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The International Comparative Legal Guide to:

# Employment & Labour Law 2017

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A practical cross-border insight into employment and labour law

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## Country Question and Answer Chapters:



## 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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# Albania

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## 1 Terms and Conditions of Employment

### 1.1 What are the main sources of employment law?

The main pieces of legislation governing employment relationships in Albania are the Labour Code and the Law on Civil Servants. Herein below, listed according to hierarchy, are other sources, along with the aforementioned acts:

(i) The Albanian Constitution.

(ii) Conventions governing employment matters as ratified by the Republic of Albania.

(iii) Law no. 7961, dated 12.07.1995 "The Labour Code of the Republic of Albania", as amended ("Labour Code").

(iv) Law no. 152/2013, dated 30.05.2013 "On the Civil Officer", as amended ("Law on Civil Servant").

(v) Law no. 10237, dated 18.02.2010 "On Security and Health at Work", as amended.

(vi) Law no. 9634, dated 30.10.2006 "On Work Inspection", as amended.

(vii) Law no. 7703, dated 11.05.1993 "On Social Insurance in the Republic of Albania", as amended.

(viii) Law no. 10383, dated 24.02.2011 "On Obligatory Health Care Insurance in the Republic of Albania", as amended.

(ix) Law no. 10221, dated 04.02.2010, "On Protection from Discrimination".

(x) Law no. 9970, dated 24.07.2008, "On Gender Equality".

(xi) Law no. 108/2013, dated 28.3.2013 "On Foreigners", as amended.

(xii) Secondary legislation (i.e. decisions of the Council of Ministers and various instructions or orders issued for the implementation of the above).

Another important source are the unifying decisions of the Unified Colleges of the Albanian Supreme Court that serve as mandatory case law for disputes deriving from an employment relationship.

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

A general distinction can be made among employees engaged in an employment relationship governed by the Labour Code: private sector employees; certain categories of public sector employees; and public sector employees, the latter being civil servants engaged in an employment relationship regulated by the Law on Civil Servants.

There is no clear-cut division based on the public and private sector criteria, since the Labour Code also governs the employment relationship of certain employees working in the public sector.

Under the Labour Code, the following types of employment contracts are regulated:

- full-time and part-time contracts;
- limited and unlimited duration contracts;
- employment agency contracts;
- individual and collective employment contracts;
- home-based employment contracts;
- commercial agent contracts; and
- apprenticeship/internship contracts.

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

The employment contract should be concluded in writing. In specific cases, when for justified reasons the contract is not concluded in writing, the employer must, within a period of seven days from the date when the employee is hired, sign the contract in writing. Failure to comply with this requirement may result in a fine for the employer up to 30 times the value of the minimum monthly salary.

### 1.4 Are any terms implied into contracts of employment?

All of the mandatory provisions of the Labour Code on the non-renounceable rights of the employee are applicable (i.e. right to compensation, time- off, various leaves, safety at work, etc.), despite the lack of regulation in the contract. In addition, the obligation of loyalty, due diligence and care are applicable to the employee without the need to address them specifically in the contractual provisions.

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

The employer shall observe the non-discrimination obligation, the right of the employees to be organised in unions, the protection of the employees that denounce corruption, minimum age of employees, health and safety at work, protection of pregnant women, minimal salary, overtime limits, etc.

**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 collective bargaining agreement contains provisions on employment conditions, on content and termination of the individual employment contracts and on relationships between the contracting parties. The collective contract cannot contain less favourable provisions for the employee than provided for in the applicable legislation. The collective bargaining usually takes place at company level.

## 2 Employee Representation and Industrial Relations

**2.1 What are the rules relating to trade union recognition?**

The Labour Code provisions govern the establishment and the rights of the trade unions and professional organisations of employers and employees. It also has to be noted that freedom of association is a right guaranteed by the Albanian Constitution.

Trade unions and professional organisations should submit the act of incorporation and the bylaws with the First Instance Court of Tirana, in order to acquire legal personality. The act of incorporation and bylaws of the trade union should be signed by a minimum of 20 founding members, whilst the professional organisation should have a minimum of five founding members. Legal personality is acquired 60 days after the filing, unless the court rules on the rejection of such request.

**2.2 What rights do trade unions have?**

Trade unions represent their members in negotiations of the collective contracts with the employers, as well as in negotiations regarding the change of terms and conditions of the existing collective employment contracts. Trade unions are further entitled to protect the interests of their members before the courts; in order to oblige, the employer has to observe the provisions of the employment legislation, collective employment contract or individual employment contracts.

