THE EMPLOYMENT LAW REVIEW

Eleventh Edition

Editor
Erika C Collins

THE LAWREVIEWS

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CONTENTS

PREFACE

For the past decade, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. When updating the book each of the past 10 years, I reread the Preface that I wrote for the first edition in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. I have been practising international employment law for more than 20 years, and I can say this holds especially true today, as the past 11 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This 11th edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see this publication grow and develop to satisfy its initial purpose: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

This 11th edition also holds a special place in my heart because it is the first that I have prepared as a shareholder of Epstein Becker & Green, PC (EBG). I joined EBG at this time in part because, in 2019, EBG established an alliance with Deloitte Legal to provide clients with comprehensive and global services relating to employment law and workforce management. The alliance brings together Deloitte Legal's global reach and the strength of its multidisciplinary business approach with EBG's United States labour and employment attorneys and workforce management experience to form a global delivery model. Through this alliance, EBG and Deloitte Legal offer comprehensive employment law and workforce management services to clients. I firmly believe that this alliance is the 'wave of the future', to be able to offer clients integrated professional services, and this notion parallels the mission and purpose of this text.

In 2020 and looking into the future, global employers face growing market complexities, from legislative changes and compliance, to technological and societal forces that are transforming the future of work. Whether solving global mobility issues, designing employee equity incentives, negotiating collective bargaining arrangements or responding to increasing public attention around harassment or equal pay issues, workforce issues can affect a company's ability to attract and retain talent, or damage its reputation and market value in an instant. These issues have created a confluence of legal and business challenges that no longer can be separated or dealt with in isolation. As a result, every company requires business advisers who can address the combined business and legal issues relating to its multinational workforce. It is my hope that this text provides legal practitioners and human resources

professionals with some guidance, best practices and comprehensive solutions to significant workforce issues that affect a company's market position, strategy, innovation and culture.

Our most recent general interest chapter still focuses on the global implications of the #MeToo movement. The movement took a strong hold in the United States at the end of 2017, as it sought to empower victims of sexual harassment and assault to share their stories on social media so as to bring awareness to the prevalence of this behaviour in the workplace. In this chapter, we look at the movement's success in other countries and analyse how different cultures and legal landscapes affect the success of the movement (or lack thereof) in a particular jurisdiction. To that end, this chapter analyses the responses to and effects of the #MeToo movement in several nations and concludes with advice to multinational employers.

Our chapter on cross-border mergers and acquisitions continues to track the variety of employment-related issues that arise during these transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, and the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2019 in nations across the globe, and one of our general interest chapters discusses this. Many countries in Asia, Europe and South America have continued to develop their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation, and regulations on gender quotas and pay equity, to ensure that all employees, regardless of gender, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals in the workforce remain underprotected and under-represented, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

We continue to include a chapter that focuses on social media and mobile device management policies. Mobile devices and social media have a prominent role in, and impact on, both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement bring-your-own-device programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. Bring-your-own-device issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work, and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Our final general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and the chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to them. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these five general interest chapters, this edition of *The Employment Law Review* includes country-specific chapters that detail the legal environment and developments of 44 jurisdictions around the world. A special thank you to the legal practitioners across the

globe who have contributed to this volume for the first time, including Sedrak Asatryan, Janna Simonyan and Mary Serobyan (Armenia), Stefan Kühteubl and Martin Brandauer (Austria), Ignacio García, Fernando Villalobos and Soledad Cuevas (Chile), Tingting He (China), Jan Procházka and Iva Bilinská (Czech Republic), Véronique Child and Eric Guillemet (France), Guy Castegnaro, Ariane Claverie and Christophe Domingos (Luxembourg), Jack Yow (Malyasia), Charlotte Parkhill and James Warren (New Zealand), Petra Smolnikar, Romana Ulčar and Tjaša Marinček (Slovenia), Fernando Bazán López, Antonio Morales Veríssimo de Mira, Paloma Gómez López-Pintor and Andrea Sánchez Rojas (Spain) and Caron Gosling (United Kingdom). This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all our contributors and my associates, Ryan H Hutzler and Anastasia Regne, for their invaluable efforts in bringing this 11th edition to fruition.

Erika C Collins
Epstein Becker & Green
New York
February 2020

Chapter 7

ARMENIA

Sedrak Asatryan, Janna Simonyan and Mary Serobyan[1]

I INTRODUCTION

Employment relationships in Armenia are regulated by the Constitution of the Republic of Armenia, the Labour Code of the Republic of Armenia, various laws (e.g., the Law on the Minimum Monthly Salary, the Law on Trade Unions) and other legal acts (such as decisions by the government or by ministers). There are also a number of applicable ratified international treaties, such as the revised European Social Charter, the International Labour Organization's Forced Labour Convention, among others.

