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The International Comparative Legal Guide to:

Employment & Labour Law 2017

7th Edition

A practical cross-border insight into employment and labour law

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the seventh 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 discuss the implications of Brexit on UK employment law, as well as 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 35 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.

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 Portuguese Constitution sets forth a number of fundamental rights and principles in its Chapter III regarding both employees and employers.

The Labour Code, collective bargaining instruments and the individual agreements are also main sources of employment law.

Labour practices of each profession, sector or company are also a secondary source of labour law.

Finally, European legislation is also a main source.

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

The Labour Code protects every employee, regardless of the specific type of agreement entered into with the employer. Nevertheless, there are specific regulations applicable to certain types of employees (such as domestic employees, professional athletes, artists and showmen).

Employment relationships between public institutions and their employees are also governed by special legislation.

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

As a rule, employment agreements do not have to be in writing. As an exception, promissory, term employment agreements, teleworking, temporary and pre-retirement employment agreements, as well as employment agreements with a foreign employee, must be in writing.

However, the Labour Code requires the employer to provide employees with some information in writing, notably:

- complete identification of the employer, including its corporate group relationship;
- the employee's place of work;
- the employee's job title or a brief description of his/her duties;
- the date of signing the employment agreement and the employee's start date;
- for a fixed-term employment agreement, the term and the grounds/reasons for entering into it;
- the employee's annual leave, or the rules for calculating the leave;
- notice periods for termination of the employment agreement, or the rules for calculating those periods;
- employee pay (amount and regularity);
- a regular weekly and daily schedule;
- the applicable collective bargaining agreement, if any;
- the identification number of the employer's accident insurance policy and insurance company; and
- identification of the respective employees' compensation fund.

1.4 Are any terms implied into contracts of employment?

Yes. All employment relationships implicitly include the employer's obligation to provide work, to pay for the work rendered and to provide a safe working environment. As for the employee, every employment agreement implies that the employee will carry out the work and be loyal to his employer.

Additionally, employment agreements are always subject to an implied probation period, unless the parties choose to reduce or exclude it in writing.

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

The Labour Code guarantees minimum employment conditions that the employers have to observe, such as minimum wages, holidays, maximum working hours, etc., which shall prevail over employment agreements or collective bargaining instruments.

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?

Collective bargaining instruments may rule on all aspects of the employment relationship, unless a specific legal rule forbids it. There are also specific matters that can only be ruled by collective bargaining agreements if more favourable to the employee. In Portugal, collective bargaining is most common at industry level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

The Portuguese Constitution recognises the right of employees to freedom of association, thus guaranteeing: (i) the freedom to form trade unions at any level; (ii) the freedom of membership (affiliation); (iii) the freedom to decide the organisation and internal regulations of trade unions; (iv) the right to engage in trade union activities within the company; and (v) the right to have political opinions.

2.2 What rights do trade unions have?

In order to defend and promote the defence of rights and interests of the represented employees, the Portuguese Constitution recognises the following rights of trade unions: (i) to enter into collective bargaining agreements; (ii) to provide services of an economic and social nature to their members; (iii) to take part in drafting labour legislation; (iv) to represent employees in labour litigations and administrative procedures; and (v) to take part in the company's restructuring.

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

Yes. Both the Portuguese Constitution and Labour Code guarantee the right to strike, setting forth a series of provisions that govern the right to strike and the proceedings that ought to be complied with.

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?

The organisation and activity of a works council – hereby understood as representatives committees at company level – is governed by law. The Portuguese Constitution sets out the right of every employee to organise and participate in a works council in order to further their labour interest.

These councils are not to be confused with union representation in the company. They are quite different in their nature, origin and respective rights – namely to: (i) receive all information necessary to carry out their activities; (ii) exercise thorough supervision of company management; (iii) intervene in the company's restructuring processes, change of work conditions and dismissal procedures; (iv) take part in the drafting of labour legislation and economic and social planning; and (v) manage the company's social works.

