Legislation and agencies

Legislation

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

Some of the provisions safeguarding the fundamental rights and freedoms related to work and employment are contained in the constitution of the Cyprus Republic including the right to work, to form collective agreements and to strike.

The most important legislation related to employment is the Termination of Employment Law of 1967 which regulates all the basic matters relevant to the Termination of Employment, including the reasons for which an employer may lawfully terminate the employment of an employee without notice, the notice and compensation an employee is entitled e.t.c. There are also many other important statutes relating to employment, such as the Annual Holidays with Pay Law of 1967, the Provident Funds Law of 1981 and The Social Insurance Law of 1964. The basic Provisions of all relevant Laws have been interpreted, analyzed and applied in various judgments of the Supreme Court of Cyprus.

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

The constitution of Cyprus Prohibits any discrimination by providing that all individuals are equal before law in the exercise of their fundamental rights one of which is their right to work and/or to agree to be employed irrespective of race, color, religion, language, sex, political or other beliefs, national or social origin e.t.c. Apart from these general provisions, more specific provisions are contained in the Ratifying Law of the Convention

regarding Discrimination (employment and occupation) of 1968 and there are also specific laws protecting specific rights and preventing particular forms of discrimination, such as the Law for equal payment to men and women for equal amount of work of 1989 and the Law protecting motherhood of 1997.

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

The Law regarding the processing of personal data (protection of the individual) of 2001, prohibits in general the "process", collection, possession, handling, transferring e.t.c. of personal data without the consent of an individual and prohibits even more strictly, the process of any "sensitive" personal data that is information related to the racial or ethnic origin of a person, to his political affiliations, his political or religious beliefs, his health, his love life or sexual preferences, his criminal record e.t.c. Any person in possession of personal data is under on obligation to inform the commissioner for the protection of personal data of this fact, but the process of personal data by an employer for the purposes of the employment relationship is one of the exceptions where the employer is exempt from this obligation. The Commissioner is a public officer responsible for the adherence of the provisions of the above mentioned Law. A person is entitled to be informed of the way his personal data are being processed by his employers and for lawful reasons object to a particular mode of process. An employee may depending on the circumstances, even apply to the Court for protection of his rights by the annulment or suspension of a harmful act of the employer related to the process of personal data aimed to the assessment of his performance as

an employee. An invasion of privacy by the employer and/or the unlawful use of personal data connected to the committing of the criminal offences of slander and libel or similar offences, is regulated by the provisions of the criminal code.

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

The Ministry of Labour and the Social Insurance Services are responsible for the enforcement of certain of the provisions of the employment statutes and regulations, and especially for the provisions regulating matters related to illegal employment, social security contributions and benefits and occupational safety and health.

The Ministry of Labour often acts via the Department of Labour Relations as a mediator between employers and employees and their Trade Unions, for resolving serious Labour Disputes and for the negotiation of the terms of collective agreements. The social security institution provides social security benefits to the temporarily unemployed (due to illness, motherhood, disabilities or termination of employment) and pensions and the Redundancy Fund, provides compensation to redundant employees.

The Department of Labour inspection is responsible for the supervision of the conditions of employment of workers and for the safety and health of employees.

Worker representation

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

There is no legislation mandating the establishment of a works council or a workers committee in a workplace.

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?

Although there are no specific restrictions or prohibitions against background checks on persons who apply for employment either directly by the employer or via a third party, such checks taking place before an employment relationship is established, could, depending on the circumstances, constitute a violation of the processing of personal Data Law, especially if the information collected, used or considered, are "sensitive" and are processed without the consent of the applicant. It is certainly not forbidden for the employer to inquire and seek information about the employee if the relevant information is necessary in order to fulfill his legal obligations and duties or to protect a right or lawful interest superior to the corresponding rights and interests of the applicant. It is for example lawful for the employer to require information in order to establish whether the employee can lawfully reside and work in the Cyprus Republic.