Employment (or service) relationships for persons holding political, discretionary or civil positions, those for civil servants, officers of other state (special) bodies and local self-government bodies, and those for employees of the Central Bank of the Republic of Armenia are mainly regulated by appropriate laws (such as the Law on the Civil Service or the Law on Public Service).[2]

Labour disputes are investigated in the manner prescribed by the Civil Procedure Code of the Republic of Armenia,[3] by courts of general jurisdiction. Labour disputes concerning employees in public service positions are investigated by a specialist administrative court.

The decisions of the courts of the first instance can be appealed to the Court of Appeal, and thereafter to the Court of Cassation.

However, cassation appeals are accepted into proceedings in exceptional cases; the court examines cases in which the decision on the issue raised may have particular significance for the uniform application of law (e.g., if there is an issue of development of law). Thus, in practice, appeals against first-instance decisions are generally examined on merits in the Court of Appeal.

Under labour law, the parties can also agree to resolving employment disputes by means of private arbitration.[4]

There are a number of government agencies with competence for enforcement of employment law, the main ones being the Ministry of Labour and Social Affairs, the Ministry of Health, the Health and Labour Inspectorate and the State Employment Agency.

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1 Sedrak Asatryan is managing partner, Janna Simonyan is a partner and Mary Serobyan is a junior associate at Concern Dialog Law Firm.

2 Labour Code of the Republic of Armenia [Labour Code], Article 7(7).

3 id., at Article 264(1).

4 id., at Article 264(2).

II YEAR IN REVIEW

There have been several changes to the Labour Code during the past year. One is a new article about the prohibition of discrimination. This principle was already observed in the Constitution and labour legislation, but now there is more detailed regulation.

Second, additions have been made to the article that regulates fixed-term employment contracts. These changes provide a new guarantee for employees, according to which, if the term of an employment contract is extended for the same job, or if an employment contract is signed with the same employer for the same job for the second time within a month, then the employment contract is considered to be valid for an indefinite term.[5] However, the law provides some exceptions to this provision.

Concurrent employees (i.e., those who work in two or more places) are no longer on the list of those with whom it is permitted to conclude fixed-term employment contracts. At the same time, employees who have been appointed for a term prescribed by law have been added to this list.

An addendum requiring employers with 10 or more employees to pay their salaries by a means other than cash, unless the employee has applied in writing to be paid in cash, has been fully adopted and signed.[6]

A Law on amendments to the Law on the Minimum Monthly Salary has also recently been fully adopted, and the minimum monthly salary is increased accordingly with effect from January 2020.[7]

Further, the National Assembly has fully adopted a draft law that envisages entrusting the full implementation of state control over the enforcement of labour legislation, and collective and employment contracts, to the State Labour Inspectorate (previously, its jurisdiction was exclusively ensuring the health and safety of workers). Thus, the aim of the proposed changes is to ensure full state control over the enforcement of the requirements of labour legislation.[8] The state had full control over the enforcement of labour legislation in the past, but later refused to exercise it.

It is difficult to predict the outcome of this initiative; one possibility is that it could put an unnecessary burden on businesses.

Another draft law relates to addenda and amendments to the Code on Administrative Offences, which adds several instances of liability; for example, violations of the requirements for hiring or work permits, failure to fulfil the instructions of officials from the State Labour Inspectorate, and obstruction of inspections, investigations or administrative proceedings conducted by the relevant inspection body. It sets out the scope of cases examined by inspection bodies that may be subject to administrative penalties.[9] This draft law has also been fully adopted and signed.

5 id., at Article 95 (2.1).

6 Draft of law on making addenda to the Labour Code RA, by Gevorg Papoyan (30 April 2019).

7 Draft of law on making Amendments to the Law on the Minimum Monthly Salary, by Varazdat Karapetyan, Babken Tunyan, Narek Zeynalyan (21 May 2019).

8 Draft of law on making amendments and addenda to the Labour Code RA, by Narek Zeynalyan, Heriknaz Tigranyan (11 September 2019).

9 Draft of law on making addenda and amendments to the Code on Administrative Offences RA, by Narek Zeynalyan, Heriknaz Tigranyan (12 September 2019).

III SIGNIFICANT CASES

The Constitutional Court rendered a decision[10] referring to the procedures for terminating an employment contract based on changes to the essential working conditions. The Court stated that the right of the employer to change the essential working conditions does not imply that the employer has complete freedom to impose any new conditions; any change to essential conditions must be reasonable and necessary; and the process of changing the essential working conditions must be clearly worded from a legal point of view, that is, the employer must substantiate the need for change and its compliance with the requirements of the applicable code.