Works council representatives are appointed by an election process.

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?

Although works councils must be consulted, through a written consultation procedure, before the employer issues a decision in some matters, the agreement of works councils is not necessary for the decision to be implemented.

The matters in which works councils must be consulted include: (i) winding-up of the undertaking and requests for bankruptcy; (ii) any measures that may lead to a substantial reduction in the number of employees, the substantial deterioration of working conditions, or substantial changes in the work organisation; (iii) changes to the criteria for employee professional classification or promotion; and (iv) change of location of the company or any of its establishments.

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

As per the above, works councils and trade unions operate with different principles and objectives. Specifically, they have a distinct set of rights, namely the right to declare strikes and the right to collective bargaining, both exclusive of trade unions.

2.7 Are employees entitled to representation at board level?

No, they are not.

3 Discrimination

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

All employees are protected against discrimination. The Portuguese Constitution sets forth that all citizens are equal before the law and have similar rights and duties, thus guaranteeing legal protection against discriminatory acts and practices, namely on the grounds of ancestry, genre, race, age, disability, language, place of origin, religion, political or ideological convictions, education, economic situation, rank or sexual orientation.

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

The Labour Code deems both direct and indirect discrimination to be unlawful. Direct discrimination occurs whenever an employee is treated less favourably than another employee in a comparable situation, and due to one of the reasons set out above. Indirect discrimination takes place when, in an apparently neutral provision, criterion or practice, an employee is put at a particular disadvantage.

3.3 Are there any defences to a discrimination claim?

Facing a judicial claim of discrimination, the employer may argue before the court that the different treatment is justified, and did not rely on discrimination.

Defence against discrimination claims may differ depending on whether the employee sued over direct or indirect discrimination. Against direct discrimination claims, the employer may argue, for instance, that the nature of the activity or the context of its performance requires a different treatment. This argument invokes the principle that what is different ought to be treated differently. Against indirect discrimination claims, a defence is possible by arguing the pursuit of a certain justifiable goal by the employer and it may be deemed successful, provided that the given different treatment is necessary, adequate and proportional to the pursued objective.

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

Employees may enforce their discrimination rights before the Commission for Equality in Work and Employment (CITE), as well as before courts. Notwithstanding the foregoing, employers may always settle with the employees, both before and after the procedure is initiated.

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

Successful discrimination lawsuits entitle the employees to: (i) compensation for both material and non-material damage; (ii) reinstatement in the company (in case of termination of employment agreements); and (iii) compensation for the termination of their employment agreements (should it be the case). Additionally, employees may terminate their agreements with fair cause, and in such case are entitled to compensation for such termination.

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?

Besides special protection given to pregnant employees, recently become mothers and union representatives or members of employees' representation bodies, all employees are granted the same protection regarding discrimination, regardless of the type of employment agreement.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Working parents are entitled to parental leave of 120 or 150 consecutive days as per new-born child, which they can share after the child's birth, without prejudice to the mother's exclusive initial parental leave (six weeks' initial parental leave immediately after giving birth). This leave may be extended by 30 days (up to a maximum of 180 days) when each parent takes exclusive leave of 30 consecutive days, or two periods of 15 consecutive days, after the mother's mandatory leave. In the event of more than one child being born at the same time, the leave period is increased by 30 days for each additional child.

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

While on leave, the employee's rights remain unchanged, except in relation to pay. The Portuguese Constitution specially protects female employees against the loss of any other privileges during this maternity leave.

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

Upon her return to work from maternity leave, the employee shall have the same rights as before. Moreover, during the breastfeeding period, the employee is entitled to time off and protection against termination.

4.4 Do fathers have the right to take paternity leave?

Yes, 15 business days of leave within the first month following the birth must be observed by the father. Five days of said 15 days must be mandatorily used after the birth. The father is also entitled to 10 business days, consecutive or not, to be used at the same time of the mother's maternity leave.

