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Armenia: Law and Practice

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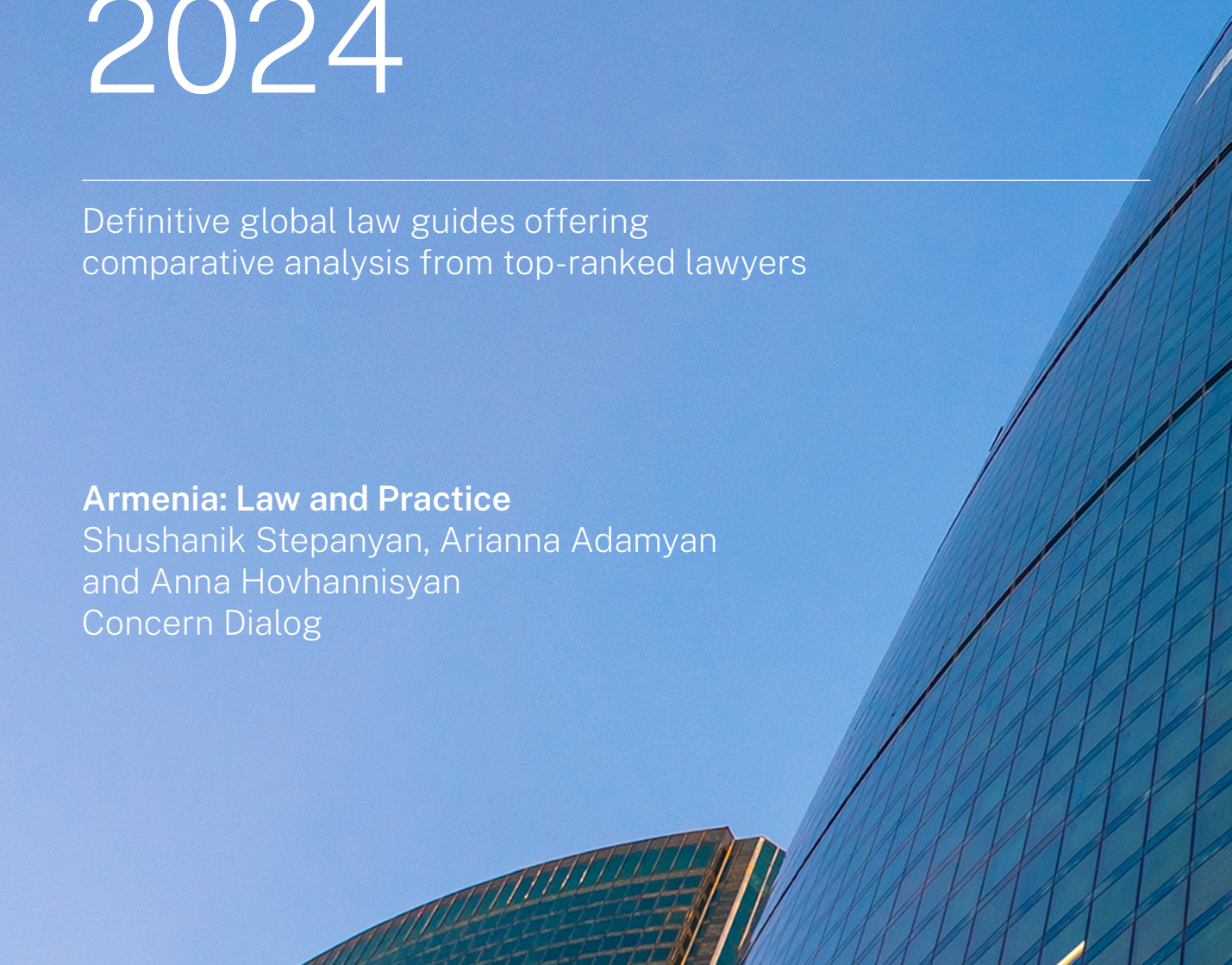
Concern Dialog



ARMENIA

Law and Practice

Contributed by:
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Concern Dialog