Further, reference was made to the reorganisation of organisations. The Court stated that it did not in itself imply any change in the conditions of production or economic, technological or work organisation and any change that derives from the essential working conditions.

A new decision from the Court of Cassation addressed the issue of accountability of civil servants. Guided by the requirement for clarity and reasonableness of the Administrative Act, the Court found that the Administrative Act (the order holding the civil servant accountable) is invalid. The Court invalidated the Act because it did not specify the amount of damages; the extent of a civil servant's liability; cite a specific Labour Code rule under which an employee may be held liable; and did not provide a statute of limitations for the administrative authority's to reduce an employee's salary in the event thatthere was liability.

Another decision[11] of the Court of Cassation addressed the issue of the enforcement and application of an individual legal decision. According to law, the moment of entry into force of an individual legal decision regarding the termination of an employment contract is the moment when a copy of the decision is given to the employee in question. The Court therefore stated that if the addressee of the action is not informed about the decision in the prescribed manner, whether or not that legal decision in its content complies with the requirements of the law, it cannot be applicable because it has not entered into force.

The Court also noted that on the basis of the loss of confidence in an employee, the employer can either:

a terminate an employment contract without any obligation to notify the employee in advance; or

b take disciplinary action, including terminating the employment contract, in which case the employer is obliged to observe certain procedures relating to disciplinary actions.

Concerning the time allowed for appeal of disciplinary penalties, the Court emphasised that although the standard limit is one month, this term is only applicable to penalties such as reprimand and severe reprimand. If, however, an employment contract is terminated as a disciplinary penalty, the decision can be appealed during the two months following receipt of the individual legal action or (document). Two months is also the window for appeal when an employee contests the employer's decision to terminate the employment contract.

10 Decision SDO-1449 of 19 March 2019 on determining the issue of identity.

11 Decision of Cassation Court EDC/4054/02/16.

IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

i Employment relationship

Employment relationships arise on the basis of an employment contract or hiring order.[12] Any work done without such an agreement is considered illegal.[13] Employers who have given their consent or who require individuals to carry out work without a formal employment relationship shall bear the responsibility as prescribed by law.

It is essential to conclude an employment contract both to comply with legal requirements and to clarify the relationship, rights and obligations of the parties and to avoid disputes between the parties. The employment contract is concluded in written form, with two copies of the document drawn up. These must be signed by the parties. One copy of the signed contract must be given to the employee; the other one remains with the employer.[14]

Employment contracts may not contain any conditions that are harmful to employees, or have working conditions that do not comply with specifications laid down by labour legislation and other regulatory legal acts containing the norms of labour law. Where the conditions laid down by employment contracts contradict these laws and regulations, these contractual conditions shall have no legal force.[15]

According to the general rule, an employment contract is concluded for an indefinite duration, except for certain cases provided by the law.[16] A fixed-term employment contract is appropriate when a labour relationship cannot be set for an indefinite period on account of the conditions or the nature of the work. The law also provides for some specific positions for which contracts can be concluded for a fixed term:

a elected officials;
b persons appointed for a specified term as prescribed by law;
c seasonal workers;
d employees providing temporary work (up to two months);
e employees who replace temporarily absent employees;
f foreigners for the period of validity of a work permit or right of residence; and
g persons who are eligible for a pension and are over 63 years old, or who are not eligible for a pension and are over 65 years old, based on an evaluation of a person's professional capacity for the position offered by the employer.

The employment contract shall state the following:

a the date (day, month and year) of conclusion of the employment contract;
b the name and surname (or, at his or her wish, the patronymic) of the employee;
c if the employer is a natural person, the title of the employer (name and surname or, at his or her wish, the patronymic);
d the structural subdivision (if available);
e the date (day, month and year) on which the work commences;
f the job title and a list of responsibilities;
g the basic salary or the manner of determining it (or both);

12 Labour Code, Article 14(1).
13 id., at Article 102.
14 id., at Article 85(1).
15 id., at Article 6.
16 id., at Article 95.

h remunerations to which employees are entitled;
i the term of the employment contract (if necessary);
j if there will be a probationary period, its duration and conditions;
k working time mode (normal, short-term, etc.);
l type of annual leave (minimum, additional, extended) and the employee's entitlement; and
m the position, name and surname of each person signing the legal decision.[17]

From the date stated in the employment contract, the employee is obliged to start work, and the employer shall, accordingly, perform the duties prescribed by law and contract.