On the other hand, the father may also be entitled to 120 or 150 days of parental leave, provided that the mother does not use the same leave. For further information, please see question 4.1.

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

When breastfeeding or bottle feeding, the mother or father are entitled to a daily leave of two distinct periods, without loss of remuneration or privileges. Unless otherwise agreed with the employer, each leave has a maximum duration of one hour, a period which is extended in the case of multiple births.

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

When caring for children under the age of 12 or for children with a disability or chronic illness (regardless of their age), the employee can benefit from: (i) 30 days per year of absence to render the necessary assistance; (ii) a period of absence equivalent to the duration of the hospitalisation, in the case of illness or accident; and (iii) flexible working hours or the right to work part-time.

When caring for children over the age of 12, the employee can benefit from a 15-day per year period of absence in order to render the necessary assistance, in the case of illness or accident.

5 Business Sales

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

Yes. In the event of a transfer (by an asset transfer) of the ownership of a business, an undertaking, an establishment that is part of an undertaking, or an establishment that constitutes an economic unit, the transferee is assigned the legal position of the employer in the employment agreement with the affected employees, and assumes liability for payment of fines applied in cases of labour offences. The concept of 'transfer' includes an assignment, transfer or return of the economic exploitation of the company.

According to some case law, provided that the changes to an employment agreement entail significant and substantial changes to the employee's position, the employee may refuse to be transferred and terminate the employment agreement with cause.

The sale of shares does not have any direct impact on the employment agreement.

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

In the event of a business sale, the new employer undertakes the contractual position assumed by the previous employer, and

therefore the employee will continue to have the same rights that he/she had with the previous employer, including length of service.

Collective bargaining agreements applicable to the original employer must be maintained by the new employer by the expiration date of the collective bargaining agreement or, at least, during 12 months following the transfer, except if a new collective bargaining agreement applies to the new employer.

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?

Yes. Both the transferor and the transferee must inform the employees' representatives [i.e. (i) employees' committees; (ii) inter-union committees; (iii) union committees; and (iv) union representatives] or all of the employees if there are no employees' representatives, who are affected by the transfer of the following: (i) the date and the reasons for the transfer; (ii) the legal, economic and social implications of the transfer for the employees; and (iii) any measures envisaged in relation to the employees.

The information must be given in writing within "reasonable time" before the transfer and, in any event, at least 10 days before the consultation referred to below, if applicable.

The transferor and the transferee must consult the employees' representatives on the envisaged measures in relation to the relevant employees in view of reaching an agreement.

The violation of these provisions constitutes a minor administrative offence and does not interfere, in any case, with the transfer itself.

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

A business sale cannot determine the dismissal of employees covered by the transfer nor cause the redundancy thereof. However, the business sale may provide the employer (either the seller or the buyer) with structural, economical or technological grounds for a redundancy procedure (collective or individual).

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

Once the new employer undertakes the contractual position of the previous employer, all employment agreements are transferred, and the previous terms and conditions of employment are maintained. However, employers may amend existing employment agreements by mutual agreement, or unilaterally, provided that there is no violation of general rules, in the same terms it could occur if no transfer existed.

6 Termination of Employment

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

In general, termination by serving notice to the employee is not allowed. However, for fixed-term employment agreements, the employer must serve notice to the employee with 15 days' notice before the term expires. For uncertain-term employment agreements, such notice must be given with a minimum notice of seven, 30 or 60 days (depending on the duration of the agreement being up to six months, between six months and two years, or longer).

Additionally, termination of an employment agreement during the trial period must comply with a seven or 15 days' notice, if that trial period has lasted more than 60 or 120 days, respectively. In this case, if the required advance notice is not given, the employer will have to pay compensation corresponding to the missing notice period.

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?

Although Portuguese law does not expressly and formally recognise the concept of "garden leave" during an employee's notice period, the employer may release the employee from the performance of work, provided that the he/she agrees so, without loss of pay.