Contents

Concern Dialog is a top-tier, full-service law firm, headquartered in Yerevan, Armenia. It has been a trusted partner for businesses and individuals seeking legal counsel and representation since 1998. The firm is renowned for its work in the areas of corporate law, labour law, competition law, tax law, contract law, family law (including child abduction cases), and regulatory issues. Concern Dialog has extensive experience in regulatory matters in TMT, mining, energy, utilities, banking and finance, medical services, real estate, and not-for-profit sectors. In addition to its renowned consulting and transaction practice, the firm's litigation practice is regarded as one of the leaders in Armenia for landmark litigation and arbitration cases. Concern Dialog's membership of the TagLaw and Nextlaw networks, as well as its co-operation with individual law firms from various jurisdictions, allow the firm to provide services to its Armenian clients virtually worldwide. Lawyers of the firm are ranked by Chambers and Partners.

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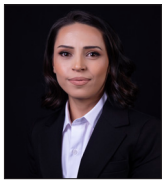

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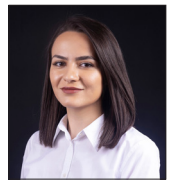

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1. Employment Terms

1.1 Employee Status

In the Republic of Armenia (RA), the Labour Code (the "Code") applies to all employment relationships without distinguishing between blue-collar and white-collar workers. Furthermore, the Code does not provide such definitions.

1.2 Employment Contracts

Indefinite and Definite Contracts

There are two main types of employment contracts: indefinite and definite contracts. Indefinite contracts are considered to be the general rule, whereas definite contracts are the exception. This is because definite contracts are only concluded when the employment relationship cannot be determined as being for an indefinite period, due to the nature of the work to be performed or the conditions of performance. The Labour Code also provides a list of situations in which fixed-term contracts can be established, for example, with seasonal workers, temporary workers (working for a duration of up to two months), replacement employees, foreigners (for the period of validity of the right of residence if the foreigner is required to have residence status to work in Armenia), etc.

Under Armenian labour law, the employment relationship between an employee and an employer is established either by a written employment contract concluded in accordance with the procedure established by labour legislation or by an individual legal act on hiring. The law requires contracts and individual legal acts to be in written form. An employment contract can also be established through mutual exchange between the parties using postal or electronic communication, provided that the method ensures the authenticity of the contract and accurately confirms that it originates from an employment contract party.

Compulsory information

The contract or the individual legal act on employment must include:

- the date and place of signing of the employment contract;
- the name, surname and patronym of the employee;

- the name of the legal person employer or the name, surname and patronym of the natural person employer;
- the workplace;
- the structural or separate division or department or institution of the employer (if applicable);
- the date of starting work;
- the job title and/or work duties, or a reference to the document defining such duties;
- the amount of the gross salary (including taxes paid from the salary, and social or other mandatory payments established by law) and the method of its determination;
- allowances, bonuses, or additional payments given to employees;
- the term of the employment contract (if applicable);
- the duration and conditions of the probationary period (if applicable);
- the work schedule (regular(full-time), part-time, or reduced or aggregated hours) and weekly working hours (except for aggregated hours);
- the type and duration of annual leave;
- the position, name and surname of the signatory of the employment contract; and
- the communication methods between the employer and the employee within labour relations.

Other terms may be included in the employment contract upon the agreement of the parties.

1.3 Working Hours

Standard Hours

In Armenia, the standard working hours are 40 hours per week, and eight hours per day. Nevertheless, the parties have the discretion to have flexible arrangements, while ensuring adherence to the mandatory provisions established by the Code.

There are no specific terms required for part-time contracts; the terms are determined by agreement of the parties.

Maximum Hours

The maximum working hours, including overtime, may not exceed 12 hours per day (including breaks for rest and meals), and 48 hours per week. Working hours for certain categories of employees (healthcare, emergency response and supply services, etc) may be 24 hours per day. But the average work time during the week may not exceed 48 hours, and there must be a minimum of 24 hours of rest between workdays.

An employee under two or more employment contracts, whether with different employers or the same employer, also must not work more than 12 hours per day, including breaks for rest and meals.

Overtime

As a general rule in Armenia, overtime work is allowed only in specific circumstances defined by law.

