

Labour & Employment 2019

Contributing editors

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K Lesli Ligorner and Mark E Zelek**

Morgan Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the fourteenth edition of *Labour & Employment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia, Finland, Indonesia, Brazil, Bangladesh, Greece, Egypt and Portugal.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing Matthew Howse, Sabine Smith-Vidal, Walter Ahrens, K Lesli Ligorner and Mark E Zelek of Morgan Lewis & Bockius LLP, for their continued assistance with this volume.



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Armenia

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LEGISLATION AND AGENCIES

Primary and secondary legislation

1 | What are the main statutes and regulations relating to employment?

The main laws regulating labour relations are:

- the Labour Code;
- the Civil Code (where not in conflict with the Labour Code);
- other laws regulating specific kinds of labour; and
- government decrees and ministerial decisions regulating safety and other technical issues.

Armenia is also party to several International Labour Organization conventions regulating labour relations, which also prevail over national legislation. These laws apply for both domestic and foreign employees working in Armenia. Armenian labour law does not regulate issues of employment outside of Armenia, unless the labour relationship is established in Armenia and the employee is temporarily seconded abroad. Labour law regulations do not foresee any conflict of law provisions, and the general principle of choice of law is not applicable to the labour relationship.

Protected employee categories

2 | Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Discrimination against employees is prohibited pursuant to national legislation, as well as international treaties ratified by Armenia. 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.

Enforcement agencies

3 | What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The primary agencies responsible for the enforcement of employment statutes and regulations are the Ministry of Labour and Social Affairs and the Healthcare and Labour Inspectorate of the Republic of Armenia, which carries out supervision and other functions prescribed by law. The Inspectorate can impose sanctions in the spheres of healthcare, workers' health and safety, acting on behalf of Armenia in the manner established by law.

WORKER REPRESENTATION

Legal basis

4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

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

Powers of representatives

5 | What are their powers?

By law, 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, collective agreements or 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;
- introduce new technical equipment;
- reduce the amount of manual labour;
- revise the production norms, as well as the amount of and procedure for the remuneration of work; and
- other additional powers not contradicting the legislation.

The common practice of unions is not yet established in Armenia.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

- 6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

In accordance with the general requirements of the Law on Personal Data Protection, persons with access to personal data shall not disseminate or disclose such data to third parties without the consent of the subject of the personal data (in this case, the candidate), unless otherwise provided under the law.

Additionally, the processing of a candidate's personal data assumes his or her written consent if the processing of the data relates to a decision about nominating or declining a potential employee. The agreement may be confirmed in a separate document signed by the applicant. Candidates' personal data are not considered confidential if the candidate puts his or her CV on the internet or otherwise makes it available to the public.

If an employer wishes to keep the candidate's personal data or report his or her data to other employers, it must obtain written consent from the candidate. It makes no difference whether an employer or a third party conducts the checks.

Medical examinations

- 7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

To conclude an employment contract, the employer must request some documents from an employee. This includes reference to his or her state of health (health book) if the employment contract is concluded for such a job that requires initial and recurrent medical examination.

The list of such works and the form of the reference (sanitary book) is defined by the Labour Code and the government of Armenia.

An employer has the right to refuse to hire an applicant who refuses to submit to a medical test.

Drug and alcohol testing

- 8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions or prohibitions against drug and alcohol testing of applicants, but an employer has the right to immediately terminate an employment contract if an employee comes to work under the influence of alcohol, narcotics or psychotropic substances.

HIRING OF EMPLOYEES

Preference and discrimination

- 9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

Labour legislation legally guarantees equality of parties of labour relations irrespective of their gender, race, nationality, language, origin, citizenship, social status, religion, marital and family status, age, philosophy, political party, trade union or public organisation membership or other factors unrelated to the employee's professional qualities.

- 10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Employment contracts or an order for employment are concluded in writing, and must contain the following terms:

- date;
- address of contract conclusion;
- employee's first and last or patronymic name;
- name of the organisation or natural person employer's first and last or patronymic name;
- structural subdivision (where available);
- year, month and date of the commencement of work;
- name of the position and official duties;
- amount of salary and the method for determining it, and any supplements, additional payments or premiums granted;
- validity period of the employment contract (if applicable);
- duration and terms of any probation period, with the consent of the parties;
- working time regime;
- normal duration of working times, or summarised calculation of working time; and
- type and duration of annual leave (minimum, extended and additional).

The employer cannot stipulate working conditions that are less favourable to the employee than those defined by the Labour Code, and if such terms are stipulated, they are null and void. A collective labour agreement may be applicable, but signing one is not mandatory. If the parties decide to sign the collective agreement, it will define:

- conditions for the terms of probation periods;
- conditions for significant changes in terms of employment and notification deadlines;
- terms for the termination of the employment contract; and
- structure of work, rest periods, vacations and vacation dates.

- 11 | To what extent are fixed-term employment contracts permissible?

