



ICLG

The International Comparative Legal Guide to:

Employment & Labour Law 2018

8th Edition

A practical cross-border insight into employment and labour law

Published by Global Legal Group with contributions from:

A. Lopes Muniz Advogados Associados
BAS – Sociedade de Advogados, SP, RL
Carnelutti Law Firm
CDZ Legal Advisors
Debarliev, Dameski and Kelesoska, Attorneys at Law
Deloitte Kosova Sh.p.k.
Deloitte Legal Sh.p.k.
DQ Advocates Limited
EmpLaw Advokater AB
Erdinast, Ben Nathan, Toledano & Co. Advocates
FCLAW – LAWYERS & PRIVATE NOTARIES
GANADO Advocates
Global Law Office
Gün + Partners
Gürlich & Co.
Hamdan AlShamsi Lawyers and Legal Consultants
Hogan Lovells
Homburger
Hughes Hubbard & Reed LLP

Koushos Korfiotis Papacharalambous LLC
Lakshmikumaran & Sridharan
Latournerie Wolfrom Avocats
Law firm Šafar & Partners, Ltd
Mariscal & Abogados, Asociados
McCann FitzGerald
Meridian Law Chambers
Mori Hamada & Matsumoto
Pachiu & Associates
People + Culture Strategies
Rátkai Law Firm
SEUM Law
Shahid Law Firm
Skrine
Stikeman Elliott LLP
Sulaiman & Herling Attorneys at Law
Udo Udoma & Belo-Osagie
Wildgen S.A.
Winkler Partners



global legal group

Contributing Editors
Stefan Martin &
Jo Broadbent, Hogan Lovells

Sales Director
Florjan Osmani

Account Director
Oliver Smith

Sales Support Manager
Toni Hayward

Sub Editor
Jenna Feasey

Senior Editors
Caroline Collingwood
Suzie Levy

Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
April 2018

Copyright © 2018
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-912509-03-4
ISSN 2045-9653

Strategic Partners



General Chapter:

1	Where Next for the Gig Economy? – Stefan Martin & Jo Broadbent, Hogan Lovells	1
---	--	---

Country Question and Answer Chapters:

2	Albania	Deloitte Legal Sh.p.k.: Sabina Lalaj & Ened Topi	5
3	Australia	People + Culture Strategies: Joydeep Hor & Therese MacDermott	15
4	Bahamas	Meridian Law Chambers: Dywan A – G. R. Rodgers	22
5	Brazil	A. Lopes Muniz Advogados Associados: Antônio Lopes Muniz & Zilma Aparecida S. Ribeiro	28
6	Canada	Stikeman Elliott LLP: Patrick L. Benaroch & Hélène Bussièrès	35
7	China	Global Law Office: Weiwei Gu & Kelly Cao	43
8	Cyprus	Koushos Korfiotis Papacharalambous LLC: Loizos Papacharalambous & Marilia Ioannou	51
9	Czech Republic	Gürlich & Co.: JUDr. Richard Gürlich, Ph.D. & Mgr. Kamila Janoušková	60
10	Egypt	Shahid Law Firm: Rasha Maurice	67
11	France	Latournerie Wolfrom Avocats: Sarah-Jane Mirou	74
12	Germany	Hogan Lovells: Dr. Kerstin Neighbour & Dr. Tim Gero Joppich	83
13	Hungary	Rátkai Law Firm: Dr. Ildikó Rátkai & Dr. Nóra Feith	90
14	India	Lakshmikumaran & Sridharan: Neeraj Dubey	97
15	Indonesia	Sulaiman & Herling Attorneys at Law: Allover Herling Mengko, S.H. & Valery Sarumpaet, S.H.	106
16	Ireland	McCann FitzGerald: Mary Brassil & Stephen Holst	112
17	Isle of Man	DQ Advocates Limited: Leanne McKeown & Jessica McManus	120
18	Israel	Erđinast, Ben Nathan, Toledano & Co. Advocates: Miriam Kleinberger-Attar	128
19	Italy	Carnelutti Law Firm: Giuseppe Bulgarini d'Elci & Marco Sartori	135
20	Japan	Mori Hamada & Matsumoto: Shiho Ono & Yuko Kanamaru	144
21	Korea	SEUM Law: Steve Ahn & Byungil Lee	154
22	Kosovo	Deloitte Kosova Sh.p.k.: Ardian Rexha & Vjosa Misini	161
23	Luxembourg	Wildgen S.A.: Jackye Elombo	167
24	Macau	FCLAW – LAWYERS & PRIVATE NOTARIES: Miguel Quental & Paulo Cordeiro de Sousa	174
25	Macedonia	Debarliev, Dameski & Kelesoska, Attorneys at Law: Emilija Kelesoska Sholjakovska & Ljupco Cvetkovski	181
26	Malaysia	Skrine: Selvamalar Alagaratnam & Siva Kumar Kanagasabai	189
27	Malta	GANADO Advocates: Dr. Matthew Brincat & Dr. Lara Pace	196
28	Mexico	Hogan Lovells: Hugo Hernández-Ojeda Alvírez & Luis Ruiz Gutiérrez	204
29	Mozambique	BAS – Sociedade de Advogados, SP, RL: Pedro Madeira de Brito & Lara Tarciana Sousa dos Mucudos Macamo	211
30	Nigeria	Udo Udoma & Belo-Osagie: Jumoke Lambo & Mary Ekemezie	217
31	Poland	CDZ Legal Advisors: Weronika Papucewicz & Piotr Kryczek	224
32	Portugal	BAS – Sociedade de Advogados, SP, RL: Dália Cardadeiro & Alexandra Almeida Mota	232
33	Romania	Pachiu & Associates: Mihaela Cracea	240

