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The International Comparative Legal Guide to:

Employment & Labour Law 2016

6th Edition

A practical cross-border insight into employment and labour law

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the sixth edition of *The International Comparative Legal Guide to: Employment & Labour Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of labour and employment laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters examine issues when structuring international employment arrangements for multi-national companies and global employment standards and corporate social responsibility.

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 43 jurisdictions.

All chapters are written by leading labour and employment lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Elizabeth Slattery and Jo Broadbent of Hogan Lovells International LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main sources of employment law are (i) the Constitution of the Republic of Serbia, and (ii) the Labour Act; the employment of civil servants is governed by separate regulations.

Further sources of employment law are: (i) the Health and Safety at Work Act; (ii) the Act on Prevention of Harassment at Work; (iii) the Employment and Unemployment Insurance Act; (iv) the Health Protection Act; (v) the Pension and Disability Insurance Act; (vi) the Strike Act; (vii) the Anti-Discrimination Act; (viii) the Labour Records Act; (ix) the Vocational Rehabilitation and Employment of Persons with Disabilities Act; (x) the Employment of Foreign Nationals Act; and (xi) the Act on Assignment of Employees to Work Abroad, etc.

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

The Labour Act protects all types of workers unless their rights are governed by other regulations, as in the case of civil servants. As the main source of employment law, the Labour Act differentiates (i) employees, (ii) contract workers, and (iii) managers/directors engaged by means of a so-called management agreement. The Labour Act applies to employees working on the territory of the Republic of Serbia with a local or a foreign employer, i.e. individuals, as well as employees seconded to work abroad by their Serbian employer.

Employees may be engaged under an open-ended contract of employment, or a fixed-term contract of employment (for a maximum of 24 months and longer in exceptional cases prescribed by the provisions of the Labour Act).

Apart from employment, work may also be performed on a contract basis under: (i) a temporary or seasonal work contract; (ii) a service contract; (iii) an agency contract; (iv) a vocational training or advanced training contract; and (v) a supplementary work contract.

A management agreement is more flexible compared to a permanent contract of employment, given that it may be terminated upon the managing director's dismissal from office.

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

The contract of employment must be concluded in writing before an employee commences work. If an employee is working for the employer without a concluded contract of employment in writing, it shall be considered that the employee has concluded a permanent contract of employment from the day of commencing work for the employer.

1.4 Are any terms implied into contracts of employment?

The Labour Act sets forth the mandatory terms of a contract of employment. Amongst those terms are the type and description of the job, working hours and basic salary at the date of the conclusion of the contract. However, some terms may be implied if not explicitly regulated by the contract of employment. For instance, if it is not indicated in the contract whether it is a permanent or a fixed-term contract of employment it will be assumed that it is in fact a permanent contract of employment. Furthermore, it is implied, pursuant to the provisions of the Labour Act, that an employee has a duty to perform duties with proper care and diligence, to respect the employer's working organisation, as well as the employer's conditions and terms in relation to performing work duties, to inform the employer of important facts that could affect the performance of his/her work duties and to inform the employer of any danger to life and health or material damages.

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

The Labour Act prescribes certain minimum terms and conditions in relation to employment such as minimum age for entering into employment (15 years of age), minimum days of annual leave (20 working days), minimum salary and full working hours. Minimum salary is fixed by way of a decision of the socio-economic council established for the territory of the Republic of Serbia. If the Socio-economic Council fails to render the decision within 15 days as of the start date of negotiations, such decision shall be rendered by the Government of the Republic of Serbia within the following 15 days.

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?

All employment terms and conditions could be agreed through collective bargaining both at company and industry level. The branch collective bargaining agreement cannot determine fewer rights and less favourable conditions of work for an employee than those determined by the general collective bargaining agreement (if applicable to the employer in accordance with the provisions of Labour Act).

Also, a collective bargaining agreement concluded with an employer cannot stipulate less rights and fewer favourable conditions than those determined by the general collective bargaining agreement and branch collective bargaining agreement (if any and if applicable to the employer in question pursuant to the provisions of the Labour Act).

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Trade union recognition is regulated under the Labour Act and the Trade Union Registration Rulebook.

In order for a trade union to be recognised, several conditions must be met. Namely, in accordance with Article 218 of the Labour Act, a trade union shall be recognised if: (i) it is founded and is active on the grounds of principles of the freedom of trade unions and their activities; (ii) it is independent of state authorities and employers; (iii) it is financed predominantly from membership fees and its other income; (iv) it has a sufficient number of members; and (v) it is registered in accordance with the law.