1.4 Compensation

In Armenia, the minimum monthly salary is AMD75,000 net. Besides the monthly salary, employees may receive additional compensation in the form of allowances, extra compensation, bonuses, or additional payments. However the payment of such bonuses is at the discretion of the employer and can be established in the employment contract or in the internal legal acts of the employer. Moreover, there is no mandatory requirement to provide a 13th pay cheque in Armenia.

When an employee works overtime, the employer must compensate them with additional pay for each extra hour worked, which should be at

least 50% more than the regular hourly rate. For night work, this compensation must not be less than 30% more than the hourly rate for each hour worked.

While the government can establish conditions under which employees may receive allowances, it does not otherwise intervene in the private sector.

1.5 Other Employment Terms

Annual Leave

Employees who work a five-day week must be granted a minimum of 20 working days of annual leave, while those who work a six-day week must be granted 24 working days of annual leave. For annual leave, the employer pays the employee an average wage, which is calculated by multiplying the employee's average daily wage by the number of days of leave granted. As a rule, replacement of annual leave with monetary compensation is not allowed. If the employee avoids or refuses to use the annual leave or a part of it for two-and-a-half consecutive working years, the period of annual leave granted to the employee may be decided by the employer.

Pregnancy and Maternity Leave

Women are entitled to the following types of leave:

- 140 days of leave, comprising 70 days of pregnancy leave and 70 days of maternity leave.
- In cases of difficult delivery, a total of 155 days is allowed, with 70 days allocated for pregnancy leave and 85 days for maternity leave.
- For simultaneous delivery of more than one child, 180 days are granted, divided into 70 days of pregnancy leave and 110 days of maternity leave.

These leaves are calculated and granted to the woman in full. In the event of premature delivery, any unused days of pregnancy leave are added to the maternity leave period.

Additionally, an employee who adopts a newborn or becomes a guardian of a newborn is entitled to leave starting from the day of adoption or appointment until the infant reaches 70 days of age (or 110 days if adopting or becoming guardian of two or more newborns). Similarly, a biological mother who gives birth to a child through a surrogate is entitled to leave from the day of the child's birth until the newborn reaches 70 days of age (or 110 days for the birth of two or more newborns).

The pay for maternity leave is calculated by average monthly salary.

Paternity Leave

Five days of paternity leave is given upon request of the employee within the first 30 days of childbirth. For each day, the employer pays an amount equal to the employee's average daily wage.

Childcare Leave

Childcare leave, intended for caregivers of children up to three years old, is granted upon request to a parent, stepparent, or guardian caring for a child until the child turns three years old. No leave pay is provided aside from any applicable state benefits.

Temporary Incapacity Leave

Temporary incapacity leave is granted for incapacity caused by:

- illness/injury;
- prosthetics;
- the need for sanatorium treatment; and

- the need for care caused by the illness or injury of a family member.

The temporary incapacity benefit is paid at the expense of the employer for the first five working days of temporary incapacity, which is not compensated by the state, and the rest of the pay is at the expense of the state budget of the Republic of Armenia for the time period mentioned in the government's temporary disability paper.

Employee Liability

An employee may be held liable under the law when certain conditions are met: damage exists, the damage stems from illegal activity, there is a direct causal link between the activity and the damage, fault is attributable to the employee, the parties affected by the violation were in an employment relationship at the time, and the occurrence of damage is connected to work-related activities.

An employee is obliged to pay compensation for damage caused to the employer only in the following circumstances:

- damage to or loss of the employer's property;
- overspending of materials;
- compensation paid by the employer for damage caused to a third party by the employee while performing work duties;
- expenses incurred due to damage to the employer's property;
- improper preservation of material values; and
- failure to take deliberate measures to prevent the release of low-quality products, or embezzlement of material or money.

The employee is obliged to compensate the damage caused to the employer in full, although this may not be equal to more than three months' average salary, except for in the following cases:

- the damage was caused intentionally;
- the damage was caused by the employee's criminal activity;
- an agreement on full financial responsibility was signed by the employee;
- the damage was caused by the loss of necessary tools, equipment, special clothing, etc, provided to the employee for work;
- the damage was caused in such a way or to such property as falls under full property liability as defined by law; or
- the damage was caused under the influence of alcoholic beverages, drugs, or psychoactive substances.