Information deriving directly from the applicant may be freely obtained and considered either by the employer or via a third party, provided the data required do not relate to any issues that it is forbidden by Law to influence the employers decision to hire the employee such as religion's beliefs, political affiliations, Union memberships e.t.c.

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

There are no specific restrictions and it is certain that a potential employer may request a medical examination of the applicant to the extent that such an examination is relevant to the physical ability of the applicant to perform the duties for which he will be hired. In Practice such an examination can be carried out only if the applicant consents to submit himself to it. It should be noted though, in regard to this and all the matters related to the pre contractual stage, that due to the absence of any specific restrictions or provisions regulating the selection of employees, such selection remains largely an area for managerial discretion by the employer and can be challenged only if it can be demonstrated that it's the result of discrimination.

Can an employer refuse to hire an applicant who does not submit to an examination?

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

There are no specific restrictions against drug or alcohol testing of applicants. The comments on question 7 are applicable here as well.

Can an employer refuse to hire an applicant who does not submit to a test?

Hiring of employees

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

There are no legal requirements to give preference in hiring to particular people or groups of people, unless in regard to the preferential hiring of

disabled persons and in particular of blind people as telephone operators by the state.

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

The Law does not require employment contracts to be in writing in order to be valid, even if the contract is for a fixed term, although in a fixed term contract the duration of the employment must be agreed specifically by the parties. The only term in an employment contract that is required by law to be in writing in order to be valid, is a provision expanding the trial period of an employee beyond 26 weeks and up to 104 weeks.

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

Fixed – term employment contracts are freely permissible. It is open for the Court though, to consider an employee as continuously employed by an employer via a succession of fixed – term contracts for the total period of the successive contracts and in such a situation, the employment may be considered as employment for an indefinite period terminable by notice. There are no restrictions as to the maximum agreed term.

Include the maximum duration of such contracts.

12. What is the maximum probationary period permitted by law?

The default probationary period is 26 weeks and it can be extended up to a maximum of 104 weeks only via a written agreement. During the

probationary period or at it's expiration, the employer may dismiss the employee without notice.

State whether this probationary period may be extended at the discretion of the employer.

13. To what extent are post-termination covenants not to compete, solicit *(customers or employees or suppliers)* or deal *(customers)* valid and enforceable?

A covenant forbidding an employee to compete his employer is valid during the period for which he is employed. Post contractual covenants not limited strictly to matters of confidentiality and to non disclosure or preventing the use of confidential information obtained by the employee during the employment relationship, are void and unenforceable under Cypriot Law to the extend that they restrain a person from exercising a lawful profession, trade or business of any kind.

State the maximum period for such covenants.

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

An employee is a person who on a basis of an employment contract is obliged to work in someone else's service that is for the employer, exclusively and/or under the control of his employer whilst an independent contractor is someone who is in business on his own account and agrees with another person to execute in his favor a particular task. There is no single test determining employment and all relevant factors must be considered and in doing so one is not bound by the mere description of the relationship by the parties which is merely a factor to be considered.

The basic factors relevant to the determination of the relationship are among others, the deegree of control exercised by the employer, whether the relationship involves any prospect of profit or loss for the worker, whether the worker is part of the employer's organization or carrying on business on his own account, the provision of equipment for the execution of work, the incidence of tax and national insurance.

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?

There are no numerical restrictions to work permits provided to foreigners.

The granting of residence and work permits to foreigners is basically a matter of public policy subject to the wide discretionary powers of the immigration authorities and to the provisions of European Law. In the case of transfer of employees from a foreign corporate entity to a Cyprus Company visas are more easily available especially for certain qualified employees. A foreign employee who is allowed to reside and/or work in Cyprus for a period of 5 consecutive years enjoys a special, more protected status. Employees from other members countries of European Union have the same right to reside and work in Cyprus as a Cypriot Citizen.

