Bird & Bird &
A European View on Employment Law

France »

Over 12.5% more labour code articles than cheese-makers

>12.5%

Germany »

40%

40% of all newly concluded employment contracts are concluded for a limited term. Of these, 30% will be renewed and 40% will be switched to unlimited terms.

Italy »

During maternity leave an employee receives 100% of their salary for 5 months followed by an additional period of maternity leave of 6 months at 30% of the salary.

100%

Nordics »

80% of the work force are covered by collective bargaining agreements.

80%

Spain »

90%

More than 90% of the employment contracts entered into in May 2016 were temporary.

UK »

Statutory minimum employment leave in the UK is 28 days (including public holidays).

28 days

France

French employment law is in favour of protecting employees. However, in reality, provided the correct procedures are followed, and given the recent legislative changes, it is possible to navigate through the laws successfully.

Background

France is a civil law country and employment relationships are governed by the Labour Code. The majority of industry sectors have also negotiated Collective Bargaining Agreements *("CBAs")* which supersede the Labour Code on certain points. These CBAs apply automatically to employers that fall within the scope of the CBA. There is no requirement to subscribe or have trade union presence. The law changes very frequently and is undergoing a number of reforms to simplify it, making it more business-friendly and increasing trade union negotiations to achieve solutions that are closer to the needs of specific businesses and industry sectors.

Did you know?

- Certain employees are protected and their termination requires authorisation from the labour authorities.
- Other employees (on maternity leave for instance) benefit from absolute protection - they cannot be terminated under any circumstances.
- Working time: the 35 hour week is only a threshold, not a maximum working time limit.
- There are various arrangements that enable employees to work more than 35 hours, for instance working time calculated in days rather than hours.
- The French social security system is expensive but provides a high level of statutory benefits (sick pay, unemployment benefits etc.) to employees. Company-side contributions are in the region of 45% on top of gross salary, and employee contributions around 20-25%.
- Unemployment benefits are very high in France (minimum 57% of salary for up to 2 years (3 years for employees over 50) post termination).

Restructuring programmes: key issues

- Works councils and other employee representatives have a right to be informed and consulted before a definitive decision is taken on a project. Legislation now limits the maximum duration of works council consultation to one month (two months if the works council appoints an expert, three months if the project has consequences on employees' health, safety or working conditions, and four months if the company has a health and safety committee coordination body), which means that projects can no longer be suspended indefinitely by the works council refusing to issue an opinion.
- A specific procedure applies for redundancies. The procedure varies depending on the size of the company and the number of redundancies envisaged. Where a social plan needs to be implemented (10 or more redundancies in a company with at least 50 employees) the company can negotiate with trade unions and must consult with staff representatives. The social plan must also be ratified by the labour authorities.
- Selection criteria must be applied to choose the employees to be made redundant. Employees are entitled to a statutory severance payment and notice period. Other measures are also implemented in order to promote redeployment both within the group and externally.

General employment

- Employment at will does not apply. Any dismissal must be justified and employees can challenge the grounds put forward, claiming that their dismissal was unfair so as to obtain damages.
- There is no obligation for employees to mitigate their detriment by actively seeking alternative employment post termination - the court will not award lower damages if an employee has not done so.

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Germany

Germany has a civil law system, meaning that employment law is governed by a variety of different laws. Nearly 40% of employees are represented by a Works Council, but most of the companies with less fewer than 100 employees do not have one.

Background

A unified statute of labour rules does not exist but employment law is governed by general provisions of the Civil Code, a high number of different employment specific acts (e.g. Protection against Unfair Dismissal Act, Vacation Act, etc.) or relevant provisions from different areas of law such as the social books. Although very unusual in a civil law system, German employment law is also to a high degree governed by case law. Further, employment law can be governed by collective bargaining agreements concluded between an employer or an employers' association on one side and a trade union on the other side. On a business level, employment law can further be subject to shop agreements concluded between an employer and its works council.

Did you know?

- The standard of employee protection is very high in Germany so that most of the German employment law is designed to protect employees.
- The level of protection against unfair dismissal is very high but it is only triggered after completion of six months of service with the employer and only if the employer employs more than 10 employees within the same business.
- Works councils and unions have much power vis-à-vis the employer and enjoy a high level of protection, which for the unions is even guaranteed by the constitution.
- There are separate courts for employment law claims. The employment procedure supports mutual settlements by providing for a statutory conciliation hearing at first instance.