These organisations may be of a larger level such as federations (i.e. the voluntary union of least two trade unions) and confederations (i.e. voluntary union of least two federations), and may become members of international professional organisations. Based on the Labour Code's provisions, only the trade unions may organise and announce strikes.

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

The right to strike is also guaranteed by the Albanian Constitution. The Labour Code defines that only trade unions have the right to organise and announce strikes. In practice, such industrial action is used as last a resource by trade unions to enforce the solving of their economic and social requirements. The strike is considered legally compliant when organised by a legally-founded trade union; it aims for either the conclusion of a collective contract or (if it already exists) the fulfilment of those requirements deriving from the employment relationship, not set forth in the collective contract, and the parties (trade union and employer) have made all efforts to solve the issue through mediation and reconciliation.

The Labour Code provides protection for the striking employees during the strike period, inclusive of the prohibition of the employer to dismiss or replace the participants in the strike with new employees.

**2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?**

The Labour Code does not provide regulations for the establishment of work councils. Law no. 9901, dated 14.04.2008 "On Entrepreneurs and Commercial Companies", as amended, provides that the council of employees may appoint representatives at board level of the joint stock company, if agreed with the representatives of the company. No other provisions deal with such an issue.

The establishment of a safety council and relevant criteria are provided under the Law no. 10237, dated 18.02.2010 "On Safety and Health at Work". This type of council represents the employees solely in relation to health and security issues at the workplace.

**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?**

This is not applicable.

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

This is not applicable.

**2.7 Are employees entitled to representation at board level?**

Please see our answer to question 2.4 above.

## 3 Discrimination

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

Article 18 of the Constitution of the Republic of Albania provides that we are all equal before the law. No one may be discriminated for reasons such as gender, race, religion, ethnicity, language, political opinions, religious or philosophical beliefs, their economic, educational, social status or parental ethnicity. Exceptions are made in cases where there is a legal and objective reason for such discrimination.

Furthermore, article 9 of the Labour Code provides that while exercising the right to employment and exercising their profession, employees are protected against any form of discrimination as provided in the Labour Code or any other sectorial legislation.

The same principles for the protection of the employees against any discrimination have also been provided by Law no. 10 221 dated 04.02.2010 "On the protection against discrimination".

The prohibition of discrimination aims to guarantee equal chances in employment to persons who are in objectively similar situations.

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

Discrimination means any kind of distinction, exclusion, restriction or preference, based on race, skin colour, ethnicity, language, gender identity, sexual orientation, political opinions, religious or philosophical beliefs, economic, educational or social status, pregnancy, parentage, parental responsibility, age, marital or family status, residence, health status, genetic predispositions, any kind of disability, HIV/AIDS, joining or belonging to unions, affiliation with a particular group, or in any other case that has the purpose or effect to prevent or make impossible the exercise of the right to employment and occupation, in the same conditions as other employees.

### 3.3 Are there any defences to a discrimination claim?

The employer against whom the employee has raised a discrimination claim has the burden of proof and should present the relevant evidence to prove that the discriminatory situation does not exist.

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

Article 15 of Law no. 10 221 dated 04.02.2010 "On the protection against discrimination" provides that every employee has the right to complain to the employer, the Commissioner for the Protection against Discrimination or to a court if he believes that he has been discriminated against. This provision does not limit the right of appeal to special institutions created in different employment sectors. With such regard, the employee and employer may settle the claims between themselves before starting any administrative or judicial procedure.

During the examination of the complaint, the employee has the right to continue working as per the terms of the respective employment contract. The parties may reach an understanding/settlement even after raising the relevant discrimination claims.

If the employer does not take action to investigate and resolve a complaint of discrimination, the employee who raised the complaint has the right to stop working, without losing salary, for as long as it is necessary to be protected from such discrimination. The employee must return the salary received as above, if the court through a final decision decides against the existence of the claimed discrimination.

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

Pursuant to the above-mentioned law, if the claims of the employee for discrimination are based in law, he/she may require to be reinstated in the previous situation or he/she may require indemnification for material or non-material damages or any other appropriate measures.

### 3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

"Atypical" employees are entitled to the same rights for protection against discrimination as any other full-time employee.

## 4 Maternity and Family Leave Rights

### 4.1 How long does maternity leave last?

The maternity and family leave rights are regulated by the Labour Code, as well as Law no. 7703, dated 11.05.1993 "On social security contributions in the Republic of Albania", as amended ("Social Security Law").

Pursuant to article 104 of the Labour Code, it is prohibited for pregnant women to work 35 days before and 63 days after birth. When a woman is pregnant with more than one child, the first period becomes 60 days.

