



ICLG

The International Comparative Legal Guide to:

Employment & Labour Law 2017

7th Edition

A practical cross-border insight into employment and labour law

Published by Global Legal Group with contributions from:

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Published by
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London SE1 3PL, UK
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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
March 2017

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ISBN 978-1-911367-41-3
ISSN 2045-9653

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EDITORIAL

Welcome to the seventh 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:

Two general chapters. These chapters discuss the implications of Brexit on UK employment law, as well as global employment standards and corporate social responsibility.

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 35 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 Elizabeth Slattery 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.co.uk.

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main sources of employment law in the Republic of Kosovo are: Constitution of the Republic of Kosovo; Law on Labour No. 03/L-212; Law on Safety and Health at Work No. 04/L-161; Law on Foreigners No. 04/L-219; Law on the Protection of Breastfeeding No. 05/L-023; Law No. 04/L-011 for Organizing Trade Union in Kosovo; and Law No. 03/L-200 On Strikes. The employment of civil servants is governed by separate laws and regulations. Other sources of employment law include a number of administrative instructions.

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

The Law on Labour foresees special protection for employees in the private and public sectors, as well as employees whose employment is regulated through a special Law, if the special Law does not provide for a solution for certain issues deriving from the employment relationship. The employment law also protects foreign employees and persons without citizenship who are employed in the territory of the Republic of Kosovo. The employment law provides for special protection to employed, pregnant and/or breastfeeding women, employees under the age of eighteen (18) as well as employees with disabilities.

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

Article 10 of the Law on Labour specifies that employment contracts have to be in writing and must be signed by both parties – the employee and the employer.

1.4 Are any terms implied into contracts of employment?

An employment contract must, at least, contain the following mandatory terms and conditions: details of the employer and the employee; job description; place of work; working hours; commencement date and end date of employment; salary and other allowances or incomes; and details of annual leave. If the employment contract contains no indication of the duration of the employment, it is implied that the term of employment is for an unspecified period of time. Furthermore, a contract for a fixed period of time that is expressly or tacitly renewed for a continued

period of employment of more than ten (10) years shall be implied to be a contract for an indefinite period of time.

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

The Kosovo Labour Law provides for a minimum age for entering into employment (15 years of age), minimum days of annual leave (four weeks), minimum salary which is set annually by the Government of Kosovo, and minimum break periods (30 minutes). The minimum salary is set by the Socio-Economic Council (SEC) based on the criteria and procedures laid down in the Administrative Instruction of the Ministry of Labour and Social Welfare.

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?

The Kosovo Labour Law provides that the terms and conditions of employment are to be agreed in a Collective Contract, which is defined as an agreement between employees' and employers' respective organisations and lays down rights, duties and responsibilities deriving from an employment relationship. The Collective Contract may not contain any less favourable rights for the employee or employer than the rights defined in the Law on Labour.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

In accordance with the Law for Organizing Trade Union in Kosovo, workers' organisations must be registered at the Ministry of Labour and Social Welfare (MLSW). A Trade Union Association must have at least 10 members.

2.2 What rights do trade unions have?

After the registration at the MLSW, a Trade Union is recognised as a legal person and is entitled to represent its members before employers and public authorities in relation to any matter involving collective negotiations for employees, particularly in the promotion of social dialogue, economic and social rights and labour relations, as well as managing its resources for protecting the rights of employees, etc.

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

According to the Law for Organizing Trade Union in Kosovo, a Trade Union can undertake actions such as protests and employee strikes in accordance with international conventions, applicable laws and Trade Union Statute in order to exercise pressure for the fulfilment of a Trade Union's requirements. The taking of industrial action is also governed by the Law on Strikes, which guarantees the elementary right of the employee and Trade Union bodies. The use of violence and undertaking of punitive measures by the employer against employees who have participated in a protest or a Trade Union strike is prohibited.

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?

According to the Law for Organizing Trade Union in Kosovo, there is no such requirement; however, the employers may create an employers organisation, which the employer can join at their own discretion for the protection of their organisation's and their own rights.