Restructuring programmes: key issues

- Collective employment law is a main aspect of procedure, mainly because of the works councils' co-determination rights with regard to social, economic and personnel matters.
- Restructuring measures that have a relevant impact entitle the works council to negotiate on a balance of interest and a social plan.
- The balance of interest negotiations with the works council are intended to focus on the organisational aspects of a restructuring,
- The social plan is implemented to compensate employees for any detrimental impact of the restructuring, mainly providing for severance payments in case of redundancy.

General employment

- Employees enjoy a high level of protection, not only in relation to terminations but also with regard to:
  - social security (e.g. employer and employee funded social security paid vacation)
  - sick pay
  - unpaid parental leave
  - leave to take care of a relative with the right of returning to the same job after a certain period of time.

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Italy

In Italy employment law is defined as the "law of the employees", meaning that the majority of labour laws aim to provide rights and protection for employees in order to create a balance between the higher (financial) power of the employer and that of the worker.

Background

Precedence is given to statutory law, which is followed by the Collective Bargaining Agreement ("CBA") and then the individual employment contract. The latter can derogate from the law or the CBA only by providing more favourable benefits for the employee. Company polices rank lowest and therefore must comply with the regulations, the CBA and the contract.

Did you know?

- A court can order the reinstatement of a dismissed employee to their old position plus the payment of all outstanding salaries and social security contributions.
- A special mandatory severance payment (called T.F.R.) can be granted, which is a deferred salary accrued during the employment relationship, to be recorded in the balance-sheet and paid out for any reason of termination (incl. resignation, retirement, etc.).
- Italy grants high levels of protection to working mothers, who must be absent from work for five months due to pregnancy and are entitled to their full salary.
- Mothers cannot be dismissed for any reason until their child is one year old.

Restructuring programmes: key issues

- There is an obligation to carry out a collective redundancy procedure if the company intends to dismiss at least five employees within a 120 day period.
- The duration of union consultations is three months (but may be longer in the event of a strike).
- The employer cannot "cherry-pick" employees for dismissal but must select them by applying objective criteria (e.g. last-in-first out; family dependants; technical reasons).
- An agreement with the unions / work councils (providing enhanced severance payment) is key to being successful but it is not binding: every employee can choose to accept the enhanced severance or to sue the employer.
- Enhanced severance is on top of mandatory severance and notice periods.

General employment

- Social security contributions (approx. 30% on gross salary) must be paid even if the company employing workers in Italy is foreign and has no offices in Italy.
- Employees working in Italy must have an Italian employment contract (even if the employer is foreign) because the greatest majority of employees' entitlements and protections set forth by Italian law are mandatory.

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Nordics

Employees across the Nordics generally have a good standard of education and are highly represented amongst successful technology companies. Collective Bargaining Agreements ("CBAs") cover as much as 80% of the work force.

Background

The law across the Nordics is codified and case law helps to interpret these laws. Employment laws are mandatory to the protection of the employees and there is no employment at will. Mandatory law includes rules on acceptable grounds for dismissal. Any terms set by CBAs enjoy similar status to laws.

Did you know?

- 50% of the employees are female
- Most of the workforce speak English and there is no obligation to translate policies or to provide bilingual employment agreements
- Fathers take parental leave in the Nordics. It is also a common practice to share the leave amongst parents
- A strong social security system exists in all countries; medical care is free or inexpensive
- Very stable labour market with few strikes
- Employees are typically hard working and loyal

Restructuring programmes: key issues

- In Sweden obligation to consult with the trade unions before deciding to restructure (if there is a CBA in place); obligation to consult also exists in Finland but procedure is different to that in Sweden
- Social selection criteria are normally applied; selection methods differ from country to country. The most drastic method is the "last in- first out" principle in Sweden
- European rules on transfer of undertakings are implemented
- There is no "one size fits all"; rules differ considerably between the Nordic countries

General employment

- The main rule is that employment continues until further notice
- Probationary periods and fixed term contracts are allowed
- Restrictive covenants must be compensated for in Denmark and Sweden but generally not in Finland

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Spain

In Spain employment law is very protective of employees. Employment courts apply the regulation with a clear preference for employees; this is the case despite legislative changes, which have tried to provide better conditions for companies to carry out business in Spain.