Continued Overleaf ➔

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Country Question and Answer Chapters:

34	Slovenia	Law firm Šafar & Partners, Ltd: Martin Šafar	249
35	Spain	Mariscal & Abogados, Asociados: Ana Gómez & Sara Moukayed	259
36	Sweden	EmpLaw Advokater AB: Annika Elmér	267
37	Switzerland	Homburger: Dr. Balz Gross & Dr. Gregor Bühler	273
38	Taiwan	Winkler Partners: Christine Chen	281
39	Turkey	Gün + Partners: Pelin Baysal & Beril Yayla Sapan	286
40	United Arab Emirates	Hamdan AlShamsi Lawyers and Legal Consultants: Hamdan Al Shamsi & Dr. Ghandy Abuhawash	293
41	United Kingdom	Hogan Lovells: Stefan Martin & Jo Broadbent	299
42	USA	Hughes Hubbard & Reed LLP: Ned Bassen & Nathan Cole	306

EDITORIAL

Welcome to the eighth 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:

One general chapter titled “Where Next for the Gig Economy?”.

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 41 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 Stefan Martin 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.com.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Poland

Weronika Papucewicz



Piotr Kryczek



CDZ Legal Advisors

1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

In Poland, the main sources of employment law are international law (e.g., ILO conventions), EU law and national law. Domestically, the main source is the Polish Labour Code and a number of other statutory acts and secondary regulations to the Code which regulate in more detail, various aspects of employment such as collective labour agreements and other collective arrangements and regulations setting out the rights and obligations of the parties of an employment relationship.

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

The Labour Code protects workers employed under employment contracts. The Code distinguishes a few types of workers who are specially protected, e.g., an employee who is pregnant cannot be laid off and cannot work overtime, at night, outside of the permanent workplace or in the shift-time system, without her prior consent.

Another group protected against termination are employees who will reach retirement age within four years or trade union activists while performing their functions (the consent for termination of the board of the trade union organisation is required). Moreover, the employer cannot terminate an agreement with an employee who is absent for justified reasons because of leave or illness. The Labour Code also protects employees on maternity leave and young employees (aged 16 to 18).

It should be noted that some professions (e.g., teachers, mine-workers and others) are subject to specific rules and privileges based on branch-related legislation.

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

Yes, Polish law requires an employment contract to be concluded in writing. If a contract is not concluded in such form, an employer must confirm basic employment terms (such as remuneration, work position, place of work, working time and work commencement date) in writing prior to starting employment, otherwise the employer might be held liable and be forced to pay a fine. The employer must also provide the employee with additional written information about certain general conditions of work such as the length of the working

day and week, the frequency and method of remuneration payments, the length of annual leave, any collective agreements governing the employee's conditions of night-time work, methods of confirming arrival at work and justification of absences from work. Irrespective of the above requirements imposed by law, it is recommended to formalise the principles of employment for evidencing purposes.

1.4 Are any terms implied into contracts of employment?

Provisions of employment contracts may not be less advantageous to the employee than provisions of binding laws (such as the Polish Labour Code) and the employer's internal labour regulations, in particular work regulations, wage regulations and collective labour agreements.

