprenticeship or under conditions from which an employment relationship can be inferred. Within the latter definition persons employed by the State and the shareholders of a private company employed by the latter are also included.

A contract for services refers to the services of independent contractors and is regulated by the principles of Contact Law. The issue of whether a worker is to be considered as an employee or an independent contractor is examined *ad hoc*, taking into consideration, amongst others, the degree of control, chance of profit and responsibility of investment/management.

The Cyprus Employment Law also distinguishes between full-time and part-time workers and between workers with fixed-term contracts and unlimited-term contracts. Furthermore, special protective rules apply with regard to the employment of workers who are under 18.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

No, employment contracts need not be in writing.

Nevertheless, the Provision of Information to the Employee by the Employer Regarding the Terms of Employment Law 2000 obliges an employer, within one month from the commencement of the employment, to provide the employee with the substantive conditions governing the employment relationship. The minimum information which must be provided include details about the parties' respective identities, the commencement date of the employment contract, duration of annual leave and all the types of emoluments to which the employee is entitled. This information must be in writing and signed by the employer. The employer's failure to fulfil its above obligation, although it does not affect the employment relationship, may subject the employer to financial sanctions.

1.4 Are any terms implied into contracts of employment?

All statutory rights and obligations are generally implied into employment contracts and any clause purporting to waive them is void. The parties, however, may agree to more favourable terms for the employee than those prescribed by statute, but not less favourable. Further, the employee's duty of fidelity to the employer is always implied into employment contracts requiring the employee to abstain from acting in a manner inconsistent and prejudicial to his/her employer's interests.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Employers must observe specific statutory minimum employment terms in relation to maximum hours of work per week (not more than 48 with a few exceptions for specific occupations), statutory minimum salary for certain occupations, annual and other leave (e.g., maternity and parental leave) and serving a valid (statutory) notice of termination.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Terms and conditions of employment can be agreed through collective bargaining where employers have entered into collective agreements with trade unions. Collective bargaining usually takes place at industry level and is particularly prevalent in the tourist industry where most employment terms are agreed through collective agreements.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

The Trade Unions Law 1965 (as amended) provides for extensive protection and freedom for the registration of trade unions. The trade union's protection is supplemented by the Law on the Recognition of Trade Unions and the Trade Union Right to Provide Facilities for Recognition Purposes 2012, regulating the procedure to be followed in the event of the employer's refusal to recognise a trade union and the Industrial Relations Code ('IRC'), as established in 1977, laying out in detail the procedures to be followed for the settlement of employment disputes.

2.2 What rights do trade unions have?

The employees' right to join any union of their choice or incorporate their own union with a view to protecting their collective rights is guaranteed by Article 21 of the Cypriot Constitution.

In accordance with the Trade Unions Law 1965, a legally registered trade union within the framework of accomplishing its purposes may possess property, appear before the courts either as a plaintiff or a defendant and is also equipped with the legal capacity to conclude contracts.

Additionally, the rights of trade unions are specified in collective agreements, the IRC through which collective agreements can be concluded and statutes which refer to trade unions as "employees' representatives". Although lacking any legal foundation, the IRC is highly respected and followed by all sides. Its mechanisms for dispute resolution include direct negotiations between the trade unions and the employer and its representatives. In the event of a large-scale redundancy, the employer must notify the union as early as possible and initiate consultations. The right to consultation and information of the local union committees has been strengthened by the Law Establishing a General Framework for Informing and Consulting Employees which requires management and the unions to negotiate practical arrangements for informing and consulting employees in undertakings that employ at least 30 employees.

The IRC allows categorisation of issues in a collective agreement as bargainable, consultative and management prerogatives. Where an issue is categorised as appropriate for consultation, the employer must consult the trade union and, although the final decision rests with the employer, he/she is bound to pay due regard to the union's views and give reasons for his/her decision. Both sides have the right to request the advice and/or assistance of the Ministry of Labour and Social Insurance in the event of deadlock.