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?

There are no provisions contained in the Law on Labour regarding co-determination rights.

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

Since the above-mentioned Law does not define the employer's organisation requirement, it is implied that the interaction between these two unions may be regulated by a mutual agreement.

2.7 Are employees entitled to representation at board level?

This is a matter left to the agreement between the employer and the employee.

3 Discrimination

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

The Constitution of the Republic of Kosovo, the Law on Labour and the Law on Protection from Discrimination provide employees with protection against all forms of discrimination. Any discrimination that includes exclusion or preference made on the basis of race, colour, sex, religion, age, family status, political opinion, national extraction or social origin, language or trade-union membership, which has the effect of nullifying or impairing equality of opportunity or treatment in employment, is prohibited.

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

All types of discrimination are unlawful. Discriminatory behaviour

that is motivated by more than one ground or which is committed more than once, or which has lasted for a long period of time or had harmful consequences especially for the victim, is considered as a severe form of discrimination. Any differentiation, exclusion or priority given in relation to a specific workplace, based on determined criteria required for that workplace, are not considered discrimination.

3.3 Are there any defences to a discrimination claim?

Associations, organisations or other legal entities may initiate or support legal procedures on behalf of claimants, with their consent, for the development of administrative or judicial procedures foreseen for the implementation of obligations set in the Law on Protection from Discrimination.

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

Any person who claims to be a victim of discrimination, under the provisions of the Law on Protection from Discrimination, has the right to file a lawsuit against the defendant and to take all legal actions to the competent court.

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

The possible remedies are: prohibition of performance of activities, which violate or may violate the right of the employee, or to compel the employer to eliminate all discriminatory actions from the employee; compensation of material or non-material damage caused by the infringement of the rights protected by this Law according to compensation on lawsuit; ordering of temporary measures in accordance with the provisions of the Law on Contentious Procedure (if the plaintiff has proven credible that his/her right for equal treatment has been violated and, if deemed necessary, ordering a measure with the aim of eliminating the risk of irreparable damages, especially for severe violations of the right on equal treatment, or with the aim of preventing violence); ordering of a shorter deadline of execution than the one defined in the Law on Enforcement Procedure; and publishing in the media the court decision, which proves the violation of the right to equal treatment.

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?

No special protection in relation to discrimination is envisaged by the Law for these types of workers. The Law on Labour provides for special measures in terms of the protection and the health and safety of minors, pregnant women and employed mothers, employees with disabilities, etc.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

An employed woman is entitled to maternity leave of up to twelve (12) months.

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

Compensation during maternity leave is divided as follows: during the first six (6) months of maternity leave, the payment is done by the employer and is an amount equal to seventy percent (70%) of the employee's basic salary; during the next three (3) months, maternity leave is paid by the Government of Kosovo and is an amount equal to fifty percent (50%) of the average salary in Kosovo; the employed woman then has the right to extend her maternity leave for another three (3) months without payment. The employer may not terminate the employment relationship of a woman whilst they are on maternity leave.

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

The Law on Protection of Breastfeeding specifies that every employed breastfeeding woman is entitled to one (1) or two (2) hours of paid time each day, at the beginning, in the middle or at the end of the working hours, in agreement with the employer. In order to claim such time, she shall notify the employer in writing and provide a certificate issued by the doctor which confirms that the employed woman is breastfeeding.

4.4 Do fathers have the right to take paternity leave?

The father of the child may assume the rights of the mother if the mother dies or abandons the child before the end of the maternity leave.

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

The father of the child has the right to: (i) three (3) days' paid leave at the birth or upon adoption of the child; and (ii) two (2) weeks' unpaid leave after the birth or upon adoption of the child, at any time before the child reaches the age of three (3). The employee must inform the employer of his intention to take leave at least ten (10) days in advance.