A trade union can be registered if at least 15% of an employer's employees are members of the trade union.

2.2 What rights do trade unions have?

Trade unions have the right to: (i) negotiate and conclude a collective bargaining agreement with an employer; (ii) participate in a collective dispute; (iii) participate in tripartite or multipartite bodies on certain levels; and (iv) other rights in accordance with the law.

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

The taking of industrial action is regulated by the Strike Act. In accordance with the provisions of the Strike Act, the majority of employees or the body of the trade union renders a decision to take industrial action/strike. The decision contains the employees' demands, the duration of the strike, the place where the employees shall be gathering to strike, etc. The employer must be given at least five days' notice thereof or 24 hours in the case of a warning strike. A strike ends when the collective dispute is settled or a decision by the trade union/decision by the majority of employees to discontinue the strike is rendered.

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 under no obligation to set up a work council. A work council can be formed where the employer has more than 50 employees. A work council provides opinions and participates in the decision-making process regarding the social and economic rights of employees. The details on their rights and duties can be regulated under the general acts.

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?

If there is no trade union organised with the employer and, thus, there is no collective bargaining agreement in place, salary and other benefits/remunerations may be determined by an agreement concluded between the director and the work council (not mandatory). The Labour Act does not contain other provisions on co-determination rights.

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

A works council does not participate in the conclusion of the collective agreement; this is one of the rights of the trade union. Typically, an employer will either have a trade union or a works council.

2.7 Are employees entitled to representation at board level?

The Labour Act does not regulate this question beyond the provisions explained above. Thus, employers are free to regulate this matter internally.

3 Discrimination

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

Employees in Serbia are protected against discrimination under the provisions of the Labour Act and the Anti-Discrimination Act.

According to the Labour Act and the Anti-Discrimination Act, any direct or indirect discrimination against persons seeking employment, as well as employees, on account of sex, birth, language, race, colour of skin, age, pregnancy, state of health and/or disability, ethnic affiliation, marital status, family commitments, sexual orientation, political or some other conviction, social background, financial standing, membership in political organisations or trade unions or some other personal traits, is prohibited. The aforementioned is prohibited in relation to (i) requirements for employment and selection of candidates for a job, (ii) working conditions and all rights stemming from employment, (iii) education, training and advanced training, (iv) job promotion, and (v) termination of employment.

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

Please see question 3.1 above.

3.3 Are there any defences to a discrimination claim?

A valid defence could be, depending on the case at hand, to call on regulating provisions which are relevant when the employer's actions of differentiation, exclusion or giving an advantage in relation to a job are not considered discrimination. Namely, pursuant to Article 22 of the Labour Act, differentiation, exclusion or giving an advantage in relation to a job is not considered discrimination when the nature of that job is such, or the job is performed under such conditions that the factors associated with some of the grounds for discrimination (please see question 3.1 above) are a real and decisive requirement for doing that job and the desired outcome to be achieved thereby is justifiable.

Also, certain provisions of the employer's internal acts and the contract of employment cannot be considered discriminatory if they

are in fact regulating the provision of special protection of certain categories of employees (e.g. employees with disabilities, etc.).

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

Under the Anti-Discrimination Act an employee may (i) file a complaint to the Equality Commissioner, whose task is to prevent all forms, types and cases of discrimination, or (ii) file a claim to the competent court. Employers may settle claims both before and after they are initiated.

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

The possible remedies are: (i) prohibition of further acts of discrimination or a repeat thereof; (ii) determining that discrimination occurred; (iii) remedying the consequences of acts of discrimination; (iv) damages; and (v) publication of the court decision.

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?

No special protection in relation to discrimination is envisaged by the law for these types of workers.

The Labour Act regulates special protection measures in terms of the protection of the health and safety of minors, pregnant women and employed mothers, employees with disabilities and employees who are exposed to a higher level of risk, etc.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Female employees are entitled to (i) maternity leave, and (ii) child nursing leave of a total 365 days for the first and second child and two years for the third and every consequent child.

Also, female employees are entitled to two years maternity if in one delivery they give birth to three or more children or a female employee having given birth to one, two or three children and in second delivery gives birth to two or more children.