16. Are spouses of authorised workers entitled to work?

Spouses of foreign employees may be permitted to reside and/or work in Cyprus subject to certain conditions imposed. Spouses of workers from the E.U. who live with the employee but who do not themselves have the citizenship are entitled to an E.U. residence and work permit.

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?

Employees from all E.U. member states are entitled to reside and work in Cyprus but all other foreigners require a residence and work permit from the immigration department before they can be lawfully employed. The employment of a foreigner who has no valid permission to work, constitutes a relatively serious criminal offence and the employer who commits it which in the case of a Company is both the company and the person committing the offence on it's behalf, may be fined with a fine up to 8500 Euros or if in the case of a physical person be imprisoned for up to 3 years.

The employee is also subject to the above penalties and if convicted he or she may be deported.

18. Is a labour market test required as a pre-cursor to a short or long-term visa? *(A labour market test typically requires recruitment in the local job market to demonstrate that there are no local workers who are willing and qualified to undertake the position offered to the foreign national.)*

In certain occasions as in the case were an employer wishes to hire a housekeeper a foreign worker may be granted a visa and a work permit in

order to be hired by the employer only after it is demonstrated to the satisfaction of the authorities that the employer took certain steps to hire in the specific job position a European citizen and failed to do so.

Terms of employment

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

The maximum daily working time is 8 hours for a working day and 44 hours for a week. These hours may be extended in cases of serious accidents or due to force majeure. The maximum daily working hours may be extended by two more and the working hours in a week by 4 more for other reasons such as for the prevention of serious harm to corruptible merchandise, the execution of special work including the collection of merchandise and the preparation of a balance sheet. Also in cases of unusual workload arising out of unusual circumstances when the employer can not be reasonably expected to take any other steps to cope with the extra workload.

In cases where the maximum working time is exceeded for any of the reasons allowing an extension, the employee is entitled as consideration to a leave ensuring that he or she will not work for a period not less than 24 hours.

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

So far there are no statutory provisions regulating overtime pay and this matter is mostly regulated by collective agreements the provisions of which are not uniformal for all fields. Usually the sum paid for each

overtime hour depends on whether the employer has worked on overtime on a weekday, during the weekend or on a public holiday.

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

If yes, what is the annual entitlement and how does it accrue?

There are specific statutory provisions safeguarding that the employees working on a five day week basis are entitled to a minimum of 15 working days vacation period and the employees working on six day week basis are entitled to an 18 working days vacation period provided that the employee has worked for the employer for at least 50 weeks within the particular year. If the employee has worked for less than 13 weeks he is not entitled to any annual vacation and he has worked for more than 13 weeks but less than 50 he is entitled to vacation by analogy. The vacation period should include a period of at least 9 consecutive days and the days of vacation may be accumulated via agreement between the employer and the employee only for a period not exceeding the minimum vacation period of two years.

A temporary absence due to illness or due to motherhood counts as working period and the days of absence due to any of the above reasons, do not count as vacation period. No absence due to strike, public holiday or due to a notice for termination of employment can be considered as vacation period.

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

If yes, what is the annual entitlement and how does it accrue?

The employee is entitled to be temporarily absent from his work due to illness preventing him from working and such an absence does not interrupt his employment. Unless there is an agreement to the opposite, any absence due to illness is without payment, but the employee may receive benefits from the Social Insurance Fund for the period his disability continues.

If the employee is rendered due to his illness permanently unable to perform the work for which he was hired, the employer may terminate the employment relationship. In case the employee is deemed disabled, he will become eligible to receive a disability pension from the Social Insurance Fund.

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?

Apart from the right for sick leave or leave due to accident that renders the employee temporarily unable to work and the vacation leave discussed above, a female employee is entitled to maternal leave up to 16 weeks in case of pregnancy and she has the right to maternal leave up to 14 works in case of an adoption of a child under twelve years of age. A mother employee is also entitled to work an hour less on a daily basis for a period of 6 months after the birth of her child – without any deductions on her payment. Any other right of absence must be either agreed or approved by the employer apart from absences due to force majeure and any such absence in unpaid unless otherwise agreed.