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 employer may only dismiss an employee when there are objective or subjective reasons related to the company or to the employee, respectively. In both cases, a formal procedure must be followed. Otherwise, the termination of the agreement shall be deemed unlawful. The employees may challenge the dismissal by filing a claim before the court.

An employee is treated as being dismissed if the employer unilaterally terminates the employment relationship. Expiration of term employment agreements and termination upon trial period is not deemed a dismissal.

Consent from third parties is not required in order for an employer to dismiss, except for cases of dismissal of pregnant employees, recently become mothers or those breastfeeding, as well as employees on parental leave. However, it is mandatory to communicate the decision to both the works council and the respective trade union (if applicable).

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

Pregnant employees, new mothers or those breastfeeding, employees on parental leave, and employees' representatives enjoy additional protection against 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?

1. An employer is entitled to dismissal for reasons related to the individual employee when there is "cause" for dismissal. The Labour Code defines "cause" as a fault in the conduct of the employee, which due to its seriousness precludes the possibility of maintaining the employment relationship because the conduct undermines the requisite of trust on which the relationship is built. The Labour Code provides some examples of cause for termination: (i) illegitimate disobedience to orders given by hierarchical superiors; (ii) violation of rights and guarantees of employees;

(iii) repeated conflicts with employees; (iv) repeated disinterest in complying with due diligence with the obligations of his/her functions; (v) infringement of the company's serious material interests; (vi) false statements concerning justifications of absences; (vii) unjustified absences from work that directly determine damage or serious risks to the company, or whose number reaches, in each year, five in a row or, regardless of damage or risk, a total of ten; (viii) lack of observance, with fault, of the rules of safety and health at work; (ix) physical violence, insults or other offences, punishable by law; (x) abduction or, in general, crime against members of the company; (xi) non-compliance or opposition to the fulfilment of a judicial or administrative decision; and (xii) abnormal reductions of productivity or quality in the performance of work.

In this case, there are no financial consequences for the employer besides the payment of the credits arising from the termination of the employment agreement.

2. Additionally, an employer is entitled to dismiss for business-related reasons based on market, structural or technological reasons when the collective or individual redundancy applies.

Within redundancy procedures (either individual or collective) the employee(s) will be entitled to compensation. The compensation amount will vary depending on the employee's length of service, the effective date of the employment agreement and the employee's base salary.

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

Yes. The employer may only terminate employment agreements with cause following a disciplinary procedure, which must be instituted within 60 days of the date when the employer became aware of the employee's misconduct. However, if needed, the employer may conduct an internal investigation to look into further evidence to substantiate the accusation. In this case, the internal investigation must be initiated no more than 30 days after there is a suspicion of irregular conduct. If the employer finds the employee has committed a breach in the employment agreement, an 'indictment note' must be served to the employee, describing the facts he/she is accused of, within 30 days of concluding the internal investigation.

Upon receipt of the 'indictment note', the employee may file a written defence within 10 working days and request certain means of proof (depositions from witnesses, documentation to be attached to the disciplinary file, etc.) to be adduced by the employer.

After completion of this phase, a full copy of the file on the proceedings must be delivered to the works council or trade union (if applicable), which may, within five working days, issue its opinion on the case. After receiving these opinions, or after the period for issuing an opinion has elapsed, the employer has 30 days to issue a final decision, either in favour of the employee or assessing a disciplinary penalty. This decision must be notified in writing to the employee. If there is no works council or trade union, the 30-day period begins on the date of the last investigation.

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

The employee may challenge both the validity and the fairness of the dismissal before the court.

In the case a court finds the dismissal unlawful, the employee will be entitled to:

(i) compensation for pecuniary and non-pecuniary damage;

(ii) reinstatement without prejudice of the employee's job position and seniority, or compensation varying between 15 and 45 days of basic salary and seniority allowance per year of seniority (taking into account the date of the final and binding court award), with a minimum of three basic salaries plus seniority allowances; and

(iii) salaries not earned between the date of the unlawful dismissal and the final and definitive court decision, plus interest at the applicable legal rate, including, for example, Christmas bonuses and vacation allowances, any mandatory salary increases, etc.