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

During maternity leave, a woman has the right to maternity pay. According to the Financial Support to Families with Children Act, the amount of maternity pay is equal to the average basic salary paid in the past 12 months prior to the month in which maternity leave was taken, and increased on the basis of time spent at work for each full year of work up to a maximum- amount of five average salaries in Serbia. During pregnancy and maternity leave and child nursing leave, an employer cannot terminate an employee's contract of employment.

In addition if an employee is in fixed-term employment, such employment is automatically extended to the end of such leave.

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

Upon returning from maternity leave, an employee continues working under the terms and conditions applicable until maternity leave was taken, unless there have been changes introduced through an annex to the contract of employment. However, it is worth noting that the Labour Act guarantees special protection rights to those breastfeeding.

Namely, where a woman's daily working hours amount to six or more, employers must allow for one or more daily breaks totalling 90 minutes to a woman who has returned to work before her child's first birthday so that she can breastfeed the child. Alternatively, the employer may shorten the working hours by 90 minutes. Daily breaks and reduced working hours are counted as working hours, while remuneration therefor is included in the basic salary, increased by longevity pay (*minuli rad*).

Also, a breastfeeding woman may not perform work which, pursuant to a medical report by the competent medical authority, is harmful to her health and that of her child, and especially work requiring the lifting of weight, or which exposes her to harmful radiation and vibrations. In such cases, the employer has a duty to assign "appropriate" work to those employees or refer them to paid leave. Also, a breastfeeding woman may not work at night or overtime if such work would be harmful to her health or that of her child pursuant to a medical report from the competent medical authority.

4.4 Do fathers have the right to take paternity leave?

Fathers have the right to take paternity leave. A father may take paternity leave where the mother abandons the child, dies, or for other legitimate reasons is not unable to exercise this right (e.g. serving a prison sentence, is seriously ill, etc.) or is unemployed.

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

The Labour Act further provides that the parent of a child under three years of age may work overtime or at night only where they provide written consent to do so. Moreover, a single parent who has a handicapped child under the age of seven may not work overtime or at night without prior consent in writing. Finally, an employer may reschedule the working hours of an employed woman during pregnancy and an employed parent with a child younger than three years of age only with his/her written consent.

Employees may have the right to parental leave when a child needs special nursing i.e. is severely handicapped. Such an employee has the right to be absent from work or to work part-time once maternity leave ends and to be absent from work for child-nursing purposes until the child reaches the age of five.

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

Please see question 4.5 above. Either the parent or guardian or a person looking after a person affected by cerebral palsy, infantile paralysis, any form of plegia or muscular dystrophy or other serious disease may work less than full time at his/her own request, subject to the opinion of the competent public health authority.

5 Business Sales

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

The Labour Act explicitly regulates only the rights of employees in case of change of employer, i.e. status changes. However, it does not regulate changes in a shareholding of the employer or asset deal as grounds for the transfer of employees.

An employer successor is under an obligation to abide by the bylaws and honour all contracts of employment valid on the day of change of employer. The employer predecessor has a duty to inform the employees prior to the transfer of their contacts of employment. If an employee refuses to be transferred or fails to respond within five days, his/her contract of employment can be terminated.

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

The Labour Act provides that the employees' rights and obligations under employment agreements and bylaws (i.e. collective bargaining agreements or work regulations) existing on the date of the transfer shall transfer to the transferee. The transferee is prohibited from amending such terms until the earlier of (i) the first anniversary of the transfer, (ii) the date of termination or expiry of the relevant bylaw, or (iii) the entry into force of another collective bargaining agreement.

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?

Article 151 of the Labour Act stipulates that the transferor and transferee must inform employees (through their trade union or directly) of the transfer 15 days before it takes place.

There are no prescribed consequences for failure to give notice/consult. However, an employer which denies its employees their rights in contravention of the rules on the business sale may be fined between approx. EUR 5,000 and EUR 12,400.

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

Yes; as explained above, prior to the transfer taking place, the employer has a duty to notify the employees of the transfer of their contracts. Employees must give their consent to the transfer of their contracts within five working days as of receipt of the employer's notice. If an employee rejects the transfer of his/her contract, the employer may terminate their employment agreement.

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

Unilateral changes are not permitted until the expiry of the deadlines described in question 5.2 above.

6 Termination of Employment

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

Article 189 of the Labour Act prescribes that only when employment (i.e. a permanent contract of employment) is terminated on the grounds of poor performance, i.e. lack of knowledge and qualifications, notice cannot be fewer than eight days or longer than 30 days depending on the employee's years of pensionable service. The exact duration is set down in the employer's internal act or the contract of employment. Fixed-term employment agreements end automatically once the term thereof lapses.