The parties may at any time by mutual agreement amend the employment contract. In some cases, the law unilaterally grants such a right to the employer: for example, it is permitted to change the essential conditions of employment if required because of a change in production capacity, or any economic, technological or organisational conditions of employment.[18]

ii Probationary periods

A probationary period is permissible with the consent of the parties.[19] The party who initiated the probationary period may terminate the contract by giving the other party three days' notice in writing.[20] The other party shall be guided by the general principles of notification when terminating the contract.

iii Establishing a presence

A foreign company cannot hire employees either in person or through an agency or a third party without being officially registered to carry on business in Armenia.

A foreign company not officially registered in Armenia may hire independent contractors in the form of both natural and legal persons. Independent contractors in their turn may set up a branch or a representation of a foreign company in Armenia or register a subsidiary company through which they may hire employees. With regard to subsidiary company registration, the subsidiary company itself shall be liable for its obligations, and for registration of a branch or representative office, a foreign company that has registered a representative or branch office shall be liable for its obligations.

The primary payment made to the state budget by employers on behalf of employees is income tax. Individuals' income tax is calculated and maintained by the tax agent.[21] It is the employer's obligation to calculate, withhold and pay taxes or payments when paying an income to the individual. Thus, the employer is considered a tax agent for the employee.

To be a tax agent, a non-resident organisation must first register a representative office, a permanent establishment or a new organisation in Armenia and then register with the tax authority.

17 id., at Article 84.
18 id., at Article 105.
19 id., at Article 91(1).
20 id., at Article 93.
21 Tax Code of the Republic of Armenia [Tax Code], Article 152(1).

V RESTRICTIVE COVENANTS

According to the Labour Code, an employer has the right to terminate an employment contract on the basis of loss of confidence of an employee if that employee has disclosed state, official, commercial or technological secrets or has revealed any of this information to a competing organisation.[22] According to the Civil Code, a contracting party that has published or used official, commercial or banking information in breach of an employment contract is obliged to compensate the other party for damages.[23]

Restrictive covenants have no other legislative regulations and are usually specified in the contractual framework. Nonetheless, the parties shall be guided by the constitutionally guaranteed rights of the individual (such as freedom of choice of employment, freedom of economic activity) and the legality of the limitations and conditions set by them.

To summarise, it should be noted that Armenian legislation does not permit the inclusion in employment contracts of provisions regarding refusal of competition.

VI WAGES

i Working time

Normal working time may not exceed 40 hours per week. A normal working day must not exceed eight hours, except in specific circumstances stated by law. The maximum working time, including overtime work, must not exceed 48 hours per week and 12 hours per day (including rest and lunch breaks).[24]

Shorter working times shall be set for children (the maximum limit depends on the age of the employee) and for employees who work in an environment where, for technical or other reasons, it is not possible to reduce the level of workplace hazards to the permitted levels as legally defined. In these circumstances, working time shall not exceed 36 hours per week.[25]

There are no specific limits on the amount of night work that may be performed.

ii Overtime

A supplementary rate of not less than one and a half times the normal hourly rate is prescribed for overtime work.[26]

Overtime is the work performed beyond the duration of the normal, daily or part-time work prescribed by law or longer than the working time scheduled for that employee.[27]

Overtime work shall not exceed four hours during two successive days and 120 hours per year.[28]

22 Labour Code, Article 122.
23 Civil Code of the Republic of Armenia, Article 141.
24 Labour Code, Article 139.
25 id., at Article 140.
26 id., at Article 184.
27 id., at Article 144.
28 id., at Article 146.

VII FOREIGN WORKERS

Employers are not obliged to keep a register of foreign workers, and there is no limit on the number of foreign workers a workplace or company may have.

However, an employment contract with a foreign worker can only be concluded if the foreign worker has a permit to work in Armenia. The employment contract can be concluded for the same period for which the work permit is valid.[29]

In general, a foreign worker needs both a visa to enter Armenia[30] and a working permit to be able to work in Armenia. However, citizens of some countries enjoy a visa-free regime arrangement with Armenia. Further, in some cases, it is permitted to conclude an employment contract with a foreign worker who does not have a work permit: for example, workers who have permanent or special residency status, or temporary residency status for a special purpose, cross-border workers, and foreign lecturers invited to study at educational institutions.[31]

An employer pays the same taxes and other fees for foreign workers as it would for Armenian citizens.

Foreign citizens in Armenia have the same legal capacity as Armenian citizens unless otherwise provided by law.[32] The law guarantees equality between the parties engaged in the labour relationship, regardless of their nationality or citizenship.

