Labour and Employment Comparative Guide

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1.Legal framework

1. 1. Are there statutory sources of labour and employment law?

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The Armenian legal system mainly relies on statutory sources (eg, laws, codes, other legal acts). The main statute is the Labour Code. Separate aspects of the employer-employee relationship may be regulated in other laws, codes and other legal acts; and in local, internal and individual acts of the employer.

1. 2. Is there a contractual system that operates in parallel, or in addition to, the statutory sources?

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The employer-employee relationship may be regulated by individual or collective agreements.

Collective and individual labour contracts cannot contain conditions that would be less favourable to the employee than the working conditions stipulated by the Labour Code and other normative legal acts that contain norms relating to labour rights. If collective or labour contracts envisage conditions that contravene the Labour Code or other normative legal acts, these conditions will have no legal effect (Article 6, point 1 of the Labour Code).

1. 3. Are employment contracts commonly used at all levels? If so, what types of contracts are used and how are they created? Must they be in writing must they include specific information? Are implied clauses allowed?

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It is mandatory for employers to sign an individual employment contract or to issue an individual legal act upon accepting employment; hence, employment contracts are commonly used. In addition to individual employment contracts, collective employment contracts may be signed with representatives of company employees.

An individual employment contract should be executed in writing and include the following mandatory terms:

- the year, month, date and place of acceptance and conclusion of the employment contract;
- the full name of the employee (and, at the employee's discretion, his or her patronymic name);
- the name of the employer, where it is a legal person; or, where the employer is a natural person, his or her full name (and, at the employer's discretion, his or her patronymic name);
- the relevant structural subdivision of the employer (if any) in which the employee will work;
- the year, month and date of commencement of employment;
- the title of the position and/or job-related functions;
- the amount of basic salary and/or the method for determining it;

- any supplements, additional payments, premiums and so on granted to the employee;
- the duration of the employment contract or individual order (if applicable);
- the duration and terms of any probation period;
- the working time regime (either the normal duration of working time or part-time/shorter working hours, or a record of cumulative hours worked);
- the type and duration of annual leave (minimum, extended and additional); and
- the position and full name of the person signing the contract (Article 84 of the Labour Code).

In addition to these mandatory terms, any other lawful term may be included in the contract. However, these terms should not impose less beneficial conditions for the employee than similar terms prescribed by law. In such case, the terms prescribed by law which are more beneficial will apply regardless of the contractual terms.

2.Employment rights and representations

2. 1. What, if any, are the rights to parental leave, at either a national or local level?

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Article 171 of the Labour Code specifies the different types of special purpose leave for employees. The following types of leave are available for women:

- pregnancy and maternity leave; and
- leave for the care of a child that is under the age of three.

According to Article 176.1 of the Labour Code, within 30 days of the date of birth of a child, the father can request five days of leave, with the employer pays him his average daily salary for each day of leave.

2. 2. How long does it last and what benefits are given during this time?

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Women on pregnancy and maternity leave receive compensation. The available leave is as follows:

- 140 calendar days (70 calendar days of pregnancy plus 70 calendar days post-delivery);
- 155 calendar days (70 calendar days of pregnancy plus 85 calendar days post-delivery) in the event of a complicated delivery; and
- 180 calendar days (70 calendar days of pregnancy plus 110 calendar days post-delivery) in the event of a multiple birth.

This leave must be calculated at once and granted to the woman in full. In case of a premature delivery, the unused days of pregnancy leave will be added to the post-delivery leave (Article 172 (1) of the Labour Code).

Employees who have adopted a newborn or who have been appointed as guardians of a newborn will be granted leave for the period from the date of adoption or guardianship until the baby is 70 days old (or, in case of adoption or appointment as guardians of two or more newborns, 110 days old) (Article 172(2) of the

Labour Code).

An employee who has a child through a surrogate mother is granted leave from the date of birth of the child until he or she is 70 days old (or, in the case of a multiple birth, 110 days old).

2. 3. Are trade unions recognised and what rights do they have?

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With the objective of protecting and representing their rights and interests, both employers and employees are free to join and set up employers' unions and trade unions respectively, through a procedure defined by law (Article 21 of the Labour Code).