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

Employers cannot extend the working hours of a single parent with a child under three (3) years' old or with a child that has disabilities. Furthermore, night shifts may only be performed by single parents and women with children younger than three (3) years of age or with children with permanent disabilities with their consent. Mothers with children up to three (3) years of age and single parents, as well as persons with disabilities, are entitled to an additional two (2) days of annual leave.

5 Business Sales

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

In such event, the previous employer is obliged to inform, in writing, all employees of the transfer of obligations and responsibilities to the next employer.

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

In cases of statutory change, change of employer, respectively, on the day of the change of the employer, in compliance with the Collective Contract and employment contract, the new employer shall take over all obligations and responsibilities of the previous employment relationship that are applicable. Furthermore, the previous employer is obliged to inform properly and entirely the new employer of the rights and obligations from the Collective Contract and employment contract to be transferred.

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?

According to the Law on Labour, and as specified above, the employer must inform the employees in writing of such event. The Law does not foresee the timeline of the process or sanctions for failing to comply with this requirement.

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

If the employee refuses the transfer to the new employer or does not declare within five (5) days from the day of the announcement, the previous employer may terminate the employment contract.

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

Unilateral changes are not permitted. The terms and conditions shall remain in compliance with the Collective Contract and employment contract as stated above.

6 Termination of Employment

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

In the case where the employment relationship is terminated by the employer, the employee must be given prior notice of the termination. The length of the notice of termination varies and depends on whether the employment contract was stipulated for a definite or indefinite term.

If an employee has a definite term contract, notice must be given thirty (30) days before, whereas for employees that have an indefinite term contract, the following notice periods are applicable: (i) between six (6) months and two (2) years of employment, thirty (30) calendar days; (ii) between two (2) and ten (10) years of employment, forty-five (45) calendar days; and (iii) above ten (10) years of employment, sixty (60) calendar days.

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 employer may deny the employee access to the premises of the company during the period of notification, namely prior to terminating the employment contract.

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?

The employees may initiate internal procedures for resolving issues deriving from the termination of an employment contract, if this is envisaged under the employment contract and employer's internal policies. Employees can also submit an appeal to the Labour Inspectorate requiring protection with regard to his/her dismissal and, as a last resort, take the matter to court.

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

The Law on Labour provides that it is prohibited to terminate the employment relationship during pregnancy, maternity leave and absence from work due to special care for a child, except in cases of a collective dismissal.

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?

The employer is entitled to terminate the employment contract of an employee in cases where: such termination is justified for economic, technical or organisational reasons; the employee is no longer able to perform the job; the employee has committed serious cases of misconduct; the employee's performance of work duties is unsatisfactory; the employee is guilty of repeating a minor misconduct or breach of obligations; or the employee's performance remains unsatisfactory in spite of a written warning. Upon dismissal, the employee is entitled to receive his/her salary until the last day of work and also be compensated for unused annual leave.

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

An employer who wants to terminate an employment relationship must respect the notification period as prescribed by Law. In addition, the employer must serve the employee with a written decision for the termination of the employment contract, such decision shall include grounds for the dismissal.

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

In the case of a dismissal, the employee is entitled to make a complaint to the employer or its relevant bodies. Moreover, if he/she is not satisfied with the decision of the employer or its relevant bodies, the employee may submit an appeal to the Labour

Inspectorate. If the decision of the Labour Inspectorate is in favour of the employee, he/she may file a complaint at the respective court. Depending on the decision of the respective body, the employee may return to his/her workplace or receive compensation.

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

Any eventual dispute, which may arise regarding the employment relationship, may be settled amicably and in good faith through direct negotiations between the parties.

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

The Law on Labour provides for collective dismissal, and involves the dismissal of at least ten per cent (10%) of the employees but not less than twenty (20) employees discharged within a six (6)-month period. In the case of a collective dismissal, the employer is obliged to make severance payments to its employees who have an indefinite contract. The amount varies and depends on their period of employment with the company:

- between two (2) and four (4) years of service, one (1) month's salary;
- between five (5) and nine (9) years of service, two (2) months' salary;
- between ten (10) and nineteen (19) years of service, three (3) months' salary;
- between twenty (20) and twenty-nine (29) years of service, six (6) months' salary; and
- from thirty (30) years of service, seven (7) months' salary.