VIII GLOBAL POLICIES

The law requires employers to adopt internal policies in only one respect: the health and safety of workers.[33] However, the law also recognises the need for the disbursement of information and notification with regard to several internal processes and procedures (for example, the transfer of employees' personal data within the organisation, the work regime, and encouragement and disciplinary measures for employees). These issues must be clearly stated in an employment contract, in an organisation's internal rules or in general legal regulations.

Further, an employer may prescribe mandatory rules, and deem that failure to comply with them may result in disciplinary sanctions against a employee. The internal disciplinary rules may also provide a list of the employees in managerial positions, and state that that work performed by those employees that exceeds the prescribed working time shall not be considered overtime, according to the law.

In this regard, employers will benefit from having internal disciplinary rules and regulating specific issues.

Employers' internal or individual policies may be adopted in the form of orders or instructions.[34] They must be approved by the body prescribed by the charter of the company (e.g., general meeting, council or director).

Any internal and individual legal ruling adopted by an employer enters into force upon duly informing the concerned persons of that action.[35] However, there is no requirement to obtain the approval or agreement of employees or government authorities.

29 Law on Foreigners of the Republic of Armenia, Article 27.

30 id., at Article 6.

31 id., at Article 23.

32 Labour Code, Article 15.

33 id., at Article 248(3).

34 id., at Article 5(1).

35 id., at Article 5(4).

Internal legal policies shall be published in a separate section on the employer's official website; if the employer does not have an official website, then it must be placed in a place that is visible and accessible to the persons to whom it is directed. The employer is obliged to indicate the date of publication of the ruling and to publish the incorporated version of the ruling after making amendments and supplements thereto.[36]

In practice, it is acceptable, as an alternative, for either the executive director or other member of company management to send a signed version of the internal policy to all employees via the corporate email address, or for each employee to sign a relevant document to certify that he or she is aware of and understands the internal legal ruling. This approach is widely accepted, and used in practice, for newly hired employees. When an employee is hired, he or she signs and confirms that he or she is familiar with all applicable internal legal policies of the employer. In general, it is essential that employers ensure proper notification to all employees, as if an employee is not properly notified about a ruling, the ruling cannot be applied to that employee.

Fundamental principles of labour law (such as the equality of parties in labour relationships, the stability of labour relationships, freedom of work, and the prohibition of forced labour and violence against workers) are prescribed either by the Constitution or legislation. Thus, as a practical matter, there is no requirement to implement these rules in internal policies.

The state language of Armenia is Armenian, which is employed in all spheres of life in the Republic.[37] Thus, in general, companies should draw up all paperwork in Armenian. Foreign state bodies, enterprises, institutions and organisations are required to have a version in Armenian of any documents that are subject to state control (such as internal policies).[38]

Tax legislation sets forth regulations that are specific to tax matters, requiring translations into Armenian (without notarisation) of accounting documents that are drawn up in languages other than Russian and English.[39]

IX PARENTAL LEAVE

Three types of parental leave are prescribed by law:

a pregnancy and maternity leave;[40]

b parental leave to be taken before a child is three years old (granted to whoever is raising the child, whether it be the mother (or stepmother), father (or stepfather) or guardian);[41] and

c unpaid leave for the husband of a woman who is on pregnancy, maternity or parental leave before the child is one year old.[42]

36 Law on Normative Legal Acts of the Republic of Armenia, Article 23(7).

37 Law on the Language of the Republic of Armenia, Article 1.

38 id., at Article 4.

39 Tax Code, Article 33(1.6).

40 Labour Code, Article 172.

41 id., at Article 173.

42 id., at Article 176.

Parental leave as described in points (a) and (b) is paid. A woman on pregnancy and maternity leave is paid a maternity allowance for the full duration of that leave in lieu of her normal salary.[43] (The monthly allowance is equivalent to the average of normal salary over 12 months.) Parents, adoptive parents or guardians, who are taking parental leave to care for a child up to three years of age, have the right to receive childcare benefits (the amount of which is prescribed by the government) until the child is two years old – this benefit is paid out of the state budget.[44]

The law also provides that an employer may not terminate an employment contract with a pregnant employee from the time that she has submitted a pregnancy certificate to the employer until one month after the end of the maternity leave following the pregnancy. This policy also applies to a person who is not on parental leave but is responsible for the care of a child who is at least one year old, except for certain exceptions provided for by law.[45]

X TRANSLATION

The law establishes a common linguistic obligation for Armenian citizens and institutions to uphold the principles arising from a language policy in all areas of public life.[46]

The law also states that enterprises, institutions and organisations located in the territory of Armenia must communicate with state bodies, enterprises, institutions, organisations and citizens of other states in a mutually acceptable language.