In certain cases, if the lawsuit is pending before a court of first instance for more than one year, the company will only be liable to pay monthly salaries accrued over the first 12 months. The State will then be liable for payment of all monthly salaries accrued after these first 12 months and until the court of first instance issues its ruling. Should an appeal be filed against this ruling and the court find against the company, the employer will be liable for all the salaries accrued while the appeal was pending.

Any amounts received by the employee as a result of the termination (e.g., unemployment benefits or salaries from another employer) will be deducted from these salaries. However, the company will be obliged to reimburse the Social Security Services of the unemployment benefits the employee has been receiving.

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

It is possible for employers to settle claims before and after they are initiated. Portuguese law admits both extrajudicial conciliatory mechanisms and judicial conciliatory agreements.

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

Yes. The Labour Code provides for two types of redundancies: (i) collective; and (ii) individual.

Collective redundancy is the successive or simultaneous termination of employment agreements over a three-month period by the employer, affecting at least two to five employees, depending on the size of the undertaking: two if the employer is a company with fewer than 50 employees; and five if the employer is a company with more than 50 employees. When collective redundancies do not apply based on the number of affected employees, individual redundancies can be applicable. Individual and collective redundancies require a specific procedure to be complied with.

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 may enforce their rights in relation to mass dismissals through legal action and within a period of six months after the date of termination.

On the other hand, an injunction for preventive suspension of the collective redundancy must be requested within a period of five working days of the date of receipt of the notification for dismissal.

Failing to comply with its obligations, the employer can be sentenced to compensate the employees for both material and non-material damage, as well as to reinstate them in the company.

The employee may also file a complaint with the labour authorities, which may take action to apply an administrative penalty.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Non-competition agreements and permanence covenants are recognised in Portugal.

7.2 When are restrictive covenants enforceable and for what period?

Non-compete clauses may last for at most two years after the termination of the employment relationship. This may be extended to three years for employees whose activity involves a relationship of trust or who have access to sensitive information concerning competition matters.

All non-compete clauses must meet the following requirements:

(i) the clause must be in writing, notably in the employment agreement or termination agreement;

(ii) the jobs or activities covered must cause damage to the employer; and

(iii) the employer must pay the employee compensation for restricting his or her professional activities during that period. This sum may be reduced in case the employer has spent large sums on the employee's professional training.

As per the permanence covenant, the employee shall be obliged not to terminate his agreement, for a period not exceeding three years, as compensation for expenses made by the employer in connection with training. The employee may be released of such obligation by paying the expenses made by the employer.

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

Employees must be properly compensated for the non-compete agreements.

7.4 How are restrictive covenants enforced?

Restrictive covenants must be set forth in writing and its enforceability depends on the content of the clause. Permanence covenants are automatically applicable. Non-compete clauses may be automatically enforced after the termination of the employment agreement.

Upon violation of restrictive covenants, legal action may be taken, and the party that failed to comply with the covenant may be sentenced to pay 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?

Within the Portuguese legal framework, personal data protection has constitutional dignity. Hence, the employer's power of management is restricted by the employees' right to privacy. Under the Portuguese Data Protection Act, personal data must be: (i) processed lawfully and in good faith; (ii) collected for specified, explicit and legitimate purposes; (iii) never processed when incompatible with such purposes; and (iv) kept for no longer than necessary for the purposes for which it was collected.

Furthermore, any transfer of data must rely on one of the legitimate grounds. Therefore, in the case of cross-border transfers to a non-adequate country, authorisation of the Portuguese Data Protection Agency (CNPD) will be required. This occurs whenever the transfer is not made: (a) to a company registered under U.S. Safe Harbor; (b) to a country deemed as adequate by a decision issued by the European Commission; or (c) through the EU Model Contract C2C.