2. Restrictive Covenants

2.1 Non-competes

Non-competes are not explicitly regulated in the RA. While increasingly common in practice, questions about their legality and enforceability remain unanswered due to the lack of case law on the matter.

2.2 Non-solicits

Like non-competes, questions regarding the legality and enforceability of non-solicits persist due to the absence of case law and explicit law provisions.

3. Data Privacy

3.1 Data Privacy Law and Employment

Data privacy in employment law is primarily governed by the Labour Code, with additional regulations provided by the Law on "The Protection of Personal Data".

The 16th chapter of the Labour Code establishes how employers should handle, protect, and pro-

cess employees' personal data while outlining employees' rights and the legal implications of non-compliance. In particular, it defines personal data as information required for employment purposes and covers all activities related to handling this data. Employers must process data only for legitimate employment-related reasons, such as compliance with the law or ensuring safety, and must obtain employee consent to process sensitive information. They are also responsible for ensuring data security and informing employees about how their data is managed.

When it comes to protecting and transferring data, it must be handled according to legal standards and not shared with third parties without employee consent, except in specific circumstances. Employees have the right to access their data, request corrections or deletions, and seek legal remedies if their data rights are violated. Violations of data protection rules can result in legal consequences for those responsible.

4. Foreign Workers

4.1 Limitations on Foreign Workers

As an exception to the general rule of indefinite contracts, a fixed-term contract is signed with foreigner workers with the validity period of the right of residence, if the foreigner is required to have residence status in order to work in Armenia.

In addition, termination of such contracts is permissible if the foreign worker's residency status is revoked or invalidated.

4.2 Registration Requirements for Foreign Workers

Foreign workers in Armenia do not face special registration requirements. They can work in the country if they have residence status permitting employment or if they qualify for exceptions under this status.

5. New Work

5.1 Mobile Work

Mobile work itself is not regulated under Armenian law. However, Armenian legislation does permit work to be performed remotely. Remote work can only be established by mutual agreement between the employer and the employee, subject to the nature of the work allowing for remote execution. The procedures and conditions for remote work, including the reimbursement of expenses for necessary equipment and materials, or their acquisition, are determined by a collective agreement, the internal disciplinary rules of the employer, or a written agreement between the parties.

Data Privacy

Armenian legislation does not differentiate between the obligations of employers regarding the processing of personal data whether work is conducted at the workplace or remotely. In all cases, employers must comply with the requirements established by the Labour Code of Armenia and Armenian law on "The Protection of Personal Data".

Occupational Health and Safety

According to the Code, when work is performed remotely, employers are exempt from complying with the standard health and safety requirements for employees, except for the obligation

to provide employees with personal protective equipment.

5.2 Sabbaticals

Armenian legislation does not mandate paid sabbaticals, but employers have the discretion to provide employees with such type of paid leave by including the relevant provisions in their internal acts.

5.3 Other New Manifestations

The concept of "new work" is not currently regulated under Armenian law, and there are no anticipated changes or legislative initiatives expected in this field in the near future. The implementation and use of such practices are at the discretion of the employer.

6. Collective Relations

6.1 Unions

Under Armenian law, unions are established to protect the rights of parties involved in employment contracts. These unions come in two types: trade unions for employees and employers' associations.

Trade Unions

Trade unions have the right to:

- set rules (elect representatives, manage staff) and goals (plan programmes);
- get work information, propose improvements and negotiate contracts;
- monitor labour law compliance and defend employees' rights;
- participate in production planning and suggest workplace changes;
- co-ordinate employee-employer interests and influence government policy; and
- organise strikes (if necessary).

However, despite their legal existence, they are not actively engaged in practice.

Employers' Associations

Employers' associations are non-profit organisations that unite both employer organisations and individual employers. The member organisations are represented by their authorised representatives within the associations. The activities of these associations are regulated by the Code, applicable laws, and their own charter.

6.2 Employee Representative Bodies

Trade unions have the authority to advocate for employees' rights and interests, ensuring their protection in labour relations. Their primary functions include representing employees, and negotiating republican, branch and territorial, and local collective agreements to improve working conditions. Additionally, trade unions have the power to decide and declare strikes.

