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The International Comparative Legal Guide to:

Employment & Labour Law 2017

7th Edition

A practical cross-border insight into employment and labour law

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Country Question and Answer Chapters:

EDITORIAL

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

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

It is divided into two main sections:

Two general chapters. These chapters discuss the implications of Brexit on UK employment law, as well as global employment standards and corporate social responsibility.

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 35 jurisdictions.

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

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

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

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The major sources of employment law are the Labour Code of the Republic of Armenia (RA), the Civil Code of RA, to the extent not covered by the Labour Code, the Law on Civil Service, the Law on Public Service of the Republic of Armenia, and other RA laws regulating labour relations, sectoral collective labour agreements, and Decrees of Government regulating different technical issues, including work security standards. In addition, Armenia is party to several ILO Conventions regulating employment law issues (for a complete list see http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102540).

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

The Labour Code protects all workers in the RA, including employees, civil officers and public officers.

RA legislation also protects the rights of actual workers, hired without a written contract, who work factually, as well as workers working under a civil contract, if the latter can prove that they have in fact been in an employment relationship with the employer.

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

Employment contracts or the Order for employment are concluded in writing, and must contain the following mandatory conditions:

- the date;
- place of conclusion of contract;
- name of employee;
- name of the organisation or name of the natural person employer;
- the structural subdivision (if applicable) of employment;
- the year, month and date of the commencement of work;
- the name of position and/or official duties;
- the salary and/or the form of determining it;
- supplements, additional payments, premiums, etc., granted to employees in the prescribed manner;
- validity period of the employment contract (upon necessity);
- duration and terms of the probation period if applicable;
- working hours;
- normal duration of the working hours or incomplete working hours, or shorter working hours, or a summarised calculation of working hours; and
- the type and duration of annual leave (minimum, extended and additional).

Actual employees hired without a written contract are considered to be employees as well if they are in actual employment relations with the employer and it can be proved. Moreover, the employer can be fined with an administrative order for keeping an employee without a written contract (including for evading taxes, as the employer is responsible for withholding and paying income tax on behalf of the employee).

1.4 Are any terms implied into contracts of employment?

If the terms defined in question 1.5 are not mentioned (and regulated otherwise where allowed) in the contract, then they are implied.

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

The employer shall be obliged to follow the conditions of employment laid down by the legislation, which are:

- payment of a salary not less than the minimum salary established by law;
- safe workplace conditions;
- working hours shall include: working hours of not more than eight hours daily and 40 hours weekly; daily (inter-shift) and weekly uninterrupted rest; and additional payment defined for overtime work or work on rest days;
- additional payment for performing heavy, harmful, or especially heavy and especially harmful work; and
- time limits established for the payment of salary (not later than the 15th day of the subsequent month), etc.

Also, if no time is defined, the work contract is implied to be signed for an indefinite period.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

After making an agreement because of collective bargaining, the employee and employer can define certain additional conditions

within the contract too; such conditions will not be less favourable for the employee than those defined in the Labour Code of RA. In the RA, collective bargaining is not applied and such practice has not yet been established.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

In the RA, trade unions are regulated by the international treaties of the Republic of Armenia, the Labour Code, the Trade Unions Law and other legal acts.

2.2 What rights do trade unions have?

Trade unions are entitled to: draft their statutes and regulations; freely elect their representatives; arrange their administrative staff and their activities; draw up their programmes; acquire information from the employer in the manner prescribed by the Labour Code; submit proposals to the employer on work organisation; conduct collective bargaining within the organisation; conclude collective agreements and exercise supervision over their execution; exercise non-state supervision within an organisation over implementation of labour legislation and other regulatory legal acts containing rules of labour law; appeal through judicial procedure the decisions and activities of an employer and the authorised persons thereof contradicting the legislation of the Republic of Armenia, as well as collective agreements and employment contracts or violating rights of the representatives of employees within the organisation; ensure the coordination of employees' and employers' interests in collective employment relations at different levels of social partnership; submit proposals to state and local self-government bodies; organise and lead strikes; participate in the development of production plans and their implementation within the organisation; submit proposals to the employer on improvement of working and leisure conditions of employees, introduction of new technical equipment, reduction of the amount of manual labour, revision of the production norms, as well as the amount of and procedure for the remuneration of work; and other additional powers not contradicting the legislation.