The cross-border transfers to adequate countries do not require CNPD authorisation, but rather CNPD notification.

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 access personal data without constraint at reasonable timings and without excessive delay or expense. Furthermore, under the Portuguese Data Protection Act, employees' rights include the right to be informed on the identity of the data controller, as well as on the purpose for which the personal data is being processed and respective categories. Also, employees must be informed of the existence and conditions of their right of access and right to rectify.

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

From a labour standpoint, as a general rule, the employer cannot run, directly or through a third party, a background check on job applicants regarding his/her private or personal life. Nonetheless, it is possible to conduct such background checks (i) if the information is strictly necessary to assess the job applicant's ability to perform his/her future duties, and (ii) when there is a written request justifying the need for such information.

From a data protection standpoint, the company can only process information containing personal data without the individual's consent in certain specific situations set forth in the law. Additionally, sensitive data (such as criminal records and medical examinations) can only be collected with a prior authorisation from the CNPD.

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

The Labour Code protects the employee's right to privacy regarding personal messages. Nevertheless, this does not affect the employer's right to enforce policies on the use of IT tools. In any case, the employer is obliged to notify employees on the terms and restrictions of the use of company equipment and data processing.

Monitoring IT tools carry risks to the privacy of the employee and therefore should be carefully analysed and assessed on a case-by-case basis and accompanied by a set of measures that ensure a minimum level of intervention. Furthermore, control of the employees' movements during their free and personal time is inadmissible.

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

Monitoring the employee's use of social media on an occasional basis, rather than on a permanent one, may be acceptable. Nevertheless, this can never, on any occasion, be extended to the monitoring of private messages. Also, even though the employee has the constitutional right to freedom of speech, the employer's intervention may be justified when regarding the disclosure of the company's confidential information, as well as in the event of any damage to the company's image or best interests.

On the other hand, taking into account some of the employee's duties (notably the duty to be loyal), employers may regulate off-work conduct to the extent that it has a detrimental impact on the employment relationship, including in cases where the employee may disclose confidential company information or other content which might harm the reputation or interests of the company or respective co-employees.

9 Court Practice and Procedure

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

On a first instance level, the Labour Court, presided by one judge, has jurisdiction over employment-related complaints.

Subsequently, the Social Division of the Court of Appeals, ruling with a panel of three judges, has jurisdiction to decide on appeals against Labour Courts' decisions.

At the last stage of hierarchy of the courts stands the 4th Division of the Supreme Court of Justice also ruling with a panel of three judges.

Additionally, the Constitutional Court has exclusive jurisdiction over violation of any constitutional provision.

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 procedure will differ according to the nature of the complaint, since special procedures will apply to different types of claims. As a rule, in employment-related judicial complaints, the court must promote a conciliatory hearing. In some special procedures, this conciliatory phase will occur not before the court, but before the Public Attorney's Office. In order to submit a claim, an employee will have to pay court/justice fees. Nevertheless, in certain situations, the employee may be exempted from this payment, for example, when represented by the public prosecutor's office. A trade union's legal department may also represent employees, being responsible for the payment of any fees there might be.

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

On average, employment-related complaints typically take between one and two years to be decided by the first instance court.

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

Yes, as a rule, it is possible to appeal from a first-instance decision before a second instance court (the Court of Appeals). However, the admissibility of the appeal will, in principle, depend on the type and value of the claim at stand. The appeal will always be admissible, regardless of the value of the claim, regarding: (i) the determination of the professional category of the employee, his/her dismissal, reintegration and validity of employment agreement; (ii) accidents at work or occupational disease; and (iii) legal proceedings of welfare institutions, family allowance and syndicates. Appeals on substantial matters (*i.e.* on the claim itself and not related to procedural matters) usually take between one and two years to be decided.

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FCB
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