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Global Practice Guides

Employment

Law and Practice – Armenia

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ARMENIA

LAW AND PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

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ARMENIA LAW AND PRACTICE

Contributed by Concern-Dialog Law Firm **Authors:** Sedrak Asatryan, Janna Simonyan, Ani Varderesyan

Concern-Dialog Law Firm is a full-service law firm founded in 1998 that provides litigation, administrative representation and legal advice to individual and corporate clients in Armenia, as well as international arbitration and public international law services worldwide. The company's specialisation includes the legal aspects in various spheres providing high-level services in corporate, competition, contract, labour, property and tax laws; on electronic communications, media, mining, energy, gambling, banking regulatory issues, legal consulting to public entities and legislation and policy development and governmental relations, as well as defence in criminal proceedings, with emphases on white collar crime and victim protection. Concern-Dialog regularly contributes to publications on labour law-related issues and provides training and presents lectures in a variety of forums. Highly competent in the peculiarities of the Labour law, the company lawyers and attorneys are ready to represent both the employees' and employers' interests at any stage of labour relations, offering the following services in

the sphere of Labour Law: legal consultancy on Labour law issues, legal audit of labour relations (legal due diligence), legal guidance in human resource services (legal support in HR management, formation of HR documentation and/or blanks in accordance with legislative requirements), implementation/support in implementation of HR automation systems (e-labour), representation during inspections and in related administrative proceedings, defence of rights and legitimate interests of companies and employees and negotiations on labour disputes and court representation. Concern-Dialog is a member of several prominent legal networks, such as TAGLaw and NextLaw by Dentons, and is also an active member of several business associations, including the American Chamber of Commerce in Armenia, the German Business Association in Armenia (DWV), the French Armenian Chamber of Industry and Commerce (CCI France-Armenie) since 2016 and a member of Next Law Global Referral Network.

Authors



Sedrak Asatryan has been the Managing Partner of Concern-Dialog Law Firm since 2003. He practises in the areas of Labour Law, General Administrative Law and heads the Real Estate practice of the firm. In 2010, Mr Asatryan intensively researched law firm management as part of an experience exchange organised for managing partners in the USA. Mr Asatryan co-authored "The New Labour Code of the RA: Employment Contracts" and "The New Labour Code of the RA: Employer's Internal and Individual Legal Acts". In 2013 another book co-authored by Mr Asatryan, Law Firm Management, an essential contribution to the Armenian legal reality, was published. Since 2014, he has led the employment law clinic for students, run jointly by Concern-Dialog Law Firm with the French University in Armenia. In addition to his attorney practice, Mr Asatryan lectures at the School of Advocates. In 2017 Mr Asatryan was elected to the Board of the Chamber of Advocates of the Republic of Armenia.



Janna Simonyan has been a Partner at Concern-Dialog Law Firm since 2010. She is specialised in Labour Law consulting, as well as Employment Law litigation issues. Ms Simonyan has represented corporate clients of Concern-Dialog as well as individuals in numerous cases since 2009. Ms Janna Simonyan regularly organises individual and group courses on the Labour law and developments, seminars on issues related to Labour Law for HR department managers and employees of organisations, and discussions on Labour Law with law clinic students from universities in Armenia. Ms Simonyan periodically trains teams of students for moot court competitions in Armenia. Janna Simonyan is also the author of many articles and co-author of publications of Employment and Labour Law.



Ani Varderesyan joined Concern-Dialog Law Firm in 2016. She graduated from French University in Armenia with a Bachelor's degree and currently continues to pursue her Master's degree in the same university. As a student, she participated in many competitions and conferences, and represented the University team at the international round of the Jessup moot court competition. She specialises in Comparative and Private International Law.

1. Terms of Employment

1.1 Contractual relationship

The employment contract, or the order for employment (which shall contain all the terms provided for the employment contract), is executed in writing and shall contain the following mandatory information:

- date and place of execution of the contract;
- first and last names of the employee (also the patronymic name upon their request);
- name of the organisation, or first and last names (also the patronymic name upon their request) of the natural person employer;
- the structural subdivision (if applicable);
- date of the commencement of work;
- name of position and/or official duties;
- amount of salary and/or the method of calculation of such;
- supplements, additional payments, premiums, etc, granted to employees in the prescribed manner;
- validity period of the employment contract (if applicable);
- duration and terms of the probation period (if applicable);
- working time regime;
- normal duration of the working time or incomplete working time, or shorter working time, or summarised calculation of working time;
- type and duration of annual leave (minimum, extended and additional).