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?

This is not regulated by the Labour Act. However, this could be introduced if the employee in question reaches an agreement with the employer.

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 employee can initiate an internal procedure for resolving issues with respect to termination of employment if such procedure is envisaged under the contract of employment or employer's internal act. This internal procedure must be initiated within three days of the day on which the employee receives the notice of termination. This internal procedure shall be resolved by an arbitrator who shall render a decision within 10 days of the day on which the request to initiate such a procedure is filed. During this internal procedure, the employee shall be suspended from work.

Apart from the foregoing, employees can protect themselves by initiating a court proceeding for nullification of the employment termination decision. Where an employee initiates court proceedings he/she can, within 15 days of its initiation, file a request to the Labour Inspectorate for return to work until the end of litigation.

The employer serves the employee with a warning before termination in respect of a violation of work duties and work discipline (prescribed by the Labour Act, the employer's internal act and contract of employment), and the employee responds thereto while at the same time he/she can submit the opinion of the trade union. However, the employer is only required to take the trade union's opinion into consideration.

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

Yes; in accordance with the provisions of Labour Act, the employees cannot be dismissed while: (i) expectant; (ii) on pregnancy leave; (iii) on maternity leave; or (iv) on special child care leave.

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 an employee: (i) for legitimate reasons related to an employee's work abilities and his/her behaviour; (ii) if an employee is at fault for breaching work duty and work discipline; and (iii) due to business-related reasons of the employer.

Legitimate reasons related to an employee's work ability are: (i) poor performance, i.e. lack of knowledge and qualifications; (ii) if the employee is convicted of a criminal offence at work or in connection to work; and (iii) if the employee does not return to work within 15 days from the expiry of the suspension of work/unpaid leave.

An employee's behaviour, which qualifies as a breach of work duty and work discipline, is provided for under the Labour Act, but also under the employer's internal act and contract of employment.

Business-related reasons are: (i) redundancy; and (ii) an employee's refusal to sign an annex to the contract of employment on grounds determined under the Labour Act (i.e. transfer to another suitable work position, transfer to another place of work with the same employer, assignment to another suitable work position with another employer, if a redundant employee is being transferred to another position as a measure of resolving redundancy and due to changes in the way basic salary, work performance, benefits, increased salary and other payments are determined).

When dismissing an employee on this ground, the employer must pay severance pay to the employee.

Pursuant to the Labour Act, the minimum severance pay is equal to the sum of 1/3 of the monthly salary for each year of service with the employer that is terminating his/her employment. The salary used as the basis for the calculation is the average salary paid for the last three months prior to the termination of employment.

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

Yes, in the case of termination of employment due to breach of work duties and work discipline, the employer is obliged firstly to warn the employee on the existence of grounds for his/her dismissal and leave him/her eight days from the day the employee receives the warning to respond. An employee can, along with a response to the warning, furnish the employer with an opinion from the union which the employer is obliged to take into consideration.

Further, the employer is obliged to serve the termination decision to the employee in person i.e. at the employee's address. Where an employer fails to serve the termination decision as provided above, the employer is obliged to make an official note and publish the termination decision on its notice board. Eight days as of the day of publishing the termination decision it shall be considered that the termination decision was delivered to the employee.

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

An employee can initiate litigation for nullification of the termination decision and seek (i) to be returned to work and compensated for damages, or (ii) only to be compensated for damages in the amount of a maximum of 18 salaries (depending on years of service, age, and number of dependant family members) without being returned to work. The damages are equal to the amount of lost salaries (including the pertaining taxes and social contributions in accordance with the law) but excluding food allowance, annual leave allowance, bonus, awards and other compensation for contribution to the employer's business success. If a court determines that there were no grounds for termination of the employment, and that circumstances are such that a return to work for the employee would be impossible, the court shall dismiss the demand for a return to work and order the employer to pay damages to the employee for an amount double the standard compensation when an employee is being reinstated to work.

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

The employer can settle claims before and after they are initiated.

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

The employer is obliged to adopt a redundancy plan ("Redundancy Plan") where it plans within a 30-day period to make redundant the following number of employees on permanent contracts of employment:

- 10 employees if it permanently employs between 20 and 100 employees;
- 10% of employees if it has between 100 and 300 employees on permanent contracts of employment; and
- 30 employees if it has more than 300 employees on permanent contracts of employment.