Trade union organisations are founded by decision of the founding meeting convened on the initiative of its founders (at least three employees). The founding meeting approves the charter of the organisation, and elects management and supervisory bodies. They are registered before the state registry of legal entities of Armenia.

6.3 Collective Bargaining Agreements

Collective bargaining agreements, or collective contracts, regulate employment relations.

A collective contract is a voluntary agreement concluded in writing between an employer and employee representatives, or the employers' union and trade union (bilateral contract). In some cases, it may also involve the Government of the Republic of Armenia (tripartite contract). This agreement regulates labour relations

and related social or economic matters between employees and employers.

There are three levels of collective contracts: republican, branch and territorial, and local (or of the organisation).

Republican Collective Contracts

Republican collective contracts are signed by the Republican Union of Trade Unions, the Republican Union of Employers and the Government of the Republic of Armenia. They include provisions for safety, employment security, broader social benefits, and mechanisms for monitoring and ensuring compliance with their terms.

Branch Collective Contracts

The parties to branch collective contracts are the union of employers of the relevant branch of the economy (production, service, profession) and the branch republican union of trade unions. The parties to territorial collective contracts are the territorial union of employers operating in a certain territory and the territorial union of trade unions. These two parties address crucial areas such as remuneration, working hours, job security during workforce reductions, and opportunities for professional growth, as well as procedures for implementation and dispute resolution.

Local Collective Contracts

A collective contract of the organisation or local collective contract is a written agreement concluded between the employer and the representatives of the employees in the given organisation. The parties can define conditions that are not covered by labour laws or higher-level collective contracts, providing they do not contradict such regulations and, at the same time, do not negatively impact employee conditions specified by those agreements.

7. Termination

7.1 Grounds for Termination

When terminating employment, the employer must provide the employee with factual and legal reasons for the dismissal in the termination order.

The procedure of the dismissal differs based on the grounds for termination.

In cases of dismissal for an employee's non-compliance with the position held or the work performed, reinstatement of the employee to a previous job, or a reduction in the number of employees and/or positions due to production necessity, termination is possible if the employer has offered the employee another job in accordance with their professional training, qualification and state of health, and the employee has refused the offered job, or if no suitable job opportunities are available within the organisation.

In the event of non-compliance of the employee with the position held, the employment contract can be terminated if the employee is unable to perform their work duties due to lack of professional ability or health conditions.

In the event of dismissal for regular non-fulfilment of duties or contravention of internal disciplinary rules without a valid reason, termination is possible if the employee who committed a labour disciplinary violation already has at least two prior active disciplinary penalties. The suitability of the employee's professional abilities to the position held or the work performed is evaluated by the employer, and the suitability of the employee's state of health is determined by a medico-social examination report.

An employer has the right to terminate an employee's contract without giving notice in the event of:

- regular non-fulfilment of the employee's duties or contravention of internal disciplinary rules without a valid reason;
- loss of trust in the employee;
- the employee being at the workplace or performing work functions at the workplace or outside the workplace under the influence of alcohol, narcotics or psychotropic substances;
- the employee not showing up for work during the entire work shift due to a disreputable reason; and/or
- the employee's refusal or avoidance of a mandatory medical examination.

For all other cases, notice is mandatory.

Collective Redundancies

Collective redundancies are possible in case of cessation of activity (liquidation) or reduction of the number of employees or positions. The employer must notify the employees' representative, as well as the State Employment Service, of the number of employees who will be dismissed two months in advance if the employer intends to dismiss more than 10% of the total number of employees, and no fewer than ten employees within a two-month period.

7.2 Notice Periods

Notification

The minimum statutory notice period for terminating an employment contract depends on the grounds for termination.

Two months' notice

Two months' prior written notice is required when:

- the employment contract is terminated on the ground of the liquidation of the employer; and
- there is a reduction in workforce due to changes in volumes of production and/or economic and/or technological and/or work organisation conditions and/or production needs.

For mass terminations the employer must also notify both the government agency responsible for employment in Armenia and the employee representative body.

Three days' written notice

Three days' prior written notice is required when:

- an alien's residence permit is recognised as invalid; or
- an employee fails to perform their duties for more than ten consecutive working days (shifts) or more than 20 working days (shifts) within the last three months as a result of not being allowed to work, in the case stipulated by the Code.