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

Working time may not exceed eight hours per day and an average of 40 hours per average working week, with certain exceptions such as balanced working time or work in continuous activities. Employees are entitled to a minimum uninterrupted rest period of 11 hours in every 24-hour period, and 35 hours per week. Work performed over the working time limits constitutes overtime work and must be paid additionally or extra time-off must be granted. The maximum number of overtime hours per year amounts to 150 hours (unless collective labour agreements, internal regulations or individual contracts provide otherwise).

Employees are entitled to 26 working days' paid leave per year (or 20 working days if the total employment period is shorter than 10 years). The employment period covers education.

The remuneration specified in the employment contract may not be lower than the statutory minimum salary (PLN 2,100 in 2017, i.e., approx. EUR 490).

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?

Terms and conditions set forth in collective bargaining agreements (CBAs) apply to individual employment contracts. CBAs can be concluded by the trade unions on a company and inter-company level, as well as on an industry level.

The level of unionisation in Poland amounts to about 12%. Most trade unions (62%) comprise public sector workers (teachers, nurses, doctors, etc.) including industry workers (miners, railways, energy sector, etc.).

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Under the Trade Unions Act, the trade union may be established by at least 10 eligible employees in the company. The employees have to enact a statute and then apply for a registration to the National Court Register. Once the trade union is registered, it becomes a legal person. Trade unions have the right to establish national federations and confederations.

2.2 What rights do trade unions have?

Generally, an employer cannot terminate or alter a trade unionist's employment contract with notice without the consent of the trade union. The other rights include:

- the right to negotiate and execute collective bargaining agreements and other agreements;
- the power to agree on internal rules, especially work and pay rules;
- the right to express opinions on legislative proposals, statutes or other normative acts;
- the right to give an opinion on individual employment matters, especially termination of an employment contract; and
- the right to be informed and consulted during group layoffs.

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

Industrial action is regulated by the Act on Collective Labour Dispute Resolution. The right to strike is guaranteed by the Polish Constitution, but the right to organise strikes is reserved for trade unions. A strike is the ultimate stage of collective dispute resolution, and must be preceded by mandatory negotiations and mediation, and optionally by arbitration.

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?

The Act on Informing and Consulting Employees (implementing 2002/14/EC Directive) stipulates that employers with 50 or more workers must inform them of their right to set up a works council. The council is elected by all employees and its composition depends on the size of the company (three, five or seven members unless the number is set in an arrangement with the employees).

The employer is obliged to inform the works council about the activities and economic situation of the company, as well as any significant changes in work organisation or employment (for instance planned layoffs). The council is also entitled to present its non-binding opinions on a number of matters. In February 2017, there were approximately 3,520 work councils in Polish companies.

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 provide the works council with information about the activities and economic situation of the company and expected changes in this respect, as well as any actions that could lead to significant changes in work organisation or employment (planned layoffs, changes in work organisation, employment policy, etc.).

Other matters that must be subject to consultation or consent of the council may be agreed with trade unions or other employee representatives.

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

The rights of works councils overlap with the rights of trade unions, but even then an employer who employs at least 50 workers is obliged to establish a works council. In companies in which there is both a works council and a trade union, the role of the works council is often marginal.

2.7 Are employees entitled to representation at board level?

There is no such obligation. The owners of the employing company may discretionarily decide that a person appointed by employees will be a member of company's management board or supervisory board. Such situations are not common in the private sector.

3 Discrimination

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

Polish law clearly prohibits any discrimination in employment. Poland has implemented two anti-discrimination directives: 2000/43/EC Racial Equality Directive; and 2000/78/EC Employment Equality. General anti-discriminatory provisions are set forth in several provisions of the Labour Code and in the Anti-discrimination Act, which protects against discrimination other than that resulting from employment relations, e.g., discrimination at work performed under civil law contracts.

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

It is prohibited to discriminate on the grounds of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, denomination or sexual orientation, as well as employment for definite or indefinite terms, or on a full-time or part-time basis.

Employees must be treated equally in the establishment and termination of employment relationships, terms and conditions of employment, promotion and access to training to develop their professional qualifications.

The Labour Code stipulates that the principle of equal treatment is violated when the employer differentiates the employee's

situation on the basis of one or more reasons resulting, among other things, in the refusal to enter into or dissolve a work contract, or disadvantageous remuneration for work or other employment conditions, or deprivation of promotion or other benefits.