Employee representatives have the right to:

- draft their own charters and procedural regulations, freely elect their representatives, appoint their administrative staff, carry out their activities and draw up their own programmes;
- obtain information from the employer in the manner established under the Labour Code;
- submit proposals and recommendations to the employer on work organisation;
- conduct collective bargaining, conclude collective agreements and supervise their implementation;
- exercise non-state supervision of the implementation of the labour legislation and other normative/regulatory legal acts on labour rights;
- appeal decisions and actions of the employer and authorised persons that contravene Armenian law, as well as collective agreements and labour contracts that violate the rights of employee representatives;
- participate in the development and implementation of production programmes; and
- submit proposals and recommendations to the employer on:
    - improvements to the working and rest conditions of employees;
    - the introduction of new equipment;
    - the facilitation of manual work;
    - reviews of manufacturing standards; and
    - the amount and patterns of remuneration.

Trade unions have the right to:

- ensure that the interests of the employer and employees in collective labour relations are reconciled at different levels of social partnership;
- submit proposals and recommendations to state and local self-governing bodies; and
- organise and lead strikes.

Under a collective agreement, employee representatives may be granted additional powers as long as these do not contravene the law (Article 25 of the Labour Code).

2. 4. How are data protection rules applied in the workforce and how does this affect employees' privacy rights?

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Chapter 16 of the Labour Code is devoted to the protection of employees' personal data.

According to Article 131 of the Labour Code, personal data connected with labour relations and relating to a specific employee is regarded as necessary information for the employer.

The processing of employees' personal data encompasses the collection, protection, coordination and transfer of that data, and its use in any other way as required.

2. 5. Are contingent worker arrangements specifically regulated?

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The general rules set out in the Labour Code provide that employment contracts should be signed for an indefinite period. A fixed-term contract may be signed only where it is not possible to sign an employment contract for an indefinite period on account of the nature of the work to be performed or the conditions for its performance.

A fixed-term employment contract may be concluded:

- for a defined period;
- by setting a calendar period; or
- by defining the completion of works as envisaged by the employment contract (Article 95(2) of the Labour Code).

Fixed-term employment may also be concluded with employees who:

- are hired to elective positions for a specified period;
- are appointed for a period prescribed by law;
- perform seasonal work;
- perform temporary/occasional work (for a period of up to two months);
- are temporarily replacing an absent employee;
- are foreign individuals who hold a work or residence permit that is valid for the entire term of employment; or
- are eligible for an old-age pension and have turned 63, or are not eligible for an old-age pension and have turned 65, based on the evaluation of the employee's professional competencies for the position or job offered by the employer.

3.Employment benefits

3. 1. Is there a national minimum wage that must be adhered to?

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According to Article 1 of the Law on the Minimum Monthly Wage, the minimum monthly wage is AMD 68,000.

3. 2. Is there an entitlement to payment for overtime?

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The Labour Code strictly regulates the circumstances in which employees may work outside their main working hours and days. In particular, according to Article 184 of the Labour Code, for each hour of overtime, in addition to the employee's hourly rate, a supplement of at least 50% of that hourly rate must be paid.

3. 3. Is there an entitlement to annual leave? If so, what is the minimum that employees are entitled to receive?

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The minimum annual leave is:

- 20 working days for employees who work five days a week; and
- 24 working days for employees who work six days a week (Article 159(1) of the Labour Code).

3. 4. Is there a requirement to provide sick leave? If so, what is the minimum that employees are entitled to receive?

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The position of an employee who loses the capacity to work due to occupational disease or work-related injury must be retained until he or she has recovered the capacity to work or has qualified as disabled. The employer may terminate the employment contract on the grounds set out in the Labour Code if the employee does not recover his or her capacity to work and qualifies as disabled.

Except in those cases specified in the Labour Code, where employees have temporarily lost the capacity to work, their position must be retained if they have not reported to work due to temporary incapacity for not more than 120 consecutive days or for not more than 140 days within the last 12 months. However, certain laws and other normative/regulatory legal acts provide that in the case of specific diseases, the employee's position must be retained for a longer period (Article 118 of the Labour Code).

Employees who have temporarily lost the capacity to work are entitled to receive a pension as described and according to the procedure set out in the Law on Temporary Working Disability and Maternity Pensions. According to this law (Article 22(2)), the allowance for the temporary disability of an employee or self-employed person is 80% of his or her average monthly salary (income), calculated in accordance with the procedure established by law.

3. 5. Is there a statutory retirement age? If so, what is it?

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According to Article 9(1) of the Law on State Pensions, people who reach the age of 63 are entitled to an old-age pension if they have at least 25 years of working experience. This is the general rule and exceptions may apply.

Reaching retirement age does not constitute direct grounds for dismissal; and if an employer is eager to terminate the employment of an employee who has reached retirement age, this possibility must be provided for in the employment contract.

4.Discrimination and harassment

4. 1. What actions are classified as unlawfully discriminatory?