Notice based on period of employment

In cases where the employment contract is terminated because the employee is not suitable for the position held or the work performed, or because of a long-term disability, the notice period varies according to the employee's period of continuous employment as follows:

- continuous employment for a period of up to one year – notice of no less than 14 days;
- continuous employment for a period of up to five years – notice period of 35 days;
- continuous employment for a period of five to ten years – notice period of 42 days;
- continuous employment for between ten and 15 years – notice period of 49 days; and

- continuous employment for more than 15 years – 60 days' notice period.

No prior notice

For terminations where no prior notice is required, refer to question **7.3 Dismissal for (Serious) Cause**.

In all cases, an employer has discretion to terminate employment without prior notice by paying a fine for every due day of notification, calculated based on the average daily salary rate.

Mass dismissal

In the case of liquidation of a company or a reduction in the number of staff, an employer is obliged, no less than two months' prior to the termination of employment contracts, to submit data on the number of employees to be dismissed (by profession and gender and age) to the state body authorised by the Government of the Republic of Armenia in the field of employment and to the employees' representative, if it is planned to dismiss more than 10% of the total number of employees within two months, but not less than ten employees (mass dismissal).

Severance

Employees are entitled to severance pay in the following situations.

A severance payment equivalent to one month's salary must be paid where the employment contract is terminated if:

- the organisation is liquidated (the activity of an individual entrepreneur is terminated);
- the number of employees and/or staff positions is reduced due to changes in volumes of production and/or economic and/or technological and/or work organisation conditions and/or by production needs; and
- the employee is reinstated in a previous position.

In cases where the employment contract is terminated because the employee is not suitable for the position or the work performed, or has a long-term disability, the amount of severance pay the employer has to give to the employee varies according to the employee's period of continuous employment as follows:

- continuous employment for up to one year – ten times the average daily wage;
- continuous employment from one to five years – 25 times the average daily wage;
- continuous employment from five to ten years – 30 times the average daily wage;
- continuous employment from ten to 15 years – 35 times the average daily wage; and
- continuous employment for more than 15 years – 44 times the average daily wage.

In situations other than those listed above, severance pay is at the employer's discretion.

7.3 Dismissal for (Serious) Cause

The legislation does not explicitly define "dismissal for a serious reason". Nevertheless, it stipulates instances where an employment contract can be terminated without giving prior notice to an employee and without the obligation to provide severance pay. These instances include:

- the employee regularly fails to fulfil the obligations reserved for them by the employment contract or the internal regulatory rules, with no good reason;
- the employer has lost confidence in the employee;
- the employee is found to be under the influence of alcohol, narcotics or psychotropic

substances at the workplace or during the performance of their work;
- the employee fails to come to work throughout the entire working day (shift) with no good reason; and
- the employee rejects or evades a mandatory medical examination.

7.4 Termination Agreements

According to Armenian employment law, termination agreements can be mutually agreed upon by the parties involved. One party must propose in writing to terminate the employment contract. If the other party accepts the offer, they must notify the proposing party within seven days.

Upon agreement, the parties sign a written termination agreement detailing the termination period and other conditions, such as compensation.

If the party receiving the termination proposal does not respond within the specified period, the proposal is considered rejected.

7.5 Protected Categories of Employee

An employment contract cannot be terminated by an employer under the following circumstances:

- during the period of temporary incapacity of the employee for work, except when the employee has long-term incapacity for work, defined as temporary disability lasting more than six consecutive months or exceeding 180 days within the last 12 months, excluding maternity leave days;
- during the leave of the employee;
- from the day a pregnant woman notifies the employer of her pregnancy until one month after maternity leave;
- throughout the period of caring for a child of up to one year old, unless the employee consistently fails to fulfil contractual obligations or internal rules, loses the employer's trust without valid reason; is under the influence of alcohol, drugs, or psychotropic substances at work or while performing duties outside the workplace; or rejects mandatory medical examinations;
- after a decision to strike is made, and during the strike, provided the employee participates as prescribed by the Code;
- while fulfilling obligations imposed by the state or local self-government bodies, except as provided by the Code;
- during natural disasters, technological accidents, epidemics, accidents, fires, or other emergencies, or when addressing their immediate aftermath, if the employee is absent due to these circumstances; and
- during unplanned transfers or the provision of vacations in educational institutions (including preschools), when the employee is absent to arrange childcare for a child under 12 years old.