24. What employee benefits are prescribed by law?

Apart from the right for paid leave discussed above, no other benefits are obligatory for the employer, but he may be obliged to continue providing any benefits which his employees enjoy due to custom or collective agreement, such as provident fund and he is also by Law obliged to contribute in favour of his employees to the Social Insurance Fund. The Social Insurance Law provides for the payment by the Social Insurance Fund of various benefits to an employee in cases of disability due to accident or illness, in cases of maternity, termination of employment, retirement e.t.c. and an employee is also entitled to a payment of benefit from the redundancy fund in case of redundancy.

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

A part time employee, that is an employee who works comparatively for fewer hours than his fulltime co-employees, is protected in general against unfair treatment and is entitled to demand equal treatment by analogy to the full time employees. The part time workers though may (depending on the number of their working hours) be exempted from some of the provisions of the Social Insurance Law.

Liability for acts of employees

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

Apart from the provisions of the Civil Wrongs Law, the basic common law principles on the matter are applicable. It can be said that the employer is in general vicariously liable for any negligent act or omission of his employee (but not in general for any negligent act of an independent contractor) committed at the course of employment and causing damage either to a co employee or to any third person. The employer is not liable for any negligent act committed by an employee outside the course of business and/or the scope of his employment, occasionally or fraudulently for the sole benefit of the employee. The employer may be held liable for a fraudulent act of his employee, if such an act is done for the employer's benefit.

Taxation of employees

27. What employment-related taxes are prescribed by law?

Income Tax, Social Insurance contributions and a work permit tax paid to the municipal authorities are mandated by Law. There also other mandatory contributions to professional associations and/or legal entities related to the particular occupation or professional capacity of an employee.

Employee-created IP

28. Is there any legislation addressing the parties' rights with respect to employee inventions?

The Law for the protection of Intellectual property of 1976 safeguards the rights of any person including an employee who wishes to copyright any

intellectual property he has created by applying to the competent department of the Ministry of Trade and Commerce. The right of intellectual property on a work belongs initially to its creator and not his employer unless it is a product of an order placed via an agreement between the creator and a person who is not his employer.

Business Transfers

29. Is there any legislation to protect employees in the event of a business transfer *(eg due to a sale or acquisition of shares or assets or outsourcing)*?

The mere transfer of shares, that is the change of the shareholders of a company – employer, does not of course by itself constitute a transfer of business and does not alter the rights of an employee, since the legal entity employing the employee, is still the same. In other situations where there is an actual transfer of business then (unless the transfer takes place for specific reasons of Bankruptcy or Liquidation) under the Law for the preservation and protection of rights of employees in cases of Transfer of Business of 2000, the rights and obligations of the transferor under employment contracts and collective agreements are being transferred to the transferee and the new employer cannot terminate the employment of an employee nor worsen the working conditions for the mere reason of the transfer of the business.

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 employer may terminate the employment of an employee on probationary period without cause without giving notice and without paying any compensation. After the probationary period elapses the employment may not be terminated unless there is a reasonable cause related to the ability or conduct of the employee or related to the functional needs of the business of the employer and if the cause is related to the conduct of the employee no termination of employment is allowed before the employee is given the opportunity to defend himself against any unfavorable reports or accusations. If the employer terminates the employment without sufficient reason, then the employee is entitled to compensation. The specific reasons which justify the termination of the employment of an employee without compensation are the following:

- Employee's failure to carry out his work in a reasonable efficient manner (temporal inability due to illness, accident or maternity does not constitute such failure).

- The employee is rendered redundant.

- Force majeure not caused by any deliberate act of the employer.

- The expiration of a fixed term employment contract or because the employee reached his retirement age.

- A blameworthy conduct by the employee that renders himself liable to dismissal without notice, such as indecent behavior, serious or repeated

breach of the work regulations, the commission of a criminal offence without the consent of the employer e.t.c.