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?

In accordance to the Law on Labour, an employee may not be dismissed until the employer provides the severance payment. If the employer fails to comply with its obligations, the employees are entitled to issue a complaint to the respective court.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The applicable legislation in Kosovo does not stipulate restrictive covenants. In practice, these covenants are usually contractual, meaning they are stipulated in the employment contract or in internal regulations of any particular company in the form of non-competition or non-solicitation clauses, and would be applicable for a certain period of time after the termination of an employment contract.

7.2 When are restrictive covenants enforceable and for what period?

Since the applicable legislation in Kosovo does not expressly provide for restrictive covenants, the parties to the employment contract may agree to the general terms and conditions on this clause.

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

This is not applicable.

7.4 How are restrictive covenants enforced?

The law does not provide the enforcement of such covenants; however, the parties may submit a complaint to the respective court for any breach of contract that may arise from the employment contract. The enforcement of such covenants would be decided by the relevant courts of the Republic of Kosovo.

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 Law on Protection of Personal Data stipulates that the consent of the employee should be given, and an approval from the National Agency for Protection of Personal Data (NAPPD) should be issued for the transfer of employee data to other countries.

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

The Law on Protection of Personal Data, specifically Article 22, specifies that data subjects are entitled to request, and the data controller is obligated to provide, among other things: 1) the personal data stored about such employee; 2) the purposes of the processing and the categories of personal data being processed; 3) the legal basis for the processing; and 4) the origin of the data.

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

According to the Law on Protection of Personal Data, pre-employment checks, such as criminal record checks, medical record checks, etc. are classified as sensitive personal data. In this regard, Article 6 of the aforementioned Law stipulates, among other things, that sensitive personal data may be processed “*if the processing is necessary for the purposes of fulfilling the obligations and specific rights of a data controller in the field of employment...*”. With this in mind, the employer could justify the pre-employment checks with the aforementioned provision.

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

According to the applicable laws, yes, the employer is entitled to monitor and employee's emails, phone calls and the use of the employer's computer system.

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

According to applicable laws, the employer is entitled to use

all publicly available sources if the consent of the employee has been given or if it “*is necessary for the purposes of fulfilling the obligations and specific rights of a data controller (in this case the employer) in the field of employment...*”.

9 Court Practice and Procedure

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

According to the Law on Courts, the employment disputes shall be submitted to the Basic Court – General Department. The Basic Court is a court of first instance. Unless otherwise provided by Law, all cases before the General Department of the Basic Court shall be adjudicated by one (1) professional judge.

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?

According to the Law on Labour, and upon the parties' agreement, the protection of rights may also be resolved through a mediation process. Rules and procedures for resolution of labour disputes through mediation are determined by the provisions of the Law on Mediation and other applicable legal provisions. The Law on Contested Procedure regulates the procedure for employment-related complaints. The claim has to be submitted in writing before the competent Basic Court. The contesting party shall pay a fee, which is based on the administrative instruction issued from the Kosovo Judiciary. The plaintiff should attach the certificate of the paid court taxes to the claim.

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

According to the Law on Contested Procedure, the defendant has to reply to the claim within fifteen (15) days after receiving the official documents from the court. Within thirty (30) days from receiving the reply by the defendant, the court sets the preparatory session. Article 420 of the same Law specifies that the main hearing be held within thirty (30) days from the end of the preparatory session. As said, the procedure will go through two (2) court hearings and, as such, it shall not take longer than one (1) year, but due to the large number of outstanding cases at the Basic Court, the decision on employee disputes may take longer than one (1) year.

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

Pursuant to the Law on Contested Procedure, the parties have the right to submit a complaint against the first instance court judgment. This can be done through means of attack foreseen by the legal provisions of this Law. With regards to a complaint in the Court of Appeal, as the second instance court, the procedure is similar to the first instance stipulated in question 9.3 and it may also last up to one (1) year.



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