The above-mentioned is provided by Article 84 of the Labour Code of the Republic of Armenia. The employer cannot prescribe contract terms that are less favourable than the regulation of the Labour Code. Any such terms are void.

1.2 Compensation and work hours

Minimum wage and overtime regulations

The minimum wage of the employee is defined by the Armenian law on “Minimum monthly wages” and cannot be less than approximately USD115 (net salary).

Overtime work is allowed in exceptional cases defined by the Labour Code. In case of overtime, the employer must pay to the employee both the hourly rate and an additional amount not less than 50% of the hourly rate.

Limitations on hours of work

Working time duration shall not exceed 40 hours per week. Daily duration of work shall not exceed eight working hours, except for the cases provided by law, other normative legal acts and the collective contract.

Maximum work duration, including overtime, is 12 hours daily (including breaks for rest) and 48 hours per week.

The duration of working time of specific categories of employees – of health care, care (custody), child care institutions, specialised electricity/gas/heating-supply organisations, specialised communications services and specialised services for elimination of the effects of accidents, etc, as well as of watchmen in premises – may be up to 24 hours per day. The duration of working time of such employees must not exceed 48 hours per week, and the rest period between working days must not be shorter than 24 hours. The list of works that are considered to be falling under this specific regulation is produced by the government.

The shorter work duration regulations are applicable to categories of employees specified by the Labour Code. For example, a weekly maximum of 36 hours is applicable to employees aged 16-18, as well as to employees working in hazardous workplace conditions. The various short durations of work are also applicable to different categories of minors.

Executive compensation

Usually the regulation of executive compensation will be subject to decision made by shareholders of a company, if this authority is not expressly transferred to the board of the company by the charter. However, executive compensations are not specifically regulated or limited by the legislation in Armenia.

1.3 Other terms of employment

Limitations on confidentiality

The employer defines the confidentiality of employment and regulates the limitations on confidentiality. These issues can be regulated by the employment contract. In the case of publication of confidential information the employee can be held liable by the terms defined by law.

Leave of absence

Pursuant to Armenian legislation, an employee may take paid leave from work for pregnancy and delivery as well as a maternity unpaid leave, which can last up until the child attains the age of three years.

The father (or stepfather) who takes care of the child may take a paternity unpaid 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.

Armenian legislation also prescribes the possibility of taking educational leave, for preparation for exams. The duration will vary, based on the type of exam (usually from two to 30 days). This leave is usually paid only if the employee is pursuing their education on the initiative of the employer.

The employees may take unpaid leave in connection with the disability of the employee, as well as in connection with illness or death of a relative of the employee for up to 30 days during a year.

The employees may also take unpaid leave for marriage for three working days, as well as unpaid leave for the funeral of a family member for not less than three days.

Any employee shall have a minimum of 20 days of annual vacation. Employees performing specific duties, the list of which is provided by the government, can have additional or prolonged vacation days.

2. Employee Representation/Unions

2.1 Representatives

Both employees and employers are free to engage their representatives in both collective and individual employment relations.

2.2 Unions

Even though unions are regulated by Armenian legislation, there is little practice in the field.

2.3 Union elections/representation

Unions can be established by the founding meeting, which shall consist of not less than three employees. The meeting adopts the charter of the union, elects the manager and creates the supervisory bodies. The employees working in the respective organisation are free to become members of the union.

3. Restrictive Covenants

3.1 Noncompetition clauses

Labour legislation does not regulate the non-compete clauses. In addition, such clauses have never been challenged in courts. Even though their enforceability seems improbable, in practice this clause can still be found in some employment contracts.

3.2 Nonsolicitation of employees provisions

As in the case of non-compete clauses, non-solicitation clauses are also not regulated by labour legislation, neither have they been addressed by judicial practice. However, non-solicitation clauses would be almost impossible to enforce considering their constraining nature.

3.3 Nonsolicitation of customers provisions

As in the case of non-compete clauses, non-solicitation clauses are also not regulated by labour legislation, neither have they been addressed by judicial practice. However, non-

solicitation clauses would be almost impossible to enforce considering their constraining nature. The employers will usually try to achieve the same result with more indirect regulations, such as use of confidentiality clauses.