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

Trade unions are entitled to organise, hold and lead strikes and public events and conduct bargaining on the issue with State bodies, local self-government bodies, other organisations and their officials. Trade unions are entitled to organise a strike if: 1) because of conciliation processes, the dispute related to the conclusion of a collective employment agreement has not been settled; 2) the employer avoids carrying out a conciliation process; and 3) the employer fails to execute a decision of the Conciliation Commission that satisfies the employees, or fails to perform his or her obligations assumed by the collective employment agreement having been concluded beforehand.

A strike shall be called in case the decision thereon has been approved by secret ballot by two thirds of the total number of employees of an organisation, or employees of a separate (structural) subdivision (that will separately strike) of an organisation when calling a strike in an organisation.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

A union of employers is a legal entity considered to be a non-commercial organisation which unifies organisations/employers and citizens/employers. The member organisations/employers of the union are represented in the union by authorised representatives.

The union of employers is entitled to: form an agreed position with the members of the union of employers on issues concerning labour and associated socio-economic relations; defend that position in relations with trade unions and governmental bodies; coordinate its positions regarding those issues with other unions of employers; protect the rights and legal interests of its members in relations with trade unions and governmental bodies; initiate collective bargaining negotiations on preparation, conclusion, and amendment of collective agreements; authorise its representatives to conduct collective bargaining negotiations on preparation, conclusion, and amendment of the drafts of collective agreements; participate in establishment and activities of corresponding commissions on settlement of labour relations, conciliation commissions and commissions for the settlement of collective labour disputes; participate in consultations with trade unions and governmental bodies concerning principal directions associated with socio-economic policy; obtain information about labour issues from trade unions and governmental bodies which is necessary to prepare, conclude, amend and control collective agreements; take part in the development and discussion of laws and other legal acts concerning settlement of labour and associated socio-economic relations which refer to the rights and legal interests of employers; create economic companies or be their member; and have other rights.

The union of employers shall undertake to: conduct collective bargaining negotiations and conclude collective agreements with trade unions on the basis of the agreement; fulfil the obligations undertaken under the agreements concluded; inform its members about the agreements concluded and provide them with their texts; provide information about working issues of trade unions and governmental bodies which is necessary to conduct collective bargaining negotiations on the preparation, conclusion, amendment, and control of collective agreements; control the implementation of covenants and collective agreements concluded by it; support the members of the union of employers in the fulfilment of the obligations provided under the covenants and collective agreements concluded by them; report to its members about the activities of the union of employers within the terms and in compliance with the procedure provided under its Charter; help its members in the field of application of the legislation regulating labour and other associated socio-economic relations; develop by-laws containing norms of labour law; conclude contracts and agreements as well as settle individual and collective labour disputes; and fulfil other obligations provided by its Charter.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

The employer is obliged to consult with the representatives of employees (if any) when taking decisions affecting the employees' legal status as well as engage the representatives of the employees in discussions on safety and health control issues.

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

Pursuant to the legislation of the RA, trade unions and unions of employers can cooperate through labour information exchange, and conduct collective bargaining negotiations on the preparation, conclusion, amendment, and control of collective agreements. Wide practice of cooperation between any two of such unions has not yet formed in the RA.

2.7 Are employees entitled to representation at board level?

There is no mandatory rule per which employees or representatives of employees are entitled to have automatic representation at board level. This can be regulated by collective agreement; however, as mentioned above, these are not extensively used in Armenia, and to the best of our knowledge there is no such rule.