Background

Spain is a civil law country and employment relationships are regulated by the Statute of Workers (other relevant legislation includes health and safety and infractions regulations for example). However, there are other sources of regulation equally important such as the Collective Bargaining Agreements ("CBAs"). Those are negotiated by the representatives of the workers and the employer at sector/company level. These CBAs can provide for better entitlements on certain working conditions (i.e. annual leave, holidays).

In Spain, there is a Public Social Security System to which employers and employees have to contribute. This system provides coverage in certain situations, e.g. public healthcare, unemployment, retirement, disability, maternity/paternity, etc.

Did you know?

- As per Spanish employment law, employees in certain situations are protected against termination. For example, in the case of employees enjoying working time reduction due to child care, the protection lasts until the child is 12 years old.
- There is a declining trend in the number of CBAs. In 2015 there were 1,120 CBAs, down from 1,842 recorded in 2014.
- As the Spanish economy improved during the last months, the number of collective restructuring plans went down from 13,497 in 2014 to 7,336 in 2015.

Restructuring programmes: key issues

- Employee representatives have extensive rights to be informed or consulted. (i.e. collective redundancies require consultation with workers representatives or employees').
- In the event of redundancy processes, the employer must fulfil strict formal and documentary obligations and provide internal information such as annual accounts. Breach of said formal obligations can derail the restructuring altogether.
- The employees' selection in case of collective termination must be made by applying objective criteria. These criteria must be thoroughly explained and documented during the process.

General employment

- In Spain, employment at will is not allowed. Any termination must be grounded in one of the causes provided for in the Statute of Workers.
- Strict formalities apply where the employer proceeds with terminating an employee (i.e. dismissal letter, notice, salary liquidation, etc.). Holiday entitlement does not depend on the employee's seniority; employees are entitled to at least 30 calendar days of holiday per year.

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UK

Although, English employment law is derived from legislation, it is still a traditional common law system in which Courts apply legal precedent to the facts before them, thereby creating new law. This means that employment law in the UK is fast moving and constantly evolving based on judgments from the Employment Tribunal, Civil Courts and European Courts.

Background

UK employment law sits somewhere between the U.S. and mainland European models. There is no concept of "at will" employment - employees with qualifying levels of continuity of service can only be dismissed on certain legally prescribed grounds (e.g. misconduct, redundancy etc.) and in most circumstances only after a fair and reasonable disciplinary or consultation process has been followed. Failure to comply with the legal requirements can give rise to claims for unfair dismissal.

Did you know?

- 29.2% of employees were covered by collective bargaining arrangements in 2012
- The number of employees who are trade union members fell to 25.0% in 2014
- The average employee was off work due to illness for 4.4 days in 2013
- Statutory minimum paid annual leave in the UK is 28 days (including public holidays)
- Almost 700,000 people in UK are on "zero-hours contracts"
- A new shared parental leave system was introduced in 2015 under which the mother and her partner can share and divide a period of up to 50 weeks absence if the mother gives up her right to take maternity leave
- Commission and overtime must be included within the calculation of holiday pay following a line of case law which remains ongoing

Restructuring programmes: key issues

- Employee representatives do not have codetermination rights and consultation periods are generally shorter than mainland Europe.
- Collective consultation (lasting at least 30 or 45 days, depending on employee numbers) will, however, be triggered if an employer proposes to make more than 19 employees at any one workplace redundant. Failure to collectively consult where it is required can give rise to claims for protective awards, which can be up to 90 days' full pay per affected employee.
- When identifying which employee(s) to make redundant, the employer should carry out individual consultation meetings and apply, where appropriate, a relatively objective set of selection criteria to mitigate against the risk of unfair dismissal claims.
- The employer will also need to identify whether any proposed measures would vary an existing contractual term within employment contracts and devise a strategy accordingly, depending on its appetite for risk (e.g. seek consent, implement unilaterally or terminate and re-engage).

General employment

- Protection afforded to employees for ordinary unfair dismissal is somewhat weaker in the UK than in Germany or France, for example.
- There are no "Works Councils" (at least not in the form you would expect to see in mainland Europe) and industry-wide collective bargaining agreements are less common.
- The UK's recent vote in favour of leaving the European Union may well give rise to some changes in English employment law over the coming years, as legislation in areas deriving from EU law (governing, for example, holiday pay and agency workers) may be reviewed, amended and in some cases even repealed.

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