Foreign state bodies, enterprises, institutions and organisations located in Armenia are obliged to hold an Armenian version of all documents that are subject to state control.[47]

It follows that institutions and organisations in Armenia must conduct all paperwork in Armenian; foreign companies are only obliged to have Armenian versions of the documents that are subject to state control. The law does not specify any particular requirements for Armenian translations, such as notarisation or the availability of an accredited translator.

The law also stipulates that government bodies, enterprises, institutions and organisations in Armenia are responsible for non-Armenian paperwork, the design of non-Armenian signboards, forms, stamps, seals, international postal envelopes and advertisements.[48]

As to the use of foreign language documents during lawsuits, the codes of administrative, civil and criminal procedures require that all court documents be submitted either in Armenian or in another language with a proper translation into Armenian (i.e., with notarial certification). If this requirement is not complied with, the submitted documents will not be considered or allowed by the court.

43 Law on Temporary Disability and Maternity Benefits of the Republic of Armenia, Articles 6(2), 11(1), 22(1).

44 Law on State Benefits of the Republic of Armenia, Article 27(1).

45 Labour Code, Article 114.

46 Law on the Language of the Republic of Armenia, Article 1.1.

47 id., at Article 4.

48 The Code on Administrative Offences of the Republic of Armenia, Article 1893.

XI EMPLOYEE REPRESENTATION

Employees are free to create and join trade unions to protect and represent their rights and interests.[49]

Representation in a collective labour relationship shall arise if a representative represents the interests of more than half the employees in an undertaking.[50]

A trade union can be established by a decision during a meeting convened by its founders, which must be attended by at least three employees. This founding meeting approves the charter of the organisation, and elects the management and overseeing bodies. The organisation must obtain state registration.[51] The law does not define the length of a representative's term of service.

Employee representatives have the right to receive information from the employer, to submit suggestions to the employer on the organisation of work, to conduct collective bargainings in the organisation, to sign collective agreements, exercise non-governmental supervision over the implementation of labour legislation and other normative legal rulings containing norms of labour law, appeal to the court against the decisions and actions of the employer or persons authorised by the employer, if they do not comply with the legislation, collective agreements and labour contracts.[52]

The employer must respect the rights of employee representatives and not interfere with their activities when they are making decisions that may affect the legal status of employees. The employer must hold consultations with employee representatives as and when required. Further, the employer must consider any proposals submitted by employee representatives and respond to them in writing within one month.[53]

Employee representatives have the benefit of certain legal guarantees, for example employees elected to representative bodies cannot be dismissed from work at the initiative of the employer without the preliminary consent of the representative body during the period for which they fulfil their authorisations, except in certain cases specified in law.[54]

The supreme body of the trade union is its assembly (conference, congress), which shall be convened within the timeframe established by its charter, but not less than once every five years.[55]

XII DATA PROTECTION

i Requirements for registration

Companies in Armenia have no obligation to register with a data protection agency or other government body, and do not need to identify with particularity any such information that is being processed.

49 Labour Code, Article 21.

50 id., at Article 22.

51 The Law on Trade Unions of the Republic of Armenia [Law on Trade Unions], Articles 4, 9.1.

52 Labour Code, Article 25.

53 id., at Article 26(1).

54 id., at Article 119.

55 Law on Trade Unions, Article 8.

Armenia's Personal Data Protection Agency only maintains a register of personal data processors. The law provides four grounds for inclusion on this register:

a legal entities that process personal data may apply to the Personal Data Protection Agency for the purpose of recognition and registration of the electronic data processing systems in their possession, which must provide a sufficient level of security;[56]

b before processing personal data, a data processor may notify the agency of its intention to process data;[57]

c a processor must notify the agency, if the agency requests notice;[58] and

d a processor must notify the agency, if the processor intends to process biometric or special categories of personal data.[59]

Personal data processing is deemed lawful if either the data subject has consented to the processing, except in circumstances provided by law, or the processed data is obtained from a publicly available source.[60]

While processing the personal data of its employees, an employer must:[61]

a not convey any personal data of employees to third parties without the written consent of the employee, except when it is necessary for preventing a threat to the life or health of the employee, as well as in other circumstances prescribed by the law;

b provide the right to be familiar with the personal data of employees only to parties with special authorisation; moreover, these authorised parties may receive only the personal data that are required for a specific purpose;

c use encryption keys and other appropriate technical and organisational measures;[62] and

d prevent unauthorised access to processing technologies and ensure that only lawful users access processed data.[63]

ii Cross-border data transfers

The law allows processors to transfer personal data to third parties provided that either the data subject has consented to the transfer, or the transfer is necessary to implement the purpose of the processing.