3 Discrimination

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

Discrimination against employees is prohibited pursuant to the national legislation, as well as international treaties ratified by the RA. Discrimination on the grounds of sex, race, nationality, language, origin, citizenship, social status, religion, marital and family status, age, beliefs and opinions, membership to parties, trade unions or non-governmental organisations, and other circumstances not connected with the working skills of any employee, is prohibited.

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

Any form of discrimination against any employee on all grounds specified under question 3.1 is prohibited during working relations.

3.3 Are there any defences to a discrimination claim?

Any employee who is a victim of discrimination can judicially enforce his/her violated rights. Corresponding court practice has not yet formed in the RA; the formation of such practice is in process.

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

The employees can enforce their violated rights both through negotiations with the employer and judicially. The negotiations can be conducted both before the initiation of claim in court and during the proceedings. Thus, the parties can resolve disagreements amicably.

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

Judicial enforcement of their rights violated due to discrimination. If the labour contract has been dissolved due to discrimination, the employee can be re-employed and paid for the period from dissolution of the contract to the moment of re-employment.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

The "atypical conditions" labour contracts are concluded by consent of the parties and additional warranties and "atypical" working mode may be defined thereunder by consent of the parties.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Pursuant to the legislation of the RA, the duration of maternity leave in the RA lasts until the child attains the age of three years.

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

During pregnancy and delivery leave, which, pursuant to the legislation of the RA, is 140 days (in the case of complicated delivery, 155 days, and in the case of multiple births, 180 days), the employee is entitled to special leave, during which she receives a temporary disability benefit in the amount of her average salary.

After completion of pregnancy and delivery leave, the employee who is on unpaid maternity leave is paid, at her will, child attendance allowance in the amount of AMD18,000 (about US$37) until the child attains the age of two years. Unpaid maternity leave is provided until the child attains the age of three years.

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

An employee who returns to her job after maternity leave is entitled to all the contractual rights she had before taking leave, and if the employee returns to work before the child attains the age of one year, she also enjoys some additional warranties. For example, she can only be sent on a business trip or engaged in overtime or work on a day off following her consent, and her engagement in hard and detrimental, or especially hard and especially detrimental, works is prohibited. Additional breast-feeding breaks are provided until the child attains the age of one-and-a-half years.

4.4 Do fathers have the right to take paternity leave?

Yes, pursuant to the legislation of the RA, the father (or stepfather) who takes care of the child may decide to take paternity leave until the child attains the age of three years. Additionally, the husband of a woman on pregnancy and delivery leave or on maternity leave is entitled to an unpaid two-month leave before the child attains the age of one year.

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

Yes, the same child care leave as defined under question 4.4 can be provided at the will of the judicially appointed trustee of the child who takes care of the child.

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

There is no such right/guarantee. Different working hours may be defined for the employee by consent of the parties (by labour contract).

5 Business Sales

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

If the shareholders, but not the employer, changes in case of sale of the employer's business, from the legislative point of view, this is not a ground for dissolution or change of labour contracts. However, if instead of share purchase assets a sale agreement is signed, there is no guarantee of transfer of labour contracts to the new company.

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

In the case of a business sale (share/stock sale), the labour relations continue and the existing contracts, including collective agreements, are not changed because of the conclusion of the corresponding contract; however, if the new shareholders decide to change the terms of work organisation as the previous shareholder might also do, the terms of the contract may be changed.

In the case of an assets transfer, no rights survive, and the employees and all labour relations remain with the seller company, which will be entitled to resolve the labour agreements based on the closing of the business (there are no assets to run the business). In this case, employees are to be notified beforehand (usually two months), or a penalty which is equal to the salary due for each month will be applicable.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Pursuant to RA legislation, the employer is not obliged to inform the employees in the case of a business sale or consult them in connection thereof.

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

Unless other grounds defined by legislation are available, the business sale from one shareholder to another is itself not a ground for dissolution of the labour contracts, but in the case of a change of the organisational conditions of work, the new shareholder may reduce wages and the number of people employed.