2.3 Are there any rules governing a trade union's right to take industrial action?

The right to strike is founded on Article 21(1) of the Constitution of Cyprus. No rules specifically regulating a trade union's right to strike exist, other than the relevant provisions of the IRC. According to the latter, if an employer flagrantly violates the provisions of an existing collective agreement, the trade union may resort to any lawful action, including a strike in defence of its interests. Nevertheless, the right to take industrial action must not be exercised when agreement cannot be reached on issues appropriate for joint consultation. Essentially, the reasons for a strike must be reasonable and based on genuine disputes which cannot be resolved through the mechanisms of the IRC and the applicable collective agreements.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Employers are required to set up work councils solely in relation to Community-scale businesses and Community-scale groups of businesses situated in Cyprus.

In accordance with the Establishment of European Works Councils Law 2011, a Community-scale business must employ:

- at least 1,000 employees within the EU Member States;
- at least 300 employees in two different Member States (at least 150 employees in each state).

A Community-scale group of businesses must employ:

- at least 1,000 employees within the EU Member States;
- at least two group businesses in different EU Member States; or
- at least one group business with at least 150 employees in one EU Member State and at least one other group business with at least 150 employees in another Member State.

The employer's central management, on its own initiative or following a written request by at least 100 employees (or their representatives) from at least two businesses or establishments located in two different Member States, must initiate negotiations for the establishment of a European Works Council or any other procedure for information and consultation. A special negotiation team, composed of the trade union members or, in the absence of trade unions, of the employees, must also be instituted. The latter, together with the central management, will be responsible for determining the duties and duration of service of the European Works Council, as well as the procedure for provision of information to the employees during consultation with them. European Works Councils have the right to meet once a year with the employer's central management and be informed and consulted about the development and the prospects of the business.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

The applicable law does not attribute the European Works Councils with co-determination rights. The European Works Councils merely have a reciprocal statutory obligation to work together with the central management in a spirit of co-operation and mutual respect for their respective rights and obligations.

2.6 How do the rights of trade unions and works councils interact?

Trade union representatives may act as employee representatives in the special negotiation team and participate in the European Works Councils.

2.7 Are employees entitled to representation at board level?

No, but the absence of a right to such representation may be compensated by the employee's right to information and consultation when restructuring or transferring a business.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Equal treatment at work is a specific statutory obligation imposed upon every employer, in accordance with the Constitution of Cyprus, the Community *acquis* and the various International Human Rights Conventions which Cyprus has ratified. Employees are protected both against direct and indirect discrimination, as well as any other conduct in relation to employment which discriminates on the grounds of racial or ethnic origin, religion, beliefs, age and sexual orientation (Equal Treatment at Work and Employment Law 2004). Indirect discrimination ensures proportional (not merely equal) treatment of employees by prohibiting *prima facie* neutral criteria or practices which are less favourable to an employee.

3.2 What types of discrimination are unlawful and in what circumstances?

Apart from direct and indirect discrimination on the grounds referred to in question 3.1, Cyprus law prohibits specific types of discrimination. More specifically, the unequal payment of employees on grounds of sex, the disproportionate treatment of part-time workers in relation to full-time workers, the disproportionate treatment of fixed-term contract employees in relation to unlimited-term contract employees and sexual harassment at work are all treated as unlawfully discriminatory.

3.3 Are there any defences to a discrimination claim?

Yes. In accordance with the laws implementing the relevant EU Directive , discrimination, exception or preference of a characteristic related to any of the grounds referred above (question 3.1) may be considered as lawful with regard to the different treatment on grounds of sex and the different treatment of persons with disabilities under the condition that the required characteristic:

- is justified by the peculiarities of the profession concerned;
- constitutes a genuine and determining occupational requirement;
- is proportionate; and
- serves a legitimate objective.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees can enforce their discrimination rights via the complaint procedure of the Office of the Commissioner for Administration (Ombudsman) which is the designated National Equality Body dealing with all forms of discrimination, or by taking legal action for compensation if the employee incurs damage e.g., through loss of office. Employers may settle claims at any time, before or after they are initiated.