4. Data Privacy Laws

4.1 General overview

A separate section of the Labour Code is dedicated to protection of employees' personal data. This section regulates general conditions for processing and transferring personal data and prescribes guarantees of data protection, as well as the rights of employees in this regard. The main act regulating privacy issues is the law on "Protection of personal data" – this is also applicable to relations between employer and employee.

5. Foreign Workers

5.1 Limitations on use of foreign workers

Foreign workers can work and have the same rights and duties as Armenian citizens without any limitations. The only requirement is that they shall be correctly registered – see **5.2 Registration Requirements** below.

5.2 Registration requirements

Even though it is established by Armenian law that foreigners need to obtain a work permit to work in the country, the application of respective procedure is suspended until January 2018. This means that foreigners can work in Armenia without any work permit until 1 January 2018 if they have a valid residency permit. There are three different types of residency permits for foreigners:

- a temporary permit is given for the duration of one year, and entails a fee of approximately USD220 – the decision to accept or reject an application is made within 30 days from the date of submission;
- a permanent permit is given for five years, and entails a fee of approximately USD290 USD – the decision to accept or reject an application is made within 30 days from the date of submission;
- a special residence permit is provided for ten years to people of Armenian descent, as well as to foreigners who are engaged in economic or cultural activities in Armenia, and entails a fee of approximately USD310 – the permit can be obtained in approximately six months, depending on a number of different factors.

6. Grounds for Termination

6.1 Is cause required?

The employment contract can be terminated in the following circumstances:

- by mutual agreement of the parties, with any terms discussed between the employer and the employee, without any limitations;
- by the employee's initiative, without any necessity to present cause, by a written notice to the employer not less than one month before leaving their position;
- by the employer's initiative with a necessity to refer to one of the causes prescribed by law, that is:
- liquidation of the company (the activity of the sole entrepreneur is terminated);
- reduction of number of employees preconditioned by changes in the volume of production, economic and technological conditions and conditions of organisation of work, as well as by production needs;
- unsuitability of the employee for the position held;
- reinstatement of an employee into their position;
- employee's periodic non-performance or incomplete performance of their duties without any reasonable justification ;
- loss of confidence towards the employee;
- inability to work (in the event that the employee does not come to work for more than 120 consecutive days or for more than 140 days because of a temporary inability to work if it is not defined by the law, and other normative acts that the job and title are preserved for a longer term in case of certain diseases);
- presence of the employee in the workplace under the influence of alcohol or drugs;
- absence from work for a whole working day without any justifying reason;
- avoiding or refusing to participate in mandatory medical examination;
- retirement age.

However, if the contract prescribes a probation period, which shall not exceed three months, during that period the employer can terminate the contract without any cause. In exceptional cases, such as termination of the employment contract with the executive director of a company, the contract can be terminated without referring to any cause.

6.2 Layoffs

In the case of termination of a contract based on elimination of their position, the employee shall be given two months' notice or, in case of violation of this notice period, be paid a compensation for each day of delay, calculated based on the average daily salary of the employee. In the cases of mass layoffs – if during a period of two months the employer dismisses more than 10% of the total number of the employ-

ees, but not fewer than ten individuals – there is also a two-month period in which to notify the authorised state agency.

7. Procedures for Implementing Terminations

7.1 Internal and appeal procedures

No internal procedures for appeal are required.

8. Notice Periods/Severance

8.1 Required notice periods

In the case of termination of the contract based on elimination of their position, the employee shall be given two months' notice. In other cases, the period for the notice depends on the employee's work experience and may vary from 14 to 60 days. In cases of breach of labour discipline, the contract can be terminated without any prior notification time. In the latter case, the employer is obliged to seek a written explanation from the employee and set a reasonable deadline for receiving it before enacting any penalty or dismissal decision. If the employee fails to present such an explanation within the prescribed reasonable term, the termination can nonetheless be exercised.

8.2 Required severance

In the cases of layoffs, the employer has to pay the employee a severance equal to approximately one month's average salary. In other cases of termination by the initiative of the employer (except for the cases of disciplinary violation), severance pay is calculated on the basis of the seniority of the employee.