In the case of an assets sale, the employees may be dismissed based on a change of business conditions.

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

If the new shareholder as a new employer intends to change the production volumes and/or economic and/or technological and/or organisational terms of work, he/she/it can change the material conditions of the contract subject to the observance of the defined procedure.

However, the fact that there is a business sale is not enough to entitle the employer to terminate or materially alter the employment contracts/work conditions.

6 Termination of Employment

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

In the case of dissolution of the labour contracts initiated by the employer, with exception for cases of dissolution of the contract for any breach of labour discipline, the employer should give notice of termination of employment within the defined term. In case of dissolution of the contract for the reason of reduction of staff, the employee shall be given two months' notice. In other cases, the term of the notice depends on the employee's length of service, and constitutes 14–60 days.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

The legislation of the RA does not define such a provision, but if the employer fails to observe the terms of the notice and dissolves the labour contract earlier, it will be subject to the payment of a fine for each day the notice was not made, which shall be calculated based on the average daily salary of the employee.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The labour contract may not be dissolved by the employer in cases provided under question 6.4 below. The employer is not obliged to inform/obtain the consent of anybody before the dissolution of the contract, with exception for cases where there is a the reduction of staff. In this case, the state employment service shall be given two months' notice.

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

The labour contract may not be dissolved during the temporary disability period of any employee (with exception of long-term disability) or during the leave of: pregnant women – during the period lasting from submission of the pregnancy certificate to the employer to the completion of one month after the end of the pregnancy and delivery leave; persons who take care of a child but are not on leave – during the whole period of care for the child until it attains the age of one, with several exceptions; after taking the decision to strike and during the strike, persons who take part in a strike in compliance with the procedure defined by legislation; and for persons who have duties imposed on him/her by governmental or local self-management bodies, save for cases of conscription for military service.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

The legislation of the RA provides that an employee may be dismissed for inefficiency in his/her position, and the labour contract may be dissolved subject to the work organisation conditions, production volume or other business factors. In case of dissolution of the labour contracts due to staff reduction or re-employment of a former employee, the employer shall pay to the employee's dismissal pay in the amount of one average monthly salary. In other cases (inefficiency of the employee in his/her position or in performance of his/her work, conscription for military service, long-term disability, retirement, and material changes of the terms of the contract), the dismissal pay shall be defined, depending on the length of service of the employee to that employer, as 10 to 40 times their average daily salary.

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

There are certain procedures that an employer should follow in case of dissolution of a labour contract, e.g. notification, final settlement and dismissal pay.

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

In the case of any dissolution of the labour contract without legal grounds or in defiance of the defined procedures, the employee can be re-employed judicially, be paid for the whole period of forced leave or receive compensation in the amount of one to 12 times his/her average monthly salary if re-employment is impossible.

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

Before reference to the court, labour conflicts can be settled through negotiations with the employer. Disputes already referred to the court can also be settled by agreement reached through negotiations.

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

If more than 10% of the total number of employees is envisaged to be dismissed within two months, or in case of the winding up or reduction of staff in any organisation with not less than 10 employees, the employer shall submit data about the number of the employees to be dismissed to the state managing body authorised by the Government of the RA in the field of employment (the Ministry of Labour and Social Welfare) and to the employees' representative not later than two months before the dissolution of the labour contracts.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

If the legal grounds or procedures were not observed at the dissolution of the contract, the employee can be judicially re-employed, be paid for the whole period of forced leave or receive compensation in the amount of one to 12 times his/her average monthly salary if re-employment is impossible.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The employer can restrict disclosure of confidential information provided to the employee during his/her work for the employer. Also, intellectual property rights can be regulated. However, most common conventions (non-compete, minimum time working obligation, etc.) are in general not recognised by law and are not commonly used (in any case, there is practically no judicial practice regarding such).

7.2 When are restrictive covenants enforceable and for what period?

No confidentiality term is available; it can be defined by the party in the contract.