Every employer is obliged to adopt a Redundancy Plan if it identifies that it will make at least 20 employees redundant within a 90-day period, irrespective of the total number of employees.

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?

Violation of the obligation set out in question 6.9 above is an offence for which the employer shall be fined under the provisions of the Labour Act from between EUR 6,640 and EUR 16,600. Additionally, the director shall be fined between EUR 415 to EUR 1,245 for the same offence.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Serbian law allows an employer to apply a non-compete clause prohibiting employees from performing certain types of activities in his/her own name and on their own account or in the name and on the account of other individuals or legal entities which would compete with the employer without consent. A non-compete clause can be applied during employment or for a certain period after termination of employment and on the territories prescribed in the employment agreement.

7.2 When are restrictive covenants enforceable and for what period?

Non-compete clauses are enforceable during employment and for a two-year period after termination of employment but only where the monetary compensation for the employee is agreed on (otherwise it is unenforceable).

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

Yes, if a non-compete clause covers the two-year period after termination of the employment.

7.4 How are restrictive covenants enforced?

Restrictive covenants are enforceable by filing a complaint to the court. An employer can claim damages from the employee. If the parties agreed on a penalty, the employer can claim the penalty and additional damages can be claimed only for the difference between the amount of penalty and the actual damages.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Employees' personal data is processed according to general rules governing personal data processing. These rules set forth certain obligations for employers. Namely, the processing of personal data must not lead to discrimination of the employee. An employer may only request personal data to the necessary extent determined by law if such data is directly connected to the employee's job, and needed for determination of the employee's professional abilities, i.e. the exercise of rights and performance of duties. Under personal data protection regulations one may collect and process personal data (e.g. an employer) only if such collection and processing is (i) expressly provided for by the law, or (ii) the person whose data is collected and processed (e.g. an employee) has given their written consent. For all employee data collection and processing that is not prescribed by law, the employer must obtain written consent from the employee. Such consent must not be obtained by an abuse of the employer's superior position.

Pursuant to Article 53 of the Personal Data Protection Act, an employer can freely transfer employee data to the countries that ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Such data can also be transferred to the countries or international organisations that are not a party to the mentioned Convention only if (i) they provide for a level of data protection in accordance with the Convention, and (ii) consent of the Commissioner is obtained before the transfer.

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

Employees have the right to review the personal data held by the employer and to request deletion of data which is not directly relevant to the job he/she performs, as well as to request correction of incorrect data.

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

No, employers are prohibited from requesting such information from the potential employee or from the competent state body which keeps criminal records. An employer may request information about the employee's criminal records from the competent state body only if: (i) the legal effects of the conviction are still ongoing; and (ii) the employer has an interest in such information as prescribed by law.

An employer cannot request from a potential employee (i.e. a candidate) information about his/her family, marital status and family planning, i.e. delivery of documents and other evidence that are not directly concerned with the performance of work for which the employee is hired.

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

This matter is not regulated by Serbian law. Hence, the general data protection principles must be observed. According to those general principles, an employer would not be allowed to constantly monitor an employee's communication without the employee's knowledge and consent, as such collection of data is not expressly permitted by the law. It must be distinguished that private communication must not be monitored by an employer even if such communication is made from the business computer system. Business communication may be monitored if the employer has the need for such monitoring but only to the extent needed. However, the employee must be informed about the monitoring. It is advised that business communication monitoring should be regulated between the employer and employee in writing.

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

The employer may forbid an employee from accessing social media from the corporate network and in such way block access to social media in the workplace. However, the employer cannot control the employee's use of social media 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?

According to the Courts Organisation Act, the basic court is competent for employment-related complaints. Territorial competence pursuant to the Civil Procedure Act belongs to the court on the territory of the employee's residence or to the court of territory where the work is or was performed by employees.

The court of first instance for employment-related complaints is composed of one judge.

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?

The rules of Civil Procedure Act apply in employment-related disputes. Conciliation is not mandatory and shall be conducted

only if previously agreed in the employer's general act or contract of employment. To submit a claim, an employee must pay a court fee. The amount of the court fee depends on the value of the dispute.

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

The Civil Procedure Act prescribes that employment-related disputes are urgent. Unfortunately, in practice, these proceedings rarely take less than two years.

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

A first instance decision may be appealed and the procedure usually takes about one year until the second instance decision is rendered.

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