9. Termination Agreements

9.1 Obtaining releases

An agreement releasing an employee from his/her obligations would be hard, if not impossible, to enforce. Thus, even if the employee waives their right to payments due in accordance with law, they will still be entitled to bring their respective claim to the competent court and demand the compensation that was rightfully due, notwithstanding their prior waiver.

9.2 Enforceable releases

Release agreements are not regulated and therefore no requirements are imposed to such agreements.

10. Employment Disputes

10.1 Employment discrimination claims

Discrimination against employees is prohibited pursuant to the national legislation (Article 29 of Constitution; Article 3 of the Labour Code prescribing principles of labour legislation) as well as international treaties ratified by Armenia (eg European Convention on Human Rights). This includes any discrimination on the grounds of sex, race, nationality, language, origin, citizenship, social status, religion, marital and family status, age, beliefs and opinions, membership of political parties, unions or non-governmental organisations. Any employee who is a victim of discrimination can judicially enforce their violated rights. However, there is very little to no practice in this regard, and the implementation standards and relevant tests are not yet fully developed by the courts.

10.2 Contractual, wrongful dismissal claims

In the case of termination of an employment contract without legal grounds or in defiance of the defined procedures, the employee can be reinstated judicially, or if reinstatement is impossible then he/she must be paid for the whole period of forced leave or receive compensation in the amount of one to 12 times their average monthly salary.

If the employee disagrees with termination of the contract, they can bring a claim to the court in a two-month period from the moment of receipt of the respective document of termination.

10.3 Retaliation/whistleblower claims

There are no specific procedures for the protection of whistle-blowers, neither in the cases of internal complaints nor in the cases of complaints to authorities. However, the employee will not be able to terminate their contract without the existence of one of the valid causes prescribed by the law, which does not include the case of an arbitral dismissal, for which the employee will be able to demand a judicial reinstatement.

There is no requirement regarding an anonymous complaint procedure.

11. Dispute Resolution

11.1 Judicial procedures

In Armenia, there are no specialised employment forums.

The country has a single system of courts of general jurisdiction where claims can be filed.

Class actions are not available. However, employees can act as co-claimants in the procedure.

11.2 Alternative dispute resolution

Both pre-dispute arbitration procedures agreements and mediation agreements are enforceable in Armenia.

11.3 Damages or other relief

Damages or other relief can be awarded for the following:

- back pay;
- judicial costs, including attorney's fees, to the extent the court will find them reasonable;
- reinstatement damages.

11.4 Attorney's fees

A prevailing party (employee or employer) can be awarded attorney's fees in the amount the court will find reasonable in Armenia.

12. Extraterritorial Application of Law

12.1 Application of domestic law outside the country

Labour legislation and other normative legal acts shall be applied to labour relations in the territory of the Republic of Armenia regardless of whether the work is performed in the Republic of Armenia or in another country with the instruction of the employer.

Provisions of the labour legislation and other normative legal acts containing norms on labour law are to be respected by all employers (citizens or organisations) regardless of their organisational, legal or ownership types.

The performance of activities in crafts or aircrafts (flying vehicles) is regulated by the labour legislation and other normative legal acts containing norms on labour law where these crafts are sailing, or aircrafts (flying vehicles) are flying, under the flag of the Republic of Armenia or bear the national emblem of the Republic of Armenia.

The Labour Code and other normative legal acts containing norms on labour are applied during the performance of work in other means of transport only if that means of transport is under the ownership of the employer who falls under the jurisdiction of the Republic of Armenia.

If the employer is a foreign country or its diplomatic representative, international organisation or foreign person, Armenian labour legislation and other normative legal acts containing norms on labour law are applied to the employment relationships of employees permanently living in the Republic of Armenia where diplomatic privileges are not waived.

The Labour Code and other normative legal acts are not applied to the relations between foreign employers and employees not living in the Republic of Armenia permanently, despite the fact that employees are doing work with the instruction of an employer in the Republic of Armenia.

The law of a foreign country shall be applied to labour relations existing in the Republic of Armenia where it is established by international treaties of the Republic of Armenia or laws.

Where international treaties of the Republic of Armenia establish norms other than envisaged by the Labour Code, the rules provided in the treaties shall prevail.

Concern-Dialog Law Firm

Office 207, 2nd floor
Charents str.
1 Yerevan
Armenia

Tel: +374 10 575 121
Email: sedrak.asatryan@dialog.am
Web: www.dialog.am