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

No, there is no such special requirement under Armenian law; however, similarly, nothing prevents the parties from agreeing on financial compensation.

7.4 How are restrictive covenants enforced?

There are none, and none are applied. As mentioned above in question 7.3, there is practically no court practice in this regard.

8 Data Protection and Employee Privacy

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

The general rule is that the personal data of an employee may not be provided to other persons regardless of their position. The personal data of an employee may be obtained, processed, and kept by the employer only in compliance with the procedure defined under the legislation of the RA. The personal data of an employee may be provided to third persons without the employee's consent only in exceptional cases defined by law, international treaties or court decision, save cases where it is necessary to prevent danger or threat to his/her life and health.

If the transfer of data is to be within the same company (e.g. the person is employed in the Armenian branch of a foreign company) then there are no limitations. Cross-border transfer entails no additional limitations.

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

Yes, the employees are entitled to freely and at no cost see their personal data and be issued a copy of any record containing personal data.

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

Save the cases and positions defined by law, all personal data shall be obtained from the employee. If the personal data of an employee can be obtained only from a third person, the consent of the employee shall be obtained. The employer shall inform the employee about the purpose, facilities and sources available for receipt of the personal data as well, as their nature and consequences of refusal to give written consent for their receipt.

However, there is no major practice regarding this either and, in practice, employers obtain data on employees from any legal source (including social media, etc.).

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

There is no general prohibition of such monitoring (unless it is the monitoring of personal e-mail and personal calls), which means that it should be considered allowed. There is no practice regarding this.

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

If the work of the employee is not directly connected with social media, the employer may limit its use in the workplace. The use of social media outside the workplace may be limited if the employee publishes information concerning the employer.

9 Court Practice and Procedure

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

In the RA, labour disputes are considered in the courts of general jurisdiction within the framework of civil proceedings as well as in the Administrative Court if the employer is an administrative body.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

If the employee does not agree with a change of working conditions or dissolution of the labour contract initiated by the employer, the employee is entitled to appeal to the court within two months upon receiving the corresponding individual legal act. Employees are exempted from payment of state duty in case of any reference to the court for labour disputes.

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

The first instance courts consider disputes within a period of two months to one year. In complicated cases, the time may be longer.

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

The decision of the first instance court may be appealed within one month of proclamation of the court's decision. Appeals are considered within a period of about two to four months. The decision of the Court of Appeal may be appealed to the High Court of Cassation within one month after the proclamation of the decision. Hearings in the Court of Cassation take another two to four months. The decision of the Court of Cassation is final and not subject to appeal.

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In addition to his attorney practice, Mr. Asatryan lectures at the School of Advocates. Since 2014, he has led the employment law clinic for students, run jointly with the French University in Armenia.

Mr. Asatryan has authored several articles and publications on employment law issues (including handbooks: "*The New Labor Code of the RA: Employment Contracts*"; "*The New Labor Code of the RA: Employer's Internal and Individual Legal Acts*"; and "*Law Firm Management*"), and now leads a working group in the development of a Labour Law handbook for attorneys and judges.

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CONCERN DIALOG
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Concern Dialog was established in 1998 as a company specialised in civil and administrative litigation services. The company's qualified and professional team provides high-quality legal services in a wide variety of fields to its individual and corporate clients in Yerevan and in all the regions of Armenia, as well as on the international level. Concern Dialog is one of the largest and most highly appreciated law firms in Armenia. The firm has four partners and more than 25 associates and paralegals.

Concern Dialog is a member of TagLaw - the worldwide alliance of independent law firms, American Chamber of Commerce in Armenia (AmCham), German Business Association in Armenia (DWV). The firm and it's Partners are ranked by *The Legal 500* and *Chambers and Partners*.

The firm is highly appreciated for its work in complex case litigation practice, labour and employment law, corporate and M&A, regulatory issues in mining, energy and telecommunications, taxes and support for trans-boundary transactions.

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