3.5 What remedies are available to employees in successful discrimination claims?

Employees are entitled to claim compensation for damages or reinstatement.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Part-time and fixed-time workers enjoy additional protection in order to guarantee that they receive the same rights and/or treatment as the full-time and unlimited contract workers through the Part-Time Employees (Prohibition of Discrimination) Law and the Employees with Fixed-Term Contracts (Prohibition of Discrimination) Law. The relevant rules highlight the necessity of observing the principle of non-discrimination and establish the principle of proportionality of employment terms of part-time employees in relation to comparable full-time employees and fixed-term contract employees in relation to unlimited-term contract employees, respectively. Amongst others, proportional salary and benefits, termination of employment, protection of maternity, annual leave, parental and sick leave are attributed to the above categories of atypical workers. Moreover, fixed-term contract employees have the right to be informed about unlimited-term posts.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Under the condition that the employee will present a registered doctor's certificate stating the expected week of childbirth, she will be entitled to maternity leave for a total period of 18 weeks, from which 11 weeks must compulsorily be taken beginning two weeks prior to the expected birthdate (Protection of Maternity Law 1997).

In the event of adoption, the adopting mother has a right to maternity leave for a period of 16 weeks immediately following the adoption of a child of less than 12 years of age, provided that she has disclosed her intention to adopt to the Services Department of Social Providence and has provided a written notice to her employer at least six weeks prior to the adoption.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Once the employee presents to her employer the relevant doctor's certificate it is unlawful for the employer to dismiss the employee, unless the business activity is discontinued or the employee is guilty of a serious disciplinary offence or such conduct which justifies the breakdown of the employment relationship. During the period of maternity leave, the employee receives pay and maternity benefits to such extent and under such conditions as the Social Insurance Law provides from time to time.

4.3 What rights does a woman have upon her return to work from maternity leave?

Upon her return to work, the employee has the right to return to her position and enjoys the same rights in seniority, promotion or other benefits which relate to employment as she would have had if she remained at work. Additional statutory rights are also attributed to her in order to facilitate breast-feeding as well as the increased needs of the child. Specifically she has the right to arrive later or leave earlier and to discontinue her work for one hour per day for a period of nine months from the childbirth or, in the case of adoption, from the date the maternity leave commences, without loss of income.

4.4 Do fathers have the right to take paternity leave?

No, they do not.

4.5 Are there any other parental leave rights that employers have to observe?

Employees of either sex who have completed at least six months of employment with the same employer may claim unpaid parental leave for a period up to 18 weeks for caring and raising a child, under the condition that a prior written notice is provided to the employer (Parental Leave and Leave for Reasons of Force Majeure Law 2012). Parental leave may be taken by natural parents following the expiration of maternity leave and prior to their child's eighth birthday, and by adopting parents following the expiration of maternity leave and prior to the eighth anniversary of adoption, provided that the child is under 12 years of age at the time the parental leave is taken.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Generally there is no such statutory entitlement, except for the rights attributed to the woman returning from maternity leave with regard to breast-feeding and childcare (see question 4.2) and the employee's (either female or male) right to unpaid leave for seven days annually for reasons of *force majeure* such as illness or accident of his dependants.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

As a general rule, on a business sale, employees automatically transfer to the buyer subject to the statutory exceptions mentioned under question 5.4. In accordance with the Preservation and Safeguard of Employee Rights during Transfer of Businesses, Facilities or Business Departments Law 2003 the transfer of a business, establishment or a business department does not itself afford grounds for dismissal by the transferor or transferee. The 2003 Law applies to both public and private undertakings which engage in economic activities; however, vessels and ships, transfers by share takeovers, transfers of insolvent businesses and restructuring of instruments between public bodies fall outside its scope.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

On the date of the transfer, all rights and obligations of the transferor, including rights to benefits for old age, disability and supplementary occupation retirement are transferred to the transferee.

The transferee must preserve the employment terms articulated in the applicable collective agreement, as they would apply to the transferor in accordance to the latter, up to the date of termination or expiration of the collective agreement, and in any case for a period of at least one year from the transfer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The transferor and the transferee must promptly inform the employees or their representatives who are affected by the transfer of the following:

- The date or proposed date of transfer.
- The reasons for the transfer.
- The legal, financial and social consequences of the transfer for the employees.
- The proposed measures to be taken in relation to the employees.