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According to Article 3.1, point 1 of the Labour Code, discrimination is prohibited under Armenian law.

'Discrimination' is any direct or indirect distinction, exclusion or restriction based on gender, race, skin colour, ethnic or social origin, genetic qualities, language, religion, worldview, political or other views, membership of a national minority, property status, birth, disability, age or other personal or social circumstances, the purpose or result of which is the manifestation of:

- a less favourable attitude towards the employee with regard to the commencement, change or termination of collective or individual labour relations; or
- a ban on the recognition and/or exercise of any right established under the labour law on an equal basis in comparison with other employees.

An exception applies where:

- such differentiation, exclusion or restriction is objectively justified for the legitimate purposes pursued; and
- the measures applied to achieve this goal are proportionate and necessary (Article 3.1, point 2 of the Labour Code.

In employment ads and throughout the employment relationship, except with regard to practical qualities and professional training and qualifications, it is prohibited to set any other condition that is a basis for discrimination, unless this is due to requirements inherent in the role (Article 3.1, point 3 of the Labour Code).

4. 2. Are there specified groups or classifications entitled to protection?

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The protection mechanisms apply without distinction and all persons are entitled to them. No special group protection is subject to separate regulation.

4. 3. What protections are employed against discrimination in the workforce?

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No special protections and remedies are available against discrimination. Hence, the general rule set out in Article 38, point 3 of the Labour Code will apply, according to which employment rights must be protected in the following ways:

- recognition of the right;
- restoration of the situation that existed before violation of the right;
- prevention or elimination of actions that violate or threaten violation of the right;
- recognition of the legal act of a state or local self-government body or the employer as invalid;
- non-application by the court of a legal act of a state or local self-government body contradicting the employer's rules;
- self-protection of the right;
- by enforcing to discharge the obligations in kind;
- compensation for the damage;
- imposition of a penalty (fine);
- termination or alteration of the legal relationship; or
- other methods provided for by law.

4. 4. How is a discrimination claim processed?

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There is no special procedure for resolving discrimination claims. The general rule is that labour disputes are subject to hearings according to the Code of Civil Procedure.

4. 5. What remedies are available?

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No special remedies against discrimination are available. Hence, the generally available remedies prescribed by civil legislation will apply (these are the same as those set out in question 4.3).

4. 6. What protections and remedies are available against harassment, bullying and retaliation/victimisation?

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No special protections and remedies against harassment, bullying and retaliation/victimisation are available. Hence, the generally available remedies prescribed by civil legislation will apply (these are the same as those set out in question 4.3).

5.Dismissals and terminations

5. 1. Must a valid reason be given to lawfully terminate an employment contract?

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Article 113, point 1 of the Labour Code sets out an exhaustive list of grounds for the lawful termination of an employment contract, as follows:

- The employer's organisation is liquidated (ie, its activities are terminated and its registration ceases to be in force or is invalidated);
- Production volumes or economic, technological or work conditions change, requiring a reduction in employees or production;
- The employee is unsuitable for the position held or the work performed;
- The employee is reinstated in a previous job;
- The employee regularly fails to perform his or her work duties prescribed by the employment contract or by internal disciplinary rules, with no good reason;
- The employer loses confidence in the employee;
- The employee becomes disabled or incapacitated, meaning that he or she does not report to work for more than 120 consecutive days or for more than 140 days in a 12-month period (except where the law allows for the retention of his or her position for a longer period, such as in the case of certain diseases);
- The employee is found under the influence of alcohol or narcotic or psychotropic substances at work;
- The employee is absent from work for an entire working day (shift) for no good reason;
- The employee refuses or avoids a compulsory medical examination/check-up; or
- The employee is eligible for an old-age pension and has turned 63, or is not eligible for an old-age pension and has turned 65, unless otherwise prescribed by the employment contract.

5. 2. Is a minimum notice period required?

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Notice periods and the procedure for termination vary, depending on the grounds for termination. The minimum notice period is 14 days for employees who have worked for the employer for less than one year in case of termination on the following grounds:

- The employee is unsuitable for the position held or the work performed;
- The employee becomes disabled or incapacitated, meaning that he or she does not report to work for more than 120 consecutive days or for more than 140 days in a 12-month period (except where the law allows for the retention of his or her position for a longer period, such as in the case of certain diseases); or
- The employee is eligible for an old-age pension and has turned 63, or is not eligible for an old-age pension and has turned 65, unless otherwise prescribed by the employment contract.

The maximum notice period, for employees who have worked for the employer for more than 15 years, is 60 days.