It should be noted that these restrictions do not apply if the employment agreement is terminated due to the liquidation of the legal person employer.

8. Disputes

8.1 Wrongful Dismissal

The grounds for a wrongful dismissal claim are the absence of legal grounds for termination or the violation of the requirements set out in the law, internal or individual acts of the employer or the employment contract.

Damages/Relief

If the court determines the termination to be wrongful, the employee's rights will be restored. In such cases, the employer is liable to pay the average salary for the entire period of forced idle time. If restoration to the previous job is impossible, the court may decide not to reinstate the employee and instead require the employer to pay compensation. This compensation should not be less than the average monthly salary but should not exceed 12 times the average monthly salary.

8.2 Anti-discrimination

Armenian labour law prohibits all kinds of discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion, political or other views, being a national minority, property, birth, disability, age or other circumstances of a personal or social nature.

Burden of Proof

If an employee claims to be a victim of discrimination, the burden of proving the occurrence of the discrimination lies with the employee.

Damages/Relief

The relief in such cases is the same as previously stated – restoration to their previous job or, where this is not possible, compensation equal to the employee's average salary for the entire period of forced idle time.

8.3 Digitalisation

Starting from January 2024, an electronic system was established for civil proceedings in Armenia. With this new amendment, paper documents are being filtered out of the court and the digitalisation of future proceedings is envisaged.

All persons using the system must submit procedural documents (appeal, application, complaint, response, position, petition, etc) to the court only in a digital form through the system (although prior court proceedings will continue in the paper format in which they began), except for information constituting a state secret, which is submitted only in material form.

A person using the system is considered to be:

- a natural person who has performed any action through the system at least once within the framework of a civil case and has not subsequently informed the court examining the case about the impossibility of using the system; and
- legal entities, sole proprietors, state and local governments, respondents in procurement disputes, representative attorneys, bankruptcy trustees, notaries and licensed mediators, regardless of whether they have ever taken any action through the system.

Within the framework of a civil case, the court will conduct the case electronically.

9. Dispute Resolution

9.1 Litigation

There are no specialised employment forums in Armenia.

Under the Armenian Civil Proceedings Code, a class action claim must be jointly presented by a minimum of 20 co-plaintiffs. The court decision will be in accordance with the common procedure.

An appeal against a court decision may be filed by a class action representative.

Class action plaintiffs may litigate their cases in court through a class action representative or representatives, the number of which cannot be more than five. A representative in a class action can be any claimant, non-governmental advocate organisation or lawyer. These equally represent the interests of all plaintiffs.

In a class action, the participation of a representative in the case excludes the participation of the plaintiff in the proceedings, but cannot exclude the right of the latter to become acquainted with the materials of the case, to refuse the claim for their part, or to terminate the powers of the representative on their behalf.

The court must terminate the powers of the representative at the request of the majority of the class action plaintiffs. If some of the plaintiffs, but not the majority, want to terminate the powers of the representative or to change the representative, then the court will separate the proceedings of the case in terms of their claims.

9.2 Alternative Dispute Resolution

Employment disputes may be submitted to arbitration, if there is an arbitration agreement between the employer and the employee, or if arbitration is provided in the collective contract as the method for resolving disputes. Disputes concerning employment contracts are subject to the same time limits as those applicable in the case of submission to the courts.

An arbitration agreement does not limit an employee's right to submit the dispute arising from the employment contract to a court, unless the arbitration agreement was signed after the dispute arose and the parties unconditionally agreed to submit the dispute to arbitration.

9.3 Costs

Both the employee and the employer can claim judicial fees, including attorneys' fees, in court. Judicial fees are distributed among the parties in the case in proportion to the amount of the prevailing claims. The court may require the losing party to reimburse these fees to the prevailing party, either fully or partially.

The court has authority to reduce the attorneys' fees claimed by the prevailing party after considering the factors of the case, such as the complexity, the duration of the proceedings, and the legal activities performed.

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