Further, when the transferee or transferor intends to vary the employees' regime, they must engage in consultations with the employees or their representatives for the purpose of reaching settlement. The transferor and transferee must serve the above information to, and engage in consultations with, the employees promptly and, in any event, before their employment terms and conditions are directly affected by the transfer.

The duration of the process depends on the complexity of the case and is typically concluded between several weeks and several months. The sanctions of an employer who fails to inform or consult with the employees is a fine on conviction which does not exceed €854, whereas the employee is entitled to seek compensation by way of damages.

5.4 Can employees be dismissed in connection with a business sale?

Employees can be dismissed in connection with a business sale on financial or organisational grounds, necessitating changes in the workforce. The latter would fall within the category of lawful dismissals, on the basis of redundancies, entitling the employee to damages from the Redundancies Fund.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

No, any changes must be agreed with the employees.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

According to the Termination of Employment Law 1967 (as amended), the employer is obliged to serve the employees a written notice of termination of their employment. The minimum notice period, depending upon the weeks of continuous employment, is specified by the 1967 Law as follows:

Term of Continuous Employment (weeks)	Minimum Notice (weeks)
26-51	1
52-103	2
104-155	4
156-207	5
208-259	6
260-311	7
312 and above	8

An employee may be summarily dismissed if any of the circumstances mentioned in question 6.5 apply (commission of a serious disciplinary or criminal offence, etc.).

Further, the parties may agree to extend the notice period but any contractual provision for the reduction or restriction of the minimum statutory notice period is void *ab initio*.

No minimum notice of termination is required during a probation period, which is 26 weeks (or up to 104 weeks if the parties so agree) from the commencement of the employment.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Instead of serving a notice of termination, the employer may demand that the employee accepts payment which corresponds to the length of the minimum notice period *in lieu* of notice of termination and to serve the period of notice as "garden leave". Further, the employee, having received a notice of termination, may not attend for work in the case of his/her recruitment in another business, without further notification to the previous employer required.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The 1967 Law exhaustively articulates the grounds for a lawful dismissal (see question 6.5). Consequently the invocation of any other reason renders the dismissal to be unlawful and attributes the dismissed employee with the right to claim damages.

An employee is treated as being dismissed, once he/she is served the minimum statutory notice of termination of his/her employment or once he/she resigns by reason of the employer's conduct ("constructive dismissal").

There is a rebuttable presumption that any dismissal is unlawful and the employer bears the burden of proving that the dismissal is lawful.

No consent from a third party is required before an employer can dismiss.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Trade union members, pregnant women and employees on sick leave enjoy special protection against dismissal. Further, the employment terms and rights on dismissal of public servants, employees in the armed forces and the police are governed by special provisions and not by the general rules on dismissal.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

An employer is entitled to dismiss for reasons related to the individual employee, relying on the grounds exhaustively listed in the statutory provisions of Termination of Employment Law, which are:

- Failure to execute work at a reasonably satisfactory level, excluding temporary disability for employment caused by illness, injury and childbirth.
- Redundancy.
- *Force majeure*, act of war, civil commotion or act of God.
- Termination at the end of a fixed period of employment.
- Display of such conduct rendering the employee subject to summary dismissal, that is, when:
  - His/her conduct renders it clear that the relationship of the employee and the employer cannot reasonably be expected to continue.
  - He/she commits a serious disciplinary offence or criminal offence or displays inappropriate or indecent conduct during the execution of his/her duties.
  - He/she repeatedly violates or ignores the employment rules.

Otherwise, any dismissal is unlawful and entitles the employee to damages which are calculated according to the:

- minimum compensation which the employee would be entitled to had she been made redundant;
- maximum of two annual salaries; and
- circumstances of the case including the employee's daily wage, the length of service, career prospects, circumstances of dismissal and the employee's age.

An employer is entitled to dismiss an employee for business-related reasons when:

- The employer discontinues the business or the business in the location the employee is employed.
- Where the number of necessary posts is reduced through business mechanisation or reorganisation, there is a lack of production means, restriction of the volume of business or credit difficulties.