To transfer personal data to a third country, the processor must obtain permission from the Personal Data Protection Agency. The Agency will grant permission if it considers the data transfer agreement will ensure an adequate level of protection of personal data. The Agency's permission is not required if a processor transfers personal data to a country that ensures an adequate level of protection of personal data.

An adequate level of protection is presumed where personal data is transferred either in compliance with international agreements, or to a country included in a list officially published by the Agency.[64]

56 Data Protection Law of the Republic of Armenia [Data Protection Law], Article 19 (9).

57 id., at Article 23(1).

58 id., at Article 23(3).

59 id., at Article 23(2).

60 id., at Article 8.

61 Labour Code, Article 134, Paragraphs (1), (5).

62 Data Protection Law, Article 19(1).

63 id., at Article 19(2).

64 id., at Article 27. The list is published online, in Armenian only, at http://moj.am/storage/uploads/Cucak-2019.pdf.

Data transferred to another country should not be further processed for purposes that are incompatible with the original purpose of the transfer.[65]

The employer must also warn the parties receiving the personal data of the employee that these data can be used only for specified purposes about which the employees have been informed. The parties receiving the personal data shall keep them confidential.[66]

iii Sensitive data

The law defines a special category of personal data as information relating to a person's race, national identity or ethnic origin, political views, religious or philosophical beliefs, trade union membership, health and sex life. Biometric personal data is defined as information relating to a person's physical, physiological and biological characteristics.[67]

Before processing any personal data, a data processor must notify the Personal Data Protection Agency of its intention to include special category or biometric personal data in that process. A processor may only process data without the data subject's consent in the following circumstances:

a special category data: if directly permitted by law;[68]

b biometric data: if directly permitted by law and if the purpose pursued by law can only be achieved by the processing of the biometric data.[69]

iv Background checks

To conclude any employment contract, the employer must request the following documents from the candidate: identification document, social security card, certificate of education or required qualification and, if the contract is for a job that requires an initial and recurring medical examination, a statement of the candidate's health. An employer is not entitled to require any documents that are not enumerated in the law and other normative legal rulings.[70]

During the course of the working relationship, an employer is permitted to process an employee's personal data but only for the purposes of ensuring the fulfilment of the requirements of the laws and other normative legal rulings, to support the employee's continued employment, training and promotion, to ensure the employee's personal security, for controlling the quality and quantity of the work performed, and for the protection of property.

The employer cannot acquire or process personal data relating to an employee's political, religious and other persuasions, membership of non-governmental organisations or activities in trade unions, or private life. With regard to activities directly linked to labour relations, the employer is allowed to acquire and process data concerning the private life of an employee but only with his or her written consent.[71]

65 Agency for Protection of Personal Data: 'Guidelines for the protection of personal data in employment relations'.

66 Labour Code, Article 134(3).

67 Data Protection Law, Article 3.

68 id., at Article 12.

69 id., at Article 13.

70 Labour Code, Article 89.

71 id., at Article 132.

XIII DISCONTINUING EMPLOYMENT

i Dismissal

The Labour Code provides an exhaustive list of bases on which an employment contract may be terminated; in all other circumstances, termination is illegal. Thus, an employer does not have the right to terminate an employment contract without reference to one of the grounds prescribed by law.

The law provides for two situations in which an employer is required to notify government authorities or representatives of the employees about a dismissal. One is in relation to the dismissal of employee representatives, as discussed in Section XI.

The other is mass dismissals. In the event of the liquidation of an organisation or a reduction in the number of employees, at least two months in advance of a planned dismissal of more than 10 per cent of the total number of employees (but not fewer than 10 employees), the employer must submit details of the proposed number of dismissed employees to the appropriate authorities and the employee representatives.[72]

The law prescribes the circumstances under which an employer must offer an employee another position, taking into account the employee's professional skills, qualifications and state of health. These include termination of an employment contract:

a based on a reduction in the number of employees or staff (because of production needs or changes in production capacity, or economic, technological or organisational conditions of labour);

b when an employee is reinstated in a previous job; or

c when an employee is not suitable for the position they hold or the work required.

An employer is entitled to terminate an employment contract if the employee rejects the offer of another position. If it is not possible to offer alternative work, the employment contract can be terminated without such an offer.[73]

A dismissed employee may apply for a job with his or her former employer, but this will be on the same basis as all other applicants (i.e., without any privileges derived from the former employment). The law does not require the implementation of social programmes.

When an employer initiates the termination of an employment contract, the law sets clear deadlines for notifying the employee. These terms vary depending on the basis on which the employment contract has been terminated. If the employer fails to comply with these terms, he or she must pay the employee a penalty;[74] the employee has a right to demand payment of this penalty. However, the employee cannot demand payment in lieu of notice.