A fixed-term employment contract is concluded when labour relations cannot be defined for an indefinite period taking into account the conditions or the nature of the work to be done, and may be concluded for a certain period of time, by defining the date of the contract or for the period of the performance of certain work. A fixed-term contract can also be concluded in the following situations:

- for employees elected for a particular contract: the contract shall be concluded for the elective term;
- a contractor working for various companies at the same time;
- seasonal work;
- temporary work (with a term of up to two months);
- substitution of a temporarily absent worker;
- for foreigners for a period of validity of the work permit or residence permit; or
- for persons aged 63 who are eligible for a pension or who are aged 65 and have no pension. This is based on an assessment of the person's professional abilities.

Probationary period

- 12 | What is the maximum probationary period permitted by law?

According to the Labour Code, a probation period shall not be longer than three months, but can be six months for some cases specified in the legislation.

Classification as contractor or employee

13 | What are the primary factors that distinguish an independent contractor from an employee?

The primary factors that distinguish an independent contractor from an employee are a work schedule and guarantees; for example, the right of leave and the right to be notified about work conditions, which are mandatory employee rights in Armenia.

Temporary agency staffing

14 | Is there any legislation governing temporary staffing through recruitment agencies?

No.

FOREIGN WORKERS

Visas

15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

To hire a foreign worker, employers must acquire a work permit issued by the competent body.

Spouses

16 | Are spouses of authorised workers entitled to work?

Spouses of authorised workers are entitled to work if they acquire their own work permit.

General rules

17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

Employers have the right to conclude a labour contract with a foreign worker (service contract) if they acquire a work permit from the competent body. Employers hiring foreign workers without a permit are subject to a fine of between 100,000 and 150,000 times the minimum wage.

Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

When issuing work permits for a foreign worker, the competent body takes into account the needs and developments of the Armenian labour market. For this purpose, the employer must first search for an Armenian citizen to fill the vacancy and, if the vacancy is not filled within a period of time prescribed by the government, the employer may recruit a foreign worker that meets its requirements and apply to the authorised body for a specific work permit for such foreign worker, by providing the necessary documents.

TERMS OF EMPLOYMENT

Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

According to the legislation, working time duration may not exceed 40 hours per week. A daily period of work must not exceed

eight working hours, except for cases stated by law, other normative legal acts or the collective contract. Legislative rules regarding maximum work duration include:

- overtime, which, in cases envisaged by the Labour Code and at the request of the employer, may not exceed 48 hours per week;
- total working time (including overtime) may not exceed 12 hours daily, including rest and lunch breaks, with the consent of both parties;
- the duration of working time of specific categories of employees (eg, carers, security workers and those working in healthcare, child care institutions, specialised electricity or gas heating supply organisations, specialised communications services, health and safety workers) 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 such jobs shall be approved by the government; and
- the duration (including lunch and rest breaks) of the daily working time of an employee with two or more employment contracts with the same employer or with different employers may not exceed 12 hours per day.

Overtime pay

20 | What categories of workers are entitled to overtime pay and how is it calculated?

All categories of workers holding employment contracts are entitled to overtime pay, but an employer can define the list of employees holding managerial official positions, or exceeding the set working time, that shall not be paid for overtime. The list of such positions is established in the collective contract prescribing the internal code of conduct.

For each hour of overtime work, an additional fee of not less than 50 per cent of the employee's hourly rate shall be paid in addition to the hourly rate.

21 | Can employees contractually waive the right to overtime pay?

No.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

By law, the minimum duration of annual leave is 20 working days.

Extended annual leave of up to 35 working days for a five-day working week, or up to 42 working days for a six-day working week shall be granted to certain categories of employees in stressful positions, whose work involves emotional and intellectual strain and professional risk. The list of employees of certain categories is defined by the government. There are categories of employees who are entitled to additional annual leave. The list of employees of certain categories entitled to additional annual leave, the minimum duration of this leave and the procedure of its provision is defined by the government.

In Armenia, holidays and memorial days are defined by law. It is prohibited to instruct employees to work on holidays, with the exception of work that cannot be interrupted on technical grounds, for public services or work involving urgent repair.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

According to Armenian legislation, employees have the right to sick leave and sick pay, which is subject to the presentation of a medical certificate from a medical organisation.

Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

The term of the absence authorised by the presentation of a medical certificate shall be no more than 120 consecutive days or no more than 140 days in one year, 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. An employee receives pay during the leave taking into account her or his average salary (this payment shall be deducted from the income tax that the employer pays on behalf of employees).

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

There are many benefits prescribed by law for Armenian employees (such as leave, providing secure work conditions, payments for overtime work and business trips), but the most important benefit is that employees cannot be dismissed from work without reasons defined in the Labour Code.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

All part-time or fixed-term employees have the same rights as full-time employees.

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

Employers in the private sector must not publish information on pay or other details about employees or the general workforce.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Armenian legislation is silent on post-termination covenants.

Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

No.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

An employer will be held liable for the acts or conduct of its employees if an employee has caused damage to the other party through non-performance or inadequate performance of his or her official duties.

TAXATION OF EMPLOYEES

Applicable taxes

31 | What employment-related taxes are prescribed by law?

Income tax, social payment and stamp payment are the employment-related taxes prescribed by law.