3.3 Are there any defences to a discrimination claim?

Defence in discrimination cases may not be easy as, in such cases, the employer must prove that he uses objective criteria for all employees. This means that an employer must demonstrate that any action connected with employment had justified and legitimate grounds, e.g., an increase of salary was in line with the company's general promotion policy.

Introduction of and compliance with internal rules against discrimination (e.g., a code of conduct) may significantly strengthen an employer's position in such defence.

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

Victims of discrimination may enforce their rights during and after employment termination, and may lodge a claim for compensation.

Employees who exercise the right to compensation for a breach of equal treatment rules must not be treated unfavourably and, in particular, it may not cause termination of their employment. Employees are also entitled to notify the National Labour Inspectorate. The Inspectorate may conduct an inspection and impose a fine on the employer who is responsible for discrimination.

When an employee files a claim, settlement ending the dispute is possible both before and after the claim is brought before the labour court until the final judgment is passed.

The employee who accuses the employer of discrimination does not have an obligation to prove this accusation in front of the court. However, he/she still has to substantiate the complaint of unequal treatment and determine which of the criteria for discrimination the employer has applied.

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

A person whose rights regarding anti-discrimination were violated has a right to compensation equal to at least the amount of the statutory minimum wage (i.e., PLN 2,100, approx. EUR 490).

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?

"Atypical" workers do not have any additional protection, but they cannot be treated worse than other "typical" employees. Disabled employees have additional rights such as:

- an appropriate workplace with special facilities;
- working hours limited to eight hours per day and 40 hours per week;
- night-work and overtime work is forbidden;
- an additional 15-minute break at work;
- additional annual leave (10 days per year); and
- additional rehabilitative leave (up to 21 days per year).

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

The length of maternity leave depends on the number of children born:

- 20 weeks – one child at birth;
- 31 weeks – two children at birth;
- 33 weeks – three children at birth;
- 35 weeks – four children at birth; and
- 37 weeks – five or more children at birth.

Leave of up to six weeks can be used prior to the expected date of childbirth.

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

A female employee receives an allowance paid by the Social Insurance Institution (ZUS). The amount of the maternity benefit differs depending on the case; in principle, it is equal to 100% of the ground of benefit assessment basis for the first six or eight weeks (depending on the number of children born) and 60% for the period of parental leave after the above-mentioned periods. However, in certain cases, it may be equal to 80% of the ground of benefit assessment basis. The employee is protected from dismissal during the maternity leave (with some exceptions).

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

After the leave, the employee must resume work in the previous position or, if this is impossible, in a position equivalent to the previous position or a position corresponding to her professional qualifications and with remuneration not lower than before the maternity leave.

A female employee is entitled to take unpaid childcare leave or ask for reduced working hours during which she is protected from dismissal. Moreover, a female employee who is breastfeeding is entitled to two additional breaks from work included in her working time, the length of which depends on her working time and the number of children born.

4.4 Do fathers have the right to take paternity leave?

An employee who is the father taking care of a child is entitled to paternity leave of two weeks until the child is 24 months old. The leave can be split into two parts, neither of which can be shorter than one week. Paternity leave is granted upon a written request submitted no later than seven days before the commencement of that leave and the employer is obliged to accept that request.

Additionally, the father may use a part of the mother's maternity leave – the mother employee must use at least 14 weeks of her maternity leave and can waive the right to the remaining portion and grant it to the father employee, at his written request.

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

Immediately after using maternity leave, both parents are entitled to parental leave of up to 32 or 34 weeks (depending on the number

of children born) in aggregate. This leave can be split into no more than four parts, cannot be shorter than eight weeks and can also be taken by both parents at the same time. Parents are able to take 16 of the 32 weeks of parental leave later (by the end of the calendar year in which the child becomes six years old). It is granted upon written request submitted 21 days before the leave starts and the employer is obliged to grant the leave.

Also, an employee employed for at least six months (including prior periods of employment) has the right to unpaid extended upbringing leave to provide personal care to the child. The length of that leave lasts up to 36 months and it can be granted by the end of the calendar year in which the child becomes six years old. Both, parental and upbringing leave can be combine with work for one year.