Termination of an employment contract by the employer is prohibited in a number of circumstances:

a at a time when an employee is temporarily unable to work;

b when an employee is on leave;

c after a decision on calling a strike is adopted, the employee takes part in the strike in the manner defined by law;

d during the implementation of duties imposed on the employer by state and local self-governance bodies;

72 id., at Article 116.

73 id., at Article 113(3).

74 id., at Article 115.

e concerning pregnant women, from the time that she has submitted a pregnancy certificate to the employer until one month after the end of the pregnancy and maternity leave; and

f concerning a person who is not on leave but has care of a child who is not less than one year old, except for certain exceptions provided for by law.[75]

The law provides for some instances when an employer has to pay an employee severance pay on terminating the employment contract. These are instances then the employment contract is terminated through no fault of the employee, such as the liquidation of the organisation, reduction of staff positions or disability of the employee.[76]

The law also allows the termination of an employment contract by mutual agreement. One party offers, in writing, to terminate the contract. If the other party agrees to the offer, he or she must notify the other party within seven days. If the parties thus agree to terminate the contract, they shall execute a written agreement specifying the terms of the termination and other conditions. If the party that received the offer to terminate the contract does not give notice of its agreement within the prescribed period, the offer shall be deemed rejected.[77]

ii Redundancies

An employer can terminate an employment contract on the basis of a reduction to the workforce because of production needs, or changes in production capacity or economic, technological or organisational conditions of labour.

In any such circumstances, an employer must offer an employee another position, taking account of professional skills, qualifications and state of health. If the employee rejects the offer, the employer is entitled to terminate the employment contract.

If it is not possible to offer other work, the employment contract can be terminated without any offer being made. In these circumstances, the principle of protection against dismissal is applicable to the categories of employees listed in Section XIII.i.

Further, an employer must notify an employee in writing no later than two months in advance of a termination; however, there is no the obligation on the employer to notify the government or trade union. In addition, the employee receives severance pay from the employer at the rate of one month of the employee's average salary.

Unlike mass dismissals, the employer has no obligation to notify any state body or employee representative about the dismissal. No social plan is required either. If the dismissed employee wishes to be re-employed by the same employer, the general rules for recruitment are applicable (the employer is free to make decisions on recruitment).

See also Section XIII.i regarding mass dismissals.

XIV TRANSFER OF BUSINESS

According to the Labour Code, the reorganisation of a company, as well as a change in the persons who have obligations or other rights thereon, shall not be a ground for termination of an employment contract, unless the number of employees or staff (or both) is reduced.[78]

75 id., at Article 114.

76 id., at Article 129.

77 id., at Article 110.

78 id., at Article 126.

Other than this, there is no specific law that provides more detailed regulations in respect of transfers of business.

However, see Section III regarding the Constitutional Court's position on changes to working conditions.

XV OUTLOOK

The main trend expected in the coming year is to ensure full state control over compliance with labour law requirements. Employers must be prepared for this in all respects: they need to be fully aware of the new powers held by inspection bodies, and their implementation procedures, and must strictly comply with labour law requirements.

A working group, including employers' representatives, has been established by the relevant ministry to prepare amendments to the Labour Code. As proposed by the employers' representatives, this will include discussion about a number of changes that will take some of the unnecessary burden off employers' shoulders.

Appendix 1

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Sedrak Asatryan has been the managing partner of Concern Dialog CJSC since 2003. He is a specialist in the areas of property, real estate, administrative, labour and heritage law. He also specialises in the defence of rights in the sphere of economic crimes. He also provides legal advice on questions relating to corporate, tax, labour and competence rights.

Sedrak Asatryan has broad experience in providing high-quality representation relating to the interests of his clients in different courts and in administrative bodies. He has presented the interests of his trustees, for instance, before the Public Services Regulatory Commission of the Republic of Armenia, State Commission for Protection of Economic Competition of the Republic of Armenia and State Revenue Committee of the Republic of Armenia.

He is the author of a number of articles and innovative projects, and is the co-author of *New Labour Code of the Republic of Armenia, Employment Contracts* (Book 1) and *New Labour Code of the Republic of Armenia, Internal and Individual Legal Acts of the Employer* (Book 2).

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Janna Simonyan, attorney, joined Concern Dialog Law Firm in 2007. At present, she holds the position of a partner. She is a specialist in contract, labour and corporate law, and performs court representation for administrative and civil cases.

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Janna Simonyan regularly organises individual and group courses on the Labour Code.

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