EMPLOYEE-CREATED IP

Ownership rights

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

Yes, the legislation that regulates the parties' rights with respect to employee inventions are the Civil Code, the Labour Code and copyright and related rights legislation.

Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

Yes, trade secrets and other confidential business information are under the protection of legislation.

DATA PROTECTION

Rules and obligations

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The key acts protecting employee privacy data and personnel data are:

- the Constitution of the Armenian Republic;
- the Convention for Protection of Individuals with Regard to Automatic Processing Of Personal Data;
- the Law on Personal Data Protection;
- the Labour Code;
- the Code on Administrative Offences;
- the Criminal Code; and
- other governmental decrees regulating different technical matters.

In accordance with the general requirements of the Law on Personal Data Protection, persons with access to personal data shall not disseminate or disclose such data to third parties without the consent of the subject of personal data, unless otherwise provided under the law.

BUSINESS TRANSFERS

Employee protections

35 | Is there any legislation to protect employees in the event of a business transfer?

If a sale agreement is signed, there is no guarantee of transfer of labour contracts to the new company.

TERMINATION OF EMPLOYMENT

Grounds for termination

36 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

An employer can only dismiss an employee with reasons that are defined by the Labour Code.

Notice

37 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

In the case of dissolution of a labour contract initiated by the employer, with the exception of cases of termination for any breach of labour rules, the employer should give notice within the defined term. In the case of dissolution of the contract for 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, but will be between 14 and 60 days.

An employer may provide pay in lieu of notice based on the employee's average salary.

38 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employment contract can be terminated without notice or payment in lieu of notice in the following cases:

- failure by the employee to fulfil the duties entrusted to him or her by the employment contract or the internal disciplinary rules without a valid reason;
- loss of confidence in the employee;
- if the employee arrives at the workplace under the influence of alcohol, narcotic drugs or psychotropic substances;
- if the employee is absent for a whole work day without good reason; and
- if the employee refuses a compulsory medical examination.

Severance pay

39 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

An employer must pay severance pay to an employee in the amount of one average month's wage in the following cases:

- liquidation of the organisation;
- where a reduction of the number of employees is essential;
- changes in production volumes;
- a change in economic or technical conditions or work organisation;
- production necessity; or
- restoration of the employee in his or her previous job.

In other cases (eg, an employee's inefficiency or poor performance, conscription for military service, long-term disability, retirement or material changes of the terms of the contract), the severance pay shall be defined, depending on the length of service of the employee, as 10 to 40 times the employee's average daily salary.

Procedure

40 | Are there any procedural requirements for dismissing an employee?

Yes, an employer must follow a prescribed procedure to achieve an effective termination of the employment relationship. If the employment relationship is terminated as a disciplinary sanction, the employer must request a written explanation for the violation from the employee, to be provided within a reasonable time limit, as set by the employer. If the employee fails to provide a written explanation without good reason within the time limit, the disciplinary sanction (termination of contract) can be applied without written explanation.

Prior approval from a government agency is not required by law for the dismissal of an employee.

Employee protections

41 | In what circumstances are employees protected from dismissal?

The labour contract may not be terminated in the following cases:

- during the temporary disability period of any employee (with the exception of long-term disability);
- during the leave of pregnant women, from the period lasting from submission of the pregnancy certificate to one month after the end of the pregnancy and delivery leave;
- for persons who take care of a child but are not on leave, during the whole period of care for the child until it reaches the age of one, with several exceptions;
- for persons taking the decision to strike and during the strike (for employees who take part in a strike in compliance with the procedure defined by legislation); and
- for an employee who has duties imposed on him or her by governmental or local self-management bodies, with the exception of conscription for military service.

Mass terminations and collective dismissals

42 | Are there special rules for mass terminations or collective dismissals?

In the case of liquidation of an organisation or a reduction of the number of employees, the employer must submit the information regarding the number of dismissed employees to the State Employment Service of Armenia, and to the employees' representative, regarding the termination of the employment contract, not later than two months prior to the termination if the employer envisages dismissing more than 10 per cent of the total number of employees, if this constitutes at least 10 employees.

Class and collective actions

43 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

By law, class and collective actions are allowed and employees can claim against an employer on a collective or individual basis.

Mandatory retirement age

44 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Yes, the law in Armenia allows employers to impose a mandatory retirement age. The general mandatory retirement age is 63 years old, but there are special professions for which the mandatory retirement age can be different and this is defined by law.

DISPUTE RESOLUTION**Arbitration**

45 | May the parties agree to private arbitration of employment disputes?

Yes, according to the Labour Code, the parties may agree to private arbitration of employment disputes.

Employee waiver of rights

46 | May an employee agree to waive statutory and contractual rights to potential employment claims?

No.

Limitation period

47 | What are the limitation periods for bringing employment claims?

An employee who disagrees with the changing of the working conditions, suspension from work on the employer's initiative or dismissal from work shall be entitled to apply to the court within one month of the day of receipt of the appropriate notice (document).

Limitation of action is not valid for claims to protect an employee's honour and dignity, for reimbursement of salary (including all bonuses or additional payments) or for damage caused to an employee's life or health.



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