The employer has the right to terminate the employment contract without prior notice on the following

grounds:

- The employee regularly fails to perform his or her work duties prescribed by the employment contract or by internal disciplinary rules, with no good reason;
- The employer loses confidence in the employee;
- The employee is found under the influence of alcohol or narcotic or psychotropic substances at work;
- The employee is absent from work for an entire working day (shift) for no good reason; or
- The employee refuses or avoids a compulsory medical examination/check-up.

According to Article 265, point 1 of the Labour Code, if the employee disagrees with a change in employment conditions, termination of the employment contract on the employer's initiative or rescission of the employment contract, he or she can apply to court within two months of receipt of notification of the individual legal act. Where it is determined that employment conditions have changed or the employment contract has been rescinded in the absence of lawful grounds or in violation of the procedure defined by law, the violated rights of the employee must be restored. In that case the employer will be charged a minimum salary for the period during which he or she was out of work or the difference in salary for the period during which he or she performed work or minimum remuneration. The average salary will be calculated by multiplying the relevant number of days by the average daily salary of the employee.

For economic, technological and organisational reasons, or if reinstatement is impossible, the court may instead order the employer:

- to pay compensation for the entire period during which the employee was out of work in the amount of the average salary, prior to entry into force of the court judgment; and
- to pay compensation in exchange for non-reinstatement of the employee in the amount of between one and 12 times the average salary.

The employment contract will be deemed rescinded from the date on which the court judgment enters into force.

5. 3. What rights do employees have when arguing unfair dismissal?

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No answer submitted for this question.

5. 4. What rights, if any, are there to statutory severance pay?

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If the employment contract is rescinded on the grounds set out in Article 113(1), points 1,2 and 4 of the Labour Code, the employer must pay dismissal benefits to the employee in the amount of his or her average monthly salary. If the employment contract is rescinded on the grounds set out in Article 113(1), points 3,7 and 11 of the Labour Code, the employer must pay the employee dismissal benefits as follows:

- where the employee has worked for the employer for up to one year, the average daily salary for 10

working days;

- where the employee has worked for the employer for between one and five years, the average daily salary for 25 working days;
- where the employee has worked for the employer for between five and 10 years, the average daily salary for 30 working days;
- where the employee has worked for the employer for between 10 and 15 years, the average daily salary for 35 working days; and
- where the employee has worked for the employer for 15 years or more, the average daily salary for 44 working days (Article 129(1) of the Labour Code).

The payment of dismissal benefits may be envisaged for a longer period in accordance with the collective agreement or employment contract (Article 129(2) of the Labour Code).

The employer must reach a final settlement with the terminated employee on the date of termination, unless another period is prescribed in the employment contract.

6.Employment tribunals

6. 1. How are employment-related complaints dealt with?

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In Armenia, employment-related disputes are under the jurisdiction of the courts. There are three instances:

- the first instance courts of general jurisdiction;
- the appeal courts; and
- the Cassation Court.

Sometimes, cases can fall under the jurisdiction of the administrative courts (if the employer is a state body).

6. 2. What are the procedures and timeframes for employment-related tribunals actions?

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The general limitation period for employment disputes is three years. No limitation period applies where the dispute involves a claim:

- to protect the employee's honour and dignity;
- for the reimbursement of salary; or
- due to damage to the employee's life or health.

As outlined in question 5.3, if an employee disagrees with his or her working conditions, suspension from work at the employer's initiative or dismissal, he or she can apply to the court within two months of notification of the relevant decision. If the court finds that the working conditions were changed or the employee was suspended or dismissed without a valid reason or in violation of the law, his or her violated rights must be restored and the employer will be charged an average salary for the period during which the employee was out of work or the difference in salary for the period during which the employee performed

work for lower remuneration.

For economic, technological and organisational or similar reasons, or if reinstatement is impossible, the court may instead order the employer:

- to pay compensation for the entire period during which the employee was out of work in the amount of the average salary, prior to entry into force of the court judgment; and
- to pay compensation in exchange for non-reinstatement of the employee in the amount of between one and 12 times the average salary.

In this case the employment contract will be considered to have been terminated as from the date on which the legal decision becomes effective.

7.Trends and predictions

7. 1. How would you describe the current employment landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

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Due to conflicts and misapplication of the law, the Labour Code and related legislation often change. The Ministry of Labour has circulated new draft amendments of the Labour Code, but as yet these have not been finalised.

8.Tips and traps

8. 1. What are your top tips for navigating the employment regime and what potential sticking points would you highlight?

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Due consideration should be given to all legislation and regulations, which should be strictly followed. In this way, risks can be minimised.

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