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

Every employee is entitled to take unpaid childcare leave or ask for reduced working hours. If the parental leave is combined with work, the leave is extended in proportion to the time worked – the parent is able to combine work with parental leave for a maximum of 64 or 68 weeks (depending on the number of children born). Additionally, a woman who is breastfeeding is entitled to additional breaks from work included in her working time, the length of which depends on her working time and the number of children born. An employee raising at least one child aged up to 14 is entitled to be granted two paid days or 16 hours off per calendar year.

The employee is entitled to an allowance while taking care of a child aged up to eight years (paid for up to 60 days) and while taking care of other family members (paid for up to 14 days).

5 Business Sales

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

The sale of shares in the company does not affect the employees and they remain employed by the same company.

In the case of transfer of assets (transfer of an organised part or entire enterprise) in the form of a sale or contribution to another company, the new employer (company) becomes party to the existing employment relationships by law. This means that employees are transferred to a new employer automatically.

The criteria for estimating, whether the transfer of enterprise (organised part thereof) has been effected, have been developed in the jurisdiction of the Tribunal of Justice of the European Union and are adopted by Polish courts. In the *Spijkers* case, the Tribunal set-out several tests that have to be taken into consideration in this respect. The crucial question is whether the buyer continues the activity of the target company or starts a new activity of a similar type. If so, the transfer of the employee took place. Other important factors to be taken into account in such tests include: the type of enterprise; determination whether material tangible components of the enterprise have been transferred (such as buildings and real property); the value of intangible components at the time of the transfer; whether the majority of employees have been taken over by the new employer; if the handling of clients has been transferred upon the transfer; and others. Each case and its circumstances should be reviewed individually.

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

Within two months from the transfer date, the employee is entitled to terminate his/her employment contract upon a seven-day notice (such termination has the same legal effect as termination with notice by the employer).

A collective agreement of the previous employer continues to apply to the transferred employees for one year from the transfer, unless otherwise stated in the separate regulations. The new employer may introduce more favourable conditions for this group of employees.

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?

The information about a planned transfer must be provided to the employees at least 30 days before the planned transfer date and must contain: the date and reasons of the transfer; legal, economic and social implications for the employees; and any measures to be taken regarding the conditions of employment, remuneration and retraining. There is no sanction for a breach of this obligation. However, failure to inform the employees in proper time can result in an employer's liability for any damages caused to an employee and can result in extension of the term for an employee's decision as to termination of the employment contract (please see question 5.2). The length of the procedure depends on the company size and the conditions of a particular transaction.

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

No, employees cannot be dismissed in connection with a business sale. The transfer itself cannot constitute grounds for termination of an employment relationship by an employer.

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

Generally, employers are not entitled to change, independently, the terms of employment in connection with a business sale, but the employer and trade union can conclude a relevant agreement in this respect.

6 Termination of Employment

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

Employees must be given a notice of termination unless the parties conclude a mutual agreement in this respect. An employment contract for an indefinite or definite term may be terminated with notice or may be terminated without notice due to a gross violation by the employee of his/her duties. In cases of an indefinite-term contract or termination without notice, reason must be offered in writing by the employer that would justify the termination.

The period of notice under indefinite and definite contracts depends on an employee's length of service in a company:

- two weeks – if the length of service is shorter than six months;
- one month – if the length of service is at least six months; and
- three months – if the length of service is at least three years.

In the case of employment for a trial period, the terms of notice are as follows:

- three working days – if the trial period does not exceed two weeks;
- one week – if the trial period exceeds two weeks; and
- two weeks – if the trial period is three months.

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 Polish law does not recognise a “garden leave” period. Under the Labour Code, the employee is obliged to use their remaining leave during the notice period, provided that the employer has granted such leave.

The employer is able to unilaterally release the employee from the obligation to work during the notice period (the employee retains the entitlement to remuneration).

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?

Employees may appeal against termination with notice to a labour court within 21 days of the date of the notice, and may claim that the notice be void, reinstatement to work or compensation. In the case of termination without notice, an employee has 21 days to lodge a claim for reinstatement to work or compensation. The employee may challenge the reasons for termination or other breaches of law (for instance, lack of consultation with trade unions).

The employee is treated as dismissed at the end of the notice period. In the case of termination without notice, in particular in case of disciplinary dismissal, the termination is effective as of the day when the employee received the termination notice.

If there is a trade union representing the employee, it must be notified by the employer in writing about the intention to terminate the employee's indefinite-term employment contract with notice. The trade union may present its objections with reasons to the employer in writing. The consent of the trade union is required only in the case of employees with special protection against dismissal (trade union board members).

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

The following groups of employees are specially protected:

- pregnant women;
- employees who will reach retirement age in less than four years;
- trade union activists;
- employees on childcare leave, on vacation, maternity leave or unpaid carer's leave;

- members of the works council;
- so-called social labour inspectors; and
- employees protected for a valid reason, in particular those on sick leave with a doctor's certificate.

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?

Reasons related to the individual employee may include personal reasons (e.g., long-term sickness) or reasons related to the employee's behaviour (e.g., loss of trust). The employer may also terminate the employment contract without notice if the employee is at fault (disciplinary dismissal). In practice, the most common reason for disciplinary dismissal is a serious breach of basic duties (such as unauthorised absence at work, refusing to carry out a task).

An employment contract may also be terminated without notice if there is no fault on the employee's part but he/she is unable to work due to incapacity to work caused by an illness lasting for a specific period of time.

In practice, business-related reasons may require that the job position of the employee be liquidated due to economic or organisational changes in the company. Justified reasons for dismissal not related to employees include the following:

- where there is causality between the position's liquidation and the termination (further employment is no longer needed);
- where the liquidated position is identified in a manner that does not give rise to any doubt; and
- where there has been approval of organisational changes by a relevant authority or other entity, if required by law.

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

The employer must meet the following requirements:

- termination must be preceded by informing trade unions (if they exist and represent the particular employee);
- it must be done in writing;
- it must contain the reasons for termination (in contracts for an indefinite term and in case of termination without notice) and information on how to appeal against termination; and
- after the termination, the employer is obliged to issue and provide the employee with a certificate of employment.

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

The employee may bring a claim for a court to invalidate the termination, or if the contract of employment has already been terminated, for reinstatement to work or for compensation. The compensation must be awarded at the amount of remuneration due for two weeks up to three months, but in any case it may not be lower than the amount of remuneration for the notice period.

The remedies for a successful claim mostly depend on the ability to prove the reasons of termination and observance of the termination procedure. Mistakes made during such procedure significantly increase an employee's chances of success before the labour court.

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

An agreement with the employee can be settled both before and during the course of court proceedings until the final judgment is passed.

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

Group layoffs are regulated by the Act of the Specific Principles of Terminating Labour Relationships for Reasons not Attributable to the Employees (implementing 98/59/EC Directive). The Act applies to entities that employ at least 20 employees and plan to terminate within 30 days, (including a minimum of five terminations by mutual agreements) and for business reasons, employment contracts, of at least:

- 10 employees when the total number of employees is lower than 100;
- 10% of employees when the entity employs at least 100 but less than 300 workers; and
- 30 employees when the entity employs at least 300 workers.

Before the group layoffs, the employer is obliged to:

- consult its decision with trade unions or other employees' representatives;
- provide trade unions with information on reasons for layoffs, number and professions to be laid off, the planned date of layoffs, the criteria of selection for dismissal and the order of layoffs;
- provide the same information to the local Employment Office; and
- award dismissed employees a severance pay which amounts to:
 - one month's remuneration, if the employee was employed for less than two years;
 - two months' remuneration, if the employee was employed from two to eight years; and
 - three months' remuneration, if the employee was employed for more than eight years.

The employer must settle with the trade unions an agreement regarding the terms of layoffs or – if there is no trade union or when the agreement is not possible – the employer must itself regulate the layoffs.

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 employer fails to fulfil its obligations in cases of mass dismissals, it can lead a court to invalidate the termination, or alternatively award compensation or reinstate the employee to work. The employee can also claim for rightful severance pay.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

There are a few restrictive covenants after termination:

- post-contractual non-compete clause;
- confidentiality clause; and
- non-solicitation clause.

7.2 When are restrictive covenants enforceable and for what period?

The parties may set, in a separate agreement, a non-compete obligation which will be binding after termination of the employment contract. Such an agreement must be in writing, must stipulate the period of the non-compete clause and the compensation for compliance. There are no restrictions as to the duration of such covenants. The confidentiality clause and non-solicitation clause may be a part of such agreement.

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

In the case of a post-contractual non-compete obligation, the former employee is entitled to receive, for the entire period of the covenant, compensation which must not be lower than 25% of his/her recent remuneration during the non-compete period. The compensation may be paid in monthly instalments.

7.4 How are restrictive covenants enforced?

The former employee is liable for a breach of the non-competition clause under the Labour Code. An employer who does not perform its obligations, i.e., stops paying compensation, may be sued by the employee before a labour court.

In the case of a breach of the non-competition clause, the Suppression of Unfair Competition Act will also apply. The Act defines actions which may be considered acts of unfair competition and regulates the rules for liability for such acts. In accordance with the Act any act such as: “*transfer, disclosure or use of third party information which is confidential or receipt of such information from an unauthorised person, if it threatens or violates the interests of the entrepreneur*” is considered an act of unfair competition. This provision applies to the former employee three years after termination of the employment contract.

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 employer is a personal data controller of the personal data of its employees and is obliged to protect such data. The employer cannot share such data with any third party without the express consent of the employee (with some exceptions such as a court order). The personal data protection rules also apply to candidates and former employees.

Under the Polish Labour Code, an employer may require an applicant to provide certain information only. Additionally, an employer may require an employee to provide additional information if necessary to exercise special rights to which an employee is entitled under labour law. The Labour Code vests the employer with the right to require additional personal information only if the applicant/employee is obligated to provide such information directly under other regulations.

Generally, employee data transfers to a “third country” (outside the European Economic Area) are only allowed if the country of destination ensures an adequate level of protection (at least the

same as that applied in Poland). No express legal definition of an “adequate level of protection” exists; it is to be assessed by a data controller on an individual basis.

Personal data may be transferred to a third country that does not ensure at least the same level of data protection as Poland if: (i) the employee has given his or her written consent; (ii) the transfer is necessary to perform a contract between the employee and the employer or takes place in response to the employee’s request; (iii) the transfer is necessary to perform a contract concluded in the interest of the employee between the employer and a third party; (iv) the transfer is necessary or required by reasons of public interest or for the establishment of legal claims; (v) the transfer is necessary in order to protect the vital interests of the employee; or (vi) the transfer relates to data which is publicly available. Alternatively, the transfer of personal data to such a third country may be permitted with prior approval of the Inspector General for Personal Data Protection, provided that the employer ensures adequate safeguards (e.g., standard contractual clauses) with respect to the protection of privacy, rights, and freedoms of the employee.

In accordance with the EU regulation which will become effective from 25 May 2018, legislation regarding data protection will be modified; for example, the candidate will have a right to demand the employer to remove his/her personal data from the system or the employer will have more information obligations towards employees.

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

Employees are entitled to manage and update their data. To do so, they must provide a written request to the employer. The employer must answer in writing within 30 days and inform the employees about their rights and collected data, but does not have to make it available.

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

The employer may only require a candidate to provide the data set out in the Labour Code and other statutes. The employer cannot process any other personal information which it deems necessary for its purposes even with the consent of the employee/applicant. According to the rulings of the Polish courts as well as the doctrinal views, such consent may not be given freely as there is an imbalance of power between the employer and the applicant/employee.

In Poland, the possibility of examining the criminal record of a candidate for employment only exists for professions and positions specifically set out in multiple separate statutes (e.g., judges, doctors, university teachers). The data in question are not included in the relevant catalogue in the Labour Code; therefore, employers are forbidden from processing this information.

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

There is no specific regulation in Poland that concerns the monitoring of employees at work; however, the general rules on data protection apply. Monitoring is generally allowed but it must be reasonable, proportional to its aims and must not violate the

dignity or privacy of employees. In practice, the best way to legally monitor employees at work is to inform them about the possible monitoring. According to the Labour Code, employees are obliged to perform specific work for the employer and under the employer’s direction at a place and time specified by the employer. Consequently, the employer is entitled to check if employees use the company’s email, telephones and computers to perform work and not for private use.

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

No regulations concerning Internet use in the workplace exist in Poland. Under Polish general legal conditions, it is necessary to refer back to general principles when regulating social media, such as: (i) privacy protection; (ii) the right of the employer to direct employees’ labour; and (iii) the protection of trade secrets.

In practice, Polish employers often introduce internal legal procedures which are binding on their employees; the Social Media Policies (SMP). A Polish SMP must contain:

- a statement of purpose motivating the introduction of the policy;
- a list of actions and behaviours on social media that the employer prohibits; and
- a list of possible disciplinary measures that may be applied when the SMP is violated.

Employees must remember their duty to take care of the best interests of the company and keep confidential any information where disclosure of such could cause damage to the employer. Publishing some information about the company via social media may therefore be recognised as a breach of duties and may result in disciplinary termination.

9 Court Practice and Procedure

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

In Poland, labour courts are competent for all legal proceedings between employers and employees.

Claims arising out of employment relationships are decided by labour courts: that constitute separate organisational units of district courts; and labour and social insurance courts that constitute separate organisational units of regional courts.

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?

Civil procedure applies to employment-related complaints. Conciliation before both the labour court and the civil court is not mandatory. A settlement ending a dispute between the employer and employee is possible at each stage of proceedings before the labour court. If a conciliatory commission exists in the workplace of the employee, before submitting a claim to a court, the employee may request such conciliatory commission to initiate mediation.

Employees do not have to pay a fee for submitting claims to a labour court unless the value of the case exceeds PLN 50,000 – then a fee of 5% of the value of the dispute will apply.

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

On average, first instance decisions concerning employment-related complaints take between six months to two years to be decided, depending on the court.



Weronika Papucewicz

CDZ Legal Advisors
Zajęcza 15 St.
00-351 Warsaw
Poland

Tel: +48 22 492 40 00
Email: weronika.papucewicz@cdz.com.pl
URL: www.cdz.com.pl

Weronika Papucewicz | Advocate, Partner, Head of the Employment Law Practice at CDZ Legal Advisors.

Weronika advises on all stages of hiring and terminating contracts with employees. She drafts management and non-competition contracts, employment bylaws and internal policies for employers and conducts trainings. She adapts global employment policies and procedures to the requirements of Polish law.

Weronika participates in employment restructuring, downsizing and layoffs, including negotiations with trade unions. She deals with employee aspects during M&A transactions and represents employers in court proceedings.

Weronika was named a Rising Star by the ranking of the nationwide law newspaper *Dziennik Gazeta Prawna* and Wolters Kluwer. She has authored numerous publications relating to individual and collective labour law and has been a speaker during conferences.

She graduated from the Warsaw University's Faculty of Law and Administration and the American Law School of the Center for American Law Studies. She is also a Ph.D. graduate from the Institute of Legal Sciences of the Polish Academy of Sciences.

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

It is always possible to appeal against a first instance decision. Appeal courts rule on such appeals (depending of the region of Poland) in about six months to one year.



Piotr Kryczek

CDZ Legal Advisors
Zajęcza 15 St.
00-351 Warsaw
Poland

Tel: +48 22 492 40 00
Email: piotr.kryczek@cdz.com.pl
URL: www.cdz.com.pl

Piotr Kryczek | Legal Advisor, Partner, Co-Head of the Employment Law Practice at CDZ Legal Advisors.

Piotr specialises in employment, competition law, intellectual and industrial property law, with a particular focus on trademark issues. He advises Polish and international clients, including companies from the BPO/SSC sectors. He represents clients in proceedings before civil and commercial courts of all instances.

Piotr advises on the hiring procedure of employees and termination of contracts. He develops internal regulations, remuneration systems and incentive programmes. He advises on the process of transforming the employees' organisational structure and employment restructuring.

Before joining CDZ, he worked for the Polish Antimonopoly Office (now UOKiK), and acted as a head of the legal department, and board member of CANAL+ Polska (now nc+), the first commercial television station in Poland.

Piotr cooperates with the Helsinki Foundation for Human Rights and the Polish Society of Anti-Discrimination Law, and is actively involved in *pro bono* activities for a number of foundations and private individuals.

Piotr is recommended by *The Legal 500 EMEA* 2017 in the field of employment law.



CDZ Legal Advisors offers more than just legal advice. CDZ's approach is practical, solution-based and innovative. It has offices in Warsaw, Krakow and Lodz.

CDZ's expertise covers transactional, corporate, litigation and regulatory issues. It handles complex situations by deploying multi-skilled teams. As a member of Interlaw, the International Association of Independent Law Firms, CDZ advises on cross-border matters by working in integrated teams from almost 100 jurisdictions. It guides clients through the local legal and business environment. CDZ supports leading organisations representing the business services sector in Poland.

For many years, CDZ has been ranked by *The Legal 500 EMEA*, *Chambers Europe* and *IFLR 1000*. In 2017, CDZ was recognised in six fields of law: employment; corporate, commercial and M&A; TMT; dispute resolution; restructuring and insolvency; and capital markets. CDZ lawyers are also recommended as leaders in their practice areas.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com