The employer must exercise his right to terminate the employment within reasonable period following the matter which gave rise to this right.

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

Except in situations where the employer can terminate the employment without notice, the minimum notice provided by law, which is analogous to the time that the employment relationship lasted, must be given. The employer is entitled to provide pay in lieu of notice.

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

The only reason for which the employer can dismiss an employee without notice or payment in lieu of notice, is the employee's own misconduct which justifies such a drastic measure and such a misconduct can be any behavior of the employee at work rendering the continuation of the employment relationship unsustainable, the commission of a serious disciplinary or criminal offence by the employee without his employer's consent, indecent behavior such as the use of vulgar language and swearing at the employer and/or the display of insubordination and serious or repeated violation of the regulations or any rules governing the operation of the employer's business.

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

An employee is entitled to receive compensation from the redundancy fund if he is rendered redundant, that is if his employment is terminated due to the fact that the employer stopped conducting his business at the place where the employee is situated or altogether or due to particular reasons connected to the operation of the employer's business, such as the reduction of the volume of work and/or changes in the structure of the business leading to the reduction of the number of the employees.

The sum the employee receives as compensation for redundancy is analogous to the years of employment, the minimum being the equivalent for two weeks salary for a one year employment period and the maximum being the equivalent of a 75 ½ weeks salary for a period of employment of 25 years or more.

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

An employee should not be dismissed before he is given the opportunity to be heard and defend himself before the employer against any accusations related to his conduct and of course he must be given notice or notice in lieu when termination without notice is not justified. Other than that, there are no specific procedural requirements fixed by law, except in the case of public servants where there are specific disciplinary procedures regulated by Law or regulations. An employer may have in place a disciplinary code or specific procedures which are followed in order

to examine any alleged misconduct by his employees before deciding whether such misconduct is established and whether termination of the employment is justified or not.

Failure to adhere to such procedural provisions resulting in an unfair treatment of the employee may, lead to a conclusion that an employee's termination of employment was unfair.

State whether prior approval from a government agency is required by law.

35. In what circumstances are employees protected from dismissal?

Employees may in general be dismissed and even if the dismissal is unfair, they are only entitled to the compensation they are entitled to under the Law and their terms of employment. In cases where the employer runs a business where the employees are more than 19 persons, the remedy of being rehired is available to an employee who has been wrongfully dismissed provided the termination appears to be obviously unlawful and mala fides. The termination of employment of pregnant employees is forbidden by Law and in fact constitutes a criminal offence if the employer has been notified via a doctor's certificate by the employee of her pregnancy. Union representatives are also afforded extra protection against dismissal and can not be dismissed for any reasons related to their Union related activities.

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

There are no special rules for collective dismissals. The employer is in the same position if he dismisses one or a group of employees. The employer

has the burden to convince the redundancy fund and/or the Court that an employee or a number of employees were dismissed collectively for valid redundancy reasons connected to the business, otherwise he will be liable to compensate them himself.

Dispute resolution

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

The Industrial disputes Court is a special Court which possesses exclusive jurisdiction over any Labour dispute the subject matter of which does not exceed an amount equal to two years of salaries. Disputes for amounts exceeding the above threshold may be promoted before the District Court and therefore become the subject of private Arbitration. In cases of employees of cooperative companies any Labour dispute is subject to arbitration.

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

State the requirements for a valid waiver.

An employee cannot agree to waive statutory rights related to potential employment claims against the employer.
A waiver of contractual rights is theoretically possible, if the employee's conduct demonstrates unequivocally such an intention.

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

The limitation periods for bringing employment claims against an employer before the Labour Disputes Court is 12 months from the date that the dispute arose and in cases where the competent Court is the District Court, six years from the date that the dispute arose. When the dispute involves redundancy, in which case both the redundancy fund and the employer may be sued in the alternative, then the limitation period is nine months and commences from the date that the application for compensation due to redundancy is dismissed by the redundancy fund.

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