On such dismissal the employee is paid an appropriate amount by the Redundancy Fund if he/she completed an employment period of 104 weeks or more with the same employer. Redundancy payments are calculated according to Table 4 of the Termination of Employment Law 1967, as follows:

Years of Employment	Cumulative Compensation	Total Compensation
First 4 years	2 weeks' wages per year employed	8 weeks
Next 5 years (5-10)	2.5 weeks' wages per year employed	15 weeks
Next 5 years (11-15)	3 weeks' wages per year employed	15 weeks
Next 5 years (16-20)	3.5 weeks' wages per year employed	17.5 weeks
Next 5 years (21-25)	4 weeks' wages per year employed	20 weeks

The upper limit for redundancy compensation is 75.5 weeks' wages.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Apart from the employer's notice obligations as described in question 6.1, in the case of a redundancy dismissal the employer must notify accordingly the Ministry of Labour and Social Insurance at least one month before the proposed date of termination, stating the redundancy's reasons, the affected business sector as well as the number and personal details of the affected employees. The employer is further obliged to give priority to redundant employees during the recruitment process of a post which became available within eight months from the redundancy, considering however its business's operational needs.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

A dismissed employee can bring a claim for damages for unlawful dismissal before the Industrial Disputes Tribunal or a claim for breach of contract before the District Court. The remedy for a successful claim is usually damages. Reinstatement is generally available against employers employing 20 persons or more but is in practice rarely granted.

6.8 Can employers settle claims before or after they are initiated?

Claims can be settled before or after initiation of legal proceedings.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

Mass dismissals are governed by the provisions of the Mass Dismissals Law 2001, according to which a mass dismissal is considered as such when:

- it is made by the employer;
- for reasons not related to the individual employees; and
- the number of dismissals within a period of 30 days concern:
  - at least 10 employees in establishments which ordinarily employ between 21 and 99 employees; or
  - at least 10 per cent of the employees in establishments which ordinarily employ between 100 and 299 employees; or
  - at least 30 employees in establishments which ordinarily employ at least 300 employees.

The employer must engage promptly in **consultations with the employees' representatives, aiming to reach settlement upon** potential ways to avoid or restrict the number of dismissals and reduce their consequences on employees. The employer must also **provide to the employees' representatives the relevant information** and disclose in writing the reasons, number and categories of the planned dismissals and the employees to remain employed, the time of the planned dismissals, the factors for selecting the employees to be dismissed and the estimation method for any payment in relation to the dismissals (excluding payment deriving from the 1967 and 1994 Termination of Employment Laws). The employer must also serve **notice to the Ministry** of any proposed redundancy dismissal at least one month prior to the proposed date of termination. The notice must include the same particulars as provided to the employees and the employees' representatives have the right to submit to the Ministry their observations. Planned mass dismissals may not be effected earlier than 30 days from the notification.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Employees can enforce their rights by applying to the Industrial Disputes Court with a claim for unlawful dismissal. If the employer breaches his/her statutory duties of consultation, information and notification is liable upon conviction to a fine not exceeding €1,708. If the employer dismisses employees before the end of the 30-day period the employer is liable upon conviction to a fine not exceeding €3,417.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Drawing on the constitutional principle that every person is entitled to exercise any lawful profession, the Contract Law establishes that any agreement restraining the exercise of a lawful profession, trade, or business of any kind is void. The Contract Law provides for three statutory exemptions. Firstly, **a person selling the goodwill of its business** may agree with the buyer to abstain from exercising similar business within reasonable borders. Secondly, with **the dissolution of a partnership**, the partners may agree that some or all of them will abstain from exercising any similar business within reasonable borders. Thirdly, the **partners of an existing partnership** may agree that some or all of them will abstain from exercising any business, other than that which is exercised by the partnership.

7.2 When are restrictive covenants enforceable and for what period?

Restrictive covenants are enforceable given that they are reasonable. In examining whether a restrictive covenant is reasonable or not, the competent court will take into consideration the type of activity that is restricted and geographical extent. The tendency of Cyprus case law is to recognise restrictive covenants of a maximum of six months duration and within very limited geographical borders.