Furthermore, the Social Security Law, article 27, provides that pregnant women shall benefit from maternity leave payment from the social security contribution scheme for a period of 365 calendar days in total, including a minimum of 35 days before and 63 days after childbirth. In line with article 104 of the Labour Code mentioned above, for a woman who will be pregnant with more than one child, the benefit period shall be a total of 390 calendar days, including a minimum of 60 days before childbirth.

Therefore, the maternity leave period is a minimum of 98 days and a maximum of 365 days; or otherwise a minimum of 125 days and a maximum of 390 days if a woman carries more than one child.

According to article 105.4 of the Labour Code, after completing the minimum mandatory maternity leave, after the 63-day period following childbirth, a woman may decide by herself if she wants to work or benefit from the social security payment and therefore reach the maximum days of maternity leave, as indicated above.

In any case, the right for maternity leave payment is granted to women who have paid social security contributions for at least 12 months. Exception to the requirement of the 12-month insurance period is made in cases where the right for the next maternity leave begins within 24 months from the date of birth of the previous child.

Furthermore, with the latest amendments to the Labour Code, as well as the Social Security Law, a special treatment has been introduced for *adoptive parents* with regards to leave and benefits, similar to those attributed to biological parents.

As such, article 106 of the Labour Code stipulates that in case of adoption of a newborn child, the employee has the right to a leave defined by the legislation on social security. The leave for adoption may be used by only one of the adoptive parents.

Article 27 of the Social Security Law stipulates the period of the parenting leave in case of adoption. Pursuant to this disposition, the adoptive mother of a child, aged up to one year old, that has paid social security contributions of not less than 12 months, has the right to parenting leave, starting from the day of adoption, not earlier than the 63rd day after childbirth and for a maximum of 330 days after childbirth. In any case, the minimum adoptive leave is 28 days.

The biological mother is entitled to maternity leave benefits until the adoption date, in case the child has been adopted during the maternity leave period. In any case, the maternity leave benefits for the biological mother shall be calculated for a period not exceeding 63 days after birth.

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

The Social Security Institute grants to women the following benefits and payments under the social security contributions scheme:

1. The right for maternity leave payment for each case of pregnancy, for women who have paid social security contributions for at least 12 months. Exception to the requirement of the 12-month insurance period is made in cases when the right for the next maternity leave begins within 24 months from the date of birth of the previous child (article 27 of the Social Security Law).

   The payment for maternity leave for insured women is calculated as below:

   a) 80 per cent of the daily average net assessment base of the last 12 months, starting from the date the right of payment before birth has started and 150 calendar days after birth.

   b) 50 per cent of the daily average net assessment base of the last 12 months starting from the date the right of payment before birth has started, for the period thereafter.

2. A woman insured for at least 12 months that, pursuant to a decision of the competent medical committee, has changed workplace because of her pregnancy has the right to obtain compensation for the reduction of income incurred because of this change, if any, provided that she has paid social security contributions of not less than 12 months (article 28 of the Social Security Law).

3. A remuneration for childbirth is granted to an insured mother that has paid social security contributions for one year prior to childbirth. This remuneration is a one-time payment, equal to 50 per cent of the minimum monthly wage (article 29 of the Social Security Law).

In addition, a special protection is granted to *pregnant or lactating* women through articles 104.2 and 108 of the Labour Code, which provide that they cannot be employed to carry out hazardous or dangerous works, or works during night shifts, that can harm their or their child's health.

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

Article 104.4 of the Labour Code provides that after completing the maternity leave, the employee has the right to return to the same work position or an equivalent one under no less favourable working conditions, and benefit from any improvement of her working conditions that she would have benefitted from during her absence. The same provision is also applicable for the parent who has benefitted from the adoption leave.

Specifically, according to article 105 of the Labour Code, in case the decision of the mother is to return to work after the 63-day period following childbirth, in agreement with the employer and for the purpose to feed the child until he/she reaches the age of one year old, she has the right to choose between:

a) a paid break, two hours within normal working hours; or

b) daily normal working hours reduced by two hours, payable as if it was a full working day.

The Labour Code offers special protection regarding the working conditions for a mother. In this regard, after returning to work from childbirth, the employer shall ensure that the working conditions are suitable and safe, and in accordance with the provisions of the legislation for health and safety at work. In this regard, the employer shall take any necessary measures for the interim adaption of the working conditions and working hours for the purpose to avoid any risk towards the employee and the child. In the case that such adaption is not possible for technical reasons and a possible transfer in a similar job is impossible to be achieved, the employee shall benefit from the protