

# Hungary

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## Legislation and agencies

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

The main statutes and regulations relating to employment are:

- the Hungarian Labour Code;
- the Act on the Legal Status of State Employees;
- the Act on the Legal Status of Government Officials;
- the Strike Act;
- the Act on Labour Supervision;
- the Act on Occupational Health and Safety;
- the Equal Treatment and Equal Opportunities Act;
- the Act on the Protection of Personal Data and the Publicity of Information of Public Interest (the Data Protection Act);
- the Act on the Occupation of Foreign Workers in Hungary;
- the Act on the Protection of Inventions by Patents (Patent Act); and
- the Act on the Alcohol Testing of Employees.

### 2 Is there any legislation prohibiting discrimination or harassment in employment?

Pursuant to article 5(1) of the Labour Code, the principle of equal treatment must be observed in employment relationships.

More detailed non-discrimination provisions are included in the Protection of Equal Treatment and Equal Opportunities Act, which implemented various EU directives. The Equal Treatment and Equal Opportunities Act provides that direct and indirect discrimination, harassment, illegal separation and revenge are prohibited regarding gender, race, religion, nationality, ethnic affiliation, disability, political opinion, motherhood, sexual orientation, sexual identity, age, marital status, social origin, financial status, nature of the employment relationship, union membership, status or characteristics.

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

Pursuant to the Hungarian employment and data protection laws, employers may only disclose facts, data and opinion concerning an employee to third persons if permitted by law or with the employee's consent. Employee information and data may be used for statistical purposes only and may be disclosed for statistical use, provided that it is not possible to identify the employees to whom the data and information refers.

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

Law enforcement by government agencies plays a major role in the area of occupational health and safety and in the employment of foreign workers.

The primary government agencies are the Ministry of Social Affairs and Labour, the Labour Inspectorate, the Central Administration of National Pension Insurance, the State Employment Service and the National Agency of Occupational Health and Safety.

Employment-related legal disputes are heard by the courts.

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## Worker representation

### 5 Is there any legislation mandating the establishment of a works council or workers committee in the workplace?

A works council must be established at the head office and at each branch office of an employer where at least 50 employees are employed. The number of works council members to be elected increases with the number of employees at the head office or at the given branch office. The works council is granted broad information and consultation rights and certain measures must not be introduced by an employer without the prior approval of the works council (termination proceedings, staff questionnaires, monitoring of staff if the monitoring would affect human dignity, incentive payments, redundancy measures, etc). Members of the works council enjoy specific privileges regarding working time and termination of their employment.

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## Background information on applicants

### 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?

Pursuant to the Data Protection Act, personal data may only be used and obtained with the consent of the data subject or if permitted by law.

An employer may ask a job applicant for criminal records but only if this information is relevant for the position. The employer may not obtain such records directly from the authority.

Security checks may be conducted if they are required for the specific position.

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

An employer may request a medical examination only if the applicant's physical condition is relevant to perform the relevant

job. Medical examinations require the applicant's consent.

Employees must not be requested to take a pregnancy test or to provide the employer with a certificate thereon, unless it is required by law or is relevant for the position in question.

An employer may refuse to hire an applicant who does not agree to an examination if the examination is relevant for the position.

#### **8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?**

There are no prohibitions against alcohol testing of employees. An employer is obliged to check whether an employee attends work in an appropriate condition to perform his or her work and that the employee does not endanger himself or herself or others or cause damage to property.

Thus, alcohol and drug tests may be requested by an employer but such tests require the applicant's consent. Refusal to consent may lead to a rejection of the application.

#### **Hiring of employees**

#### **9 Are there any legal requirements to give preference in hiring to particular people or groups of people?**

Generally, an employer may not give preference to particular people or groups of people when hiring because this could be considered as discrimination, which is prohibited by law.

Pursuant to the Equal Treatment and Equal Opportunities Act and the Labour Code, an employer may give preference in hiring particular people or groups of people but only with the aim of overcoming the unequal opportunities of an explicitly designated group. This preference, however, has to be based upon a legal regulation. Such provisions and decisions may not infringe any fundamental rights or assure absolute advantages.

#### **10 Must there be a written employment contract? If so, what essential terms are required to be evidenced in writing?**

Employment contracts must be concluded in writing. If there has been a failure to provide the employee with a written contract, the employee may, within 30 days of commencing the job, claim that the employment contract is invalid. An employment contract must contain:

- the names and addresses of the parties;
- position and important dates about the employment relationship;
- the place of employment or, if the employee will not work at only a specific location, information that the employee may be required to work at variable locations; and
- the amount of the employee's basic salary.

Other typical but non-compulsory terms are:

- the employment commencement date;
- the envisaged term of employment for fixed-term contracts;
- the trial period;
- the agreed working time;
- the annual holiday entitlement;
- liability matters;
- confidentiality;
- non-compete rules;
- the termination notice period; and
- a general reference to applicable collective bargaining and works agreements (if any).

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

In the absence of an agreement to the contrary, an employment relationship is established for an indefinite period. The period of fixed-term employment must be determined according to the calendar or by other appropriate means. Except for employees in executive positions, a fixed-term employment may not exceed five years, including extensions and any other fixed-term employment created within six months of termination of the previous fixed-term employment relationship. A fixed-term employment contract must be considered open-ended if the employee works for at least one extra day following the expiry of the initial fixed term with the knowledge of his or her immediate superior. A fixed-term employment contract extended or established again between the same parties is deemed to be employment for an indefinite period if it has been concluded without the legitimate interests of the employer for concluding a fixed-term contract and impairs the employee's rights.

#### **12 What is the maximum probationary period permitted by law?**

A trial period may be stipulated under the employment contract upon establishment of the employment relationship. The duration of the trial period shall be 30 days. A shorter or longer trial period, not to exceed three months, may be stipulated in the collective agreement, or agreed upon by the parties. The trial period may not be extended.

For civil servants, the maximum duration of the trial period is six months. Deviation from this rule is not permitted. During the trial period, either party may terminate the employment relationship in writing with immediate effect and without providing reasons.

#### **13 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?**

During the employment relationship, employees must not behave in a manner which could jeopardise the legitimate economic interests of the employer. After the termination of the employment relationship, employees may only remain subject to this obligation if they have agreed to it prior to the termination of the employment contract. The agreement's duration may not exceed three years. Further, the employee must receive appropriate consideration for such post termination undertaking.

#### **14 What are the primary factors that distinguish an independent contractor from an employee?**

An employment relationship must be established by concluding a written employment contract defining the workplace, the regular salary and the scope of activity. An employee must discharge its duties personally and may not perform his or her services through subcontractors or agents. An employee uses the employer's assets (working tools) when performing his or her duties and is subject to the employer's instructions on how and when to perform. Contrary to an independent contractor, an employee is fully embedded in the employer's organisational framework.

An independent contractor is essentially free to determine his or her activities, his or her working hours and his or her place of work. An independent contractor provides his or her services without (most of) the above restrictions and with his or her own working tools.

The Labour Supervision Authority and the Hungarian courts may determine that an independent contractor rendering per-

sonal services is an employee if he or she is retained or commissioned by only one employer and regularly performs work only for this specific employer.

The type of contract, irrespective of the name, shall be chosen so as to best accommodate all applicable circumstances, such as the parties' prior negotiations and their statements made at the time of contracting or during the performance of work, the nature of the work to be performed, and the rights and obligations set out in the Labour Code.

#### Foreign workers

##### 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?

Pursuant to Hungarian law, a work permit is required to employ a foreign worker in Hungary, however several exemptions exist because of Hungary's admission to the EU:

Starting 1 January 2008, nationals from the EEA, their spouses and their children under 21 years of age maintained by the employee, are entitled to work without a work permit provided that they are from the following countries: Denmark, Belgium, France, Norway, Bohemia, Estonia, Latvia, Lithuania, Poland, Slovenia, Slovakia, Malta, Cyprus, England, Iceland, Ireland, Italy, Spain, Sweden, the Netherlands, Finland, Portugal, Luxembourg.

Starting 1 January 2008, a work permit is not required for jobs that require qualifications if the employee and his or her relative are nationals of the following countries: Austria, Lichtenstein, Germany, Switzerland, Denmark, Belgium, France, Norway, Bulgaria and Romania.

From the above date, no work permit is required for the nationals of Austria, Lichtenstein, Germany, Switzerland, Denmark, Belgium, France and Norway to continue their employment in Hungary as long as they were employed for at least 12 months on the date of 1 May 2004 or thereafter. In this case, the relatives can also work without a work permit if the above mentioned conditions were performed and the relatives lived together in Hungary for more than 12 months on the date of 1 May 2004 or thereafter.

Non-EEA nationals need a work permit to be employed in Hungary. After receiving the work permit, the employment contract can be signed. Types of the work permits are: individual permits, general group permits, and individual permits based on general group permits.

There are several cases in which a work permit is not required at all, among others working as a manager of a branch office of a company, in the event that the company's registered seat is located in a foreign country, working as an employee of a diplomatic mission or working at a registered church in Hungary.

The highest number of the foreign workers employed with a work permit at the same time in the whole territory of Hungary cannot exceed the number of announced applications in an average month in the year before the year in question.

Employees from EEA transferring from one corporate entity in one jurisdiction to a related entity in Hungary do not need a work permit provided that these employees were appointed. This kind of employment must be announced to the competent Labour Office.

##### 16 Are spouses of authorised workers entitled to work?

Spouses must obtain their own work permit (if a work permit is required) to legally work in Hungary, however the Hungarian legal provisions provide several concessions.

Starting 1 January 2008, spouses of EEA employees are entitled to work without a work permit in case they come from the following countries: Denmark, Belgium, France, Norway, Bohemia, Estonia, Latvia, Lithuania, Poland, Slovenia, Slovakia, Malta, Cyprus, England, Iceland, Ireland, Italy, Spain, Sweden, the Netherlands, Finland, Portugal, Luxembourg.

After living in Hungary for more than 5 years, the spouse of the non-EEA employee, who has worked in Hungary for more than eight years, can work in Hungary with a permit that does not require labour market examination.

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

If the employee does not need a work permit, the employer notifies the competent Labour Office of the foreign workers' employment. The notification contains the number and the citizenship of the employees, the form of employment, in case of spouses, signing the legal status of the spouses, and data on the establishment or termination of the employment relationship. The Labour Office certifies the notification and registers the data provided.

If the employee needs a work permit, the employer announces its request for workforce at the competent branch of the Labour Office. In case there is no applicant (local workers) that can be appointed for the job, and the request, the employer and the foreign national meet the requirements, the employment of the foreign applicant will be authorised by the Labour Office.

If the employer employs a foreign worker, who does not have a work permit, the labour inspector orders the employer to pay the amount of the fine into the Labour Market Fund. The amount of the fine depends on the number of the violations of the legal provisions on the work permit of foreign workers.

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

A labour market test is required if the employee needs a work permit to be employed. In that case, the competent branch of the Labour Office examines whether there are qualified local workers for the position offered to the foreign applicant. The employer must send the following documents to the Labour Office: medical certificate on the capacity of the foreign applicant to perform the scope of activities in question; documents verifying the applicant's qualifications; and a copy of the employer's articles of association. If these documents only exist in a foreign language, the employer must attach a certified Hungarian translation of the documents.

#### Terms of employment

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

Full-time employment working hours are eight hours a day or 40 hours per week. The agreement between the parties may stipulate a shorter working time for full-time employment. The parties may agree to increase the working time of full-time employees to a maximum of 12 hours daily or 60 hours per week for employees working on-call duty or who are close relatives of the employer or the owner (any member of the business association holding

more than 25 per cent of the votes in the company).

Employees may be required to perform overtime work only in justified and extraordinary circumstances but not more than 200 hours in a calendar year or 300 hours in a calendar year under a collective agreement. If stipulated by collective agreement or requested by the employee, overtime work must be ordered in writing.

The working schedule must be defined so that the daily and weekly working time of employees does not exceed 12 and 48 hours respectively, and the daily and weekly working time of employees working on-call duty may not exceed 24 and 72 hours – including overtime work.

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

As compensation for overtime work, the employee is entitled to an overtime supplement or to extra time off. The basis for the calculation of such overtime supplement is the employee's personal basic salary.

For overtime work performed in excess of the daily working time or over and above the relevant working time cycle, the employee is entitled to a 50 per cent supplement on the employee's personal basic salary. The parties may agree in the employment contract that in lieu of an overtime supplement a monthly lump sum is payable for overtime work. The parties may also agree that time off must be granted in lieu of a salary supplement. The time off may not be less than the duration of the overtime work performed.

The salary supplement for work on a resting day must be 100 per cent of the employee's personal basic salary or 50 per cent if another resting day is provided. Unless otherwise agreed, the time off and the resting day must be allocated before the end of the month following the month in which the overtime work was performed. When working time is specified in cycles, the time off or the resting day must be allocated before the end of the given working time cycle.

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**21 Is there any legislation establishing the right to annual vacation and holidays?**

Employees are entitled to annual leave, comprising basic and extra annual leave for each calendar year spent in an employment relationship. The basic annual leave time amounts to 20 working days and increases according to the age of the employee. Employees with children, blind employees and employees working in dangerous circumstances are entitled to extra annual leave. Also, a collective agreement or an employment contract may stipulate additional annual leave.

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**22 Is there any legislation establishing the right to sick leave or sick pay?**

Employees are entitled to sick leave for the time they are incapacitated to work due to illness. During the first 15 days of sick leave in a given calendar year, sick pay (80 per cent of 'absence fee') is paid by the employer. Thereafter, and for the period of sick leave due to accidents at work and occupational diseases the employee will receive payment from the social insurance institution. An employee's incapacity to work shall be certified by a physician.

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**23 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?**

Employees can take a leave of absence, for example, in the circumstances outlined below:

- leave of absence related to pregnancy and childbirth – pregnant women and those who have just given birth are entitled to a total of 24 weeks' maternity leave. Such leave must be scheduled to commence four weeks before the expected date of birth, if possible. The mother must also be granted work time allowance for nursing. Upon the birth of his child, a father will be entitled to five days of work time allowance, which the employer must allocate within the two-month period following the date of birth on the days requested by the father;
- upon the death of a close relative;
- for the duration of performing citizens' duties;
- if being incapacitated due to illness;
- for the duration of being engaged in fire suppression or rescue operations as a volunteer or institutional firefighter, if such activities are not otherwise included in the employee's job profile;
- on the basis of provisions pertaining to labour relations, or with the employer's consent.
- for the entire duration of compulsory medical examination (including pregnancy tests);
- for the duration of treatment related to a human reproduction procedure as specified in other legislation;
- for the duration of blood donation or for at least four hours if it takes place outside the workplace; and
- for union and works council members to fulfil their tasks as such members.

In the above cases, the employee will receive 'absence fee'. An employee makes unpaid leave of absence, for example, for the purpose of taking care of a child until the child's third birthday.

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**24 What employee benefits are prescribed by law?**

There are no benefits mandated by Hungarian law. Employers may support the employee's cultural, welfare and health care needs and the improvement of their living standards. Employers may decide to make a contribution to the payment of the membership due of the employee in a voluntary health or pension insurance fund.

Employers are obliged to pay social insurance contributions, including pension and health insurance.

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**25 Are there any special rules relating to part-time or fixed-term employees?**

Pursuant to the Protection of Equal Treatment and Equal Opportunities Act, an employee may not be discriminated against because of the nature of his or her employment relationship (part-time or fixed term).

An employment relationship established for a fixed term may only be terminated by mutual consent or by extraordinary dismissal or during the trial period with immediate effect. (See also the last paragraph of question 32.)

**Liability for acts of employees****26 In which circumstances may an employer be held liable for the acts or conduct of its employees?**

If an employee causes damage to a third person in connection with his or her employment, the employer will be liable towards the person who suffered the damage.

**Taxation of employees****27 What employment-related taxes are prescribed by law?**

All wages paid to employees working in Hungary are subject to personal income tax. In addition, both the employer and the employee are obliged to pay other contributions (for example, health and pension insurance contribution) based on the salary of the employee. The rates of these taxes and contributions are changed almost every year. Benefits may also be subject to personal income tax.

**Employee-created IP****28 Is there any legislation addressing the parties' rights with respect to employee inventions?**

The Patent Act regulates inventions resulting from an employment relationship. This Act differentiates between service inventions and employees' inventions.

Service invention is the invention of a person whose duty – resulting from an employment relationship – is to work out solutions which could qualify as an invention. Employees' inventions are the inventions of a person who works out an invention within the framework of an employment relationship, but without having the duty to work out such an invention, provided that the invention falls within the employer's business activity.

In the case of an employee's invention, the employer will automatically have the right to use the invention, but the employee will be the patent owner. The employer's rights to use the invention are not exclusive. In the case of a service invention, the employer will be the patent owner. The inventor or employee must inform the employer about the service invention or the employee's invention immediately following its creation.

**Business transfers****29 Is there any legislation to protect employees in the event of a business transfer?**

According to the Labour Code, the employers shall consult the local trade union branch before passing a decision in respect of any plans for actions affecting a large group of employees, in particular those related to proposals for the employer's reorganisation, transformation, the conversion, privatisation and modernisation of a strategic business unit into an independent organisation. Trade unions may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment. Employers shall not refuse to supply such information, nor the justification of their actions. Furthermore, trade unions shall be entitled to express their position and opinion to the employer concerning any employer actions (decisions) and, furthermore, to initiate talks in connection with such actions.

A local trade union branch shall be entitled to contest any unlawful action taken by the employer (or his failure to take action) by way of demurrer if such action directly affects the employees or the interest representation organisations of employees.

Trade union shall mean all employee organisations whose

primary function is the advancement and protection of employees' interests related to their employment relationship. Works council insures the right of participation in the decisions of the employer.

Works councils shall have the right of codetermination with regard to the appropriation of welfare funds, and the utilisation of welfare institutions and real property of such nature as specified in the collective agreement. Employers shall consult the works council prior to adopting a decision in connection with plans for actions affecting a large group of employees, in particular those related to proposals for the employer's reorganisation, transformation, the conversion, privatisation and modernisation of a strategic business unit into an independent organisation;

The employees have the right to be informed about the transformation, (merger etc), the dissolution and the liquidation of the employer (company) they are working for, and in particular cases the employees also have the right of participation in the supervision of the company.

According to Act IV of 2006 on Business Association, if the annual average of the number of full-time employees employed by the business association exceeds two hundred, the employees shall have the right to partake in the supervision of the company, unless there is an agreement between the works council and the management of the business association to the contrary. In this case the representatives of the employees shall comprise one-third of the members of the supervisory board.

**Termination of employment****30 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 employment relationship may be terminated by ordinary or by extraordinary notice. The employer's notice of termination must contain the employer's clear and justified reasons for termination, unless the employee is entitled to retire. Termination notices which fail to include a clear and justified reason are unlawful.

The reasons for the termination by ordinary notice may only be connected with the abilities of the employee, his or her conduct in relation to the employment and the operations of the employer.

Termination of an employment contract by extraordinary dismissal is possible if the other party wilfully or by gross negligence commits a grave violation of substantive obligations arising from the employment relationship, or otherwise behaves in a manner rendering it impossible to further uphold the employment relationship.

In the case of a dispute, the employer must prove that the reason for dismissal was real (actual) and relevant.

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

Written notice is always required. There may be two types of notices: In the case of a so-called 'ordinary notice of termination', the notice must be given at least 30 days before the effective date of termination. The so-called 'extraordinary notice of termination' will have immediate effect, that is, no notice period must be respected. An extraordinary notice is permitted only in very serious cases (more precisely defined by law). An ordinary notice is permitted in less serious cases.

If the reasons for a termination are based on the employee's work performance or conduct, the employee must be given the

opportunity to learn about the reasons for the planned termination and to present his or her defence against the complaints raised against him or her, unless this cannot be reasonably expected from the employer in the light of the given circumstances.

Generally, it is not possible to pay an amount of compensation to the employee in lieu of the notice period and thus terminate the employment relationship with immediate effect. In the case of employment for a definite period of time, it is permitted to terminate it prior to the expiry of the definite term and without providing reasons for the termination provided that the average salary for the remaining term (up to a maximum of 12 months) is paid to the employee.

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

During the trial period, either party may terminate the employment relationship with immediate effect without reasoning or payment. In the case of an extraordinary termination, the employment also ends with immediate effect, and if the reasoning is lawful, no special payments are compulsory. However, the cases in which an extraordinary termination is permitted are very limited.

In the case of employment for a definite period of time, it is also possible to terminate such employment without reasoning with immediate effect but in this case the average salary for the remaining term (not exceeding 12 months) must be paid to the employee.

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

After at least three years of employment the employee is entitled to severance pay if his or her employment relationship is terminated by ordinary termination or as a result of the dissolution of the employer without a legal successor. The employee is, however, not entitled to severance pay if he or she qualifies as a pensioner on or just before the date on which his or her employment is terminated. The amount of the severance pay must be increased by three months' average earnings if the employee's employment is terminated within the five-year period preceding his or her eligibility for old age pension.