Further, the employees' duty of fidelity entitles an employer to **prevent his/her employees from working for a competing business** during the employment term (but not thereafter) whereas he/she can **protect their business's confidential information** through non-disclosure contracts. These are available only in relation to information which is classified as a trade secret or is confidential to the extent that equivalent protection is required.

7.3 Do employees have to be provided with financial compensation in return for covenants?

No, they do not.

7.4 How are restrictive covenants enforced?

Restrictive covenants are enforced by applying to the court for an injunction restraining a former employee who is acting inconsistently with the restrictive covenant or for damages.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship?

The Processing of Personal Data (Protection of the Individual) Law, imposes upon the employer who, with the explicit consent of its employees, maintains records of their personal data with various duties aiming to secure the employee's personal data. The employer is under the obligation to inform accordingly the Office of the Commissioner for the Protection of Personal Data and maintain and process the records:

- fairly and lawfully;
- in accordance with the proportionality principle;

- for specified and legitimate purposes;
- only for the period necessary for the attainment of the purpose of their collection;
- in an accurate manner and proceeding to their update when necessary; and
- to preserve their confidential treatment through the appropriate technical and organisational measures.

The employer must also ensure that all the above conditions are fulfilled by the various departments of its business which have access to the employees' personal data.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Yes, employees have a right to obtain copies of their personal data held by the employer, and the latter is obliged to provide them.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

The personal data of prospective employees enjoy the same protection as the personal data of employees. As such the employer must collect the personal data necessary and relevant to the nature of the position for which the candidate has applied, with the consent of the candidate.

Criminal record checks are considered as sensitive personal data, which cover, amongst others, the employee's participation in a trade union and his/her political or religious beliefs. Their collection and processing is explicitly prohibited by the applicable law and may exceptionally be lawfully collected and processed under certain conditions such as, if the employee has been informed in advance and has provided its consent explicitly and/or the sensitive data collection is absolutely necessary for purposes directly linked with the needs of the employment relationship.

Additional safeguards are also provided by other laws such as the Police Law according to which access to a person's criminal records requires the listing of an application by the person concerned or by a duly authorised (by the latter) person.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

If the conditions for a lawful collection and processing (see question 8.1) are fulfilled, the employer should inform in advance its employees for any means of monitoring that he/she will employ.

With regard to emails, the employee's personal email, to which the employee has access by using his/her own username and password, is considered and protected as personal data even if it was purely provided for use within the framework of the employee's duties. The employer may only exceptionally have access to the employee's personal email (e.g. under the condition that the employee is present).

Regarding the employee's telephone calls, the employer may have access only to detailed telephone bills, from which the last three digits of the listed telephone numbers should be missing.

Lastly, the employer may monitor an employee's computer system provided that the employee is informed in advance and in an explicit manner.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

The employer may monitor and even prohibit the use of social media, however, only in and not outside the workplace.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The Industrial Disputes Tribunal has exclusive competence in respect to matters arising from the termination of employment and the employment relationship. The Industrial Disputes Tribunal is composed of a President or a Judge, who is a member of the judiciary, and two lay members with a consultative role appointed on the recommendation of the employer's and employees' respective organisations. Alternatively, a person may apply to the competent District Court for the breach of the employment contract, provided that his/her claim exceeds the maximum amount which can be ordered by the Industrial Disputes Court (namely, the equivalent of two years' salary). The District Court is composed of a President or a Judge who is a member of the judiciary.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

An employee can apply to the Industrial Disputes Court by filing a petition and paying the required official fees. The employer must then file a reply dealing with the employee's allegations and the case is then heard. Conciliation is not mandatory unless it has been agreed between the parties in the employment contract.

9.3 How long do employment-related complaints typically take to be decided?

Where a petition is filed before the Industrial Disputes Court the procedure may take between several months and a couple of years depending on the complexity of the issues raised. Typically, a simple claim can be concluded within six to twelve months.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Decisions of the Industrial Disputes Court are subject to appeal to the Supreme Court. Appeals typically take one to three years to conclude.

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