Severance is calculated as the sum of the 'average salary' for a certain number of months, as follows:

Length of employment with given employer (predecessor)	Severance (months of 'average salary')
3 years	1 month
5 years	2 months
10 years	3 months
15 years	4 months
20 years	5 months
25 years	6 months

**34 Are there any procedural requirements for dismissing an employee?**

If the reason for the termination by the employer is based on the employee's work performance or conduct, the employee must be given the opportunity to learn about the reasons for the planned dismissal and to present his or her defence against the complaints raised, unless this cannot be reasonably expected from the employer in the light of all the given circumstances.

If the employment of a works council member is to be terminated by ordinary termination, the prior written consent of the works council must be obtained.

**35 In what circumstances are employees protected from dismissal?**

Employers may not terminate an employment relationship by ordinary termination during a period of incapacity to work due to illness, of sick leave for the purpose of caring for a sick child, for leave of absence without pay for nursing or caring for a close relative, during a treatment related to a human reproduction procedure as specified in other legislation, during pregnancy, for three months after giving birth, or during maternity leave and during regular or reserve army service. These restrictions do not apply for the termination of an employment contract in respect of an employee who qualifies as a pensioner or an 'executive'.

**36 Are there special rules for mass terminations or collective dismissals?**

The rules regarding mass termination (or collective redundancy) apply when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship:

- of at least 10 workers, when employing more than 20 and less than 100 employees;
- of 10 per cent of the employees, when employing 100 or more, but less than 300 employees;
- of at least 30 persons, when employing 300 or more employees within a period of 30 days for reasons in connection with its operations.

When an employer plans to implement collective redundancy, it must commence consultations with the works council or with the workers' representatives at least 15 days prior to the decision on the collective redundancy. At least seven days before the consultations, the employer must inform the workers' representatives in writing about the reasons for the planned redundancy, the number of workers to be made redundant and the number of the employees for the preceding six month period.. To reach an agreement, the consultations must cover, at least, the possible ways of avoiding collective redundancy, the principles of the redundancy, the means of mitigating the consequences and reducing the number of employees affected.

A written agreement about the result of the above consultations must be concluded and a copy thereof must be filed with the competent employment centre. The employer must notify the relevant employment centre of its intention to implement a collective redundancy at least 30 days prior to the implementation thereof. This notification must contain the personal data (including social security number), the last position, the qualifications and the average salary of each employee to be made redundant. Additionally, the employer must notify the employees affected by its intention of the collective redundancy at least 30 days prior to delivery of the termination notice.

**Dispute resolution**

**37 May the parties agree to private arbitration of employment disputes?**

In the interests of settling a conflict, the parties may use the services of an independent mediator who is not involved in the conflict. The parties must request the participation of the mediator jointly.

**Update and trends**

There are two hot topics recently in labour and employment regulation. One is that, until now, labour-related legal disputes filed by an employee have been free of duties and charge. But according to a new amendment, from 6 February 2008, the employee has only the right of prenotation of duties, meaning that if he or she loses the case, he or she must subsequently pay the duties. That new rule may cause the reduction of labour-related legal disputes. The other trend is the desire of the government to rise the retirement age gradually.

For settling a collective employment dispute, the parties may agree to appoint an arbitrator. The decision of the arbitrator will be binding if the parties agreed on this in advance in writing.

**38 May an employee agree to waive statutory and contractual rights to potential employment claims?**

An employee may not waive his or her rights regarding the protection of his or her salary and his or her personal rights in advance, nor may he or she conclude a preliminary agreement which may impair his or her rights.

An agreement that is in breach of any legal regulation regarding employment relations or any other statutory provision is invalid. Collective or other agreements may only deviate from the provisions of the Labour Code if they contain more favourable terms for the employee.

**39 What are the limitation periods for bringing employment claims?**

Claims related to employment relationships may be brought within three years. The period of liability for damages caused by criminal offence is five years, or longer, as consistent with the statute of limitations for such criminal liability.

For the enforcement of claims in connection with the termination of employment, employees, trade unions and workers' councils may file a legal action within 30 days of learning of the cause for the action. In the notice of termination, the employee must be informed of this 30-day time limit. If the employer fails to do so, the employee will be entitled to file a lawsuit within the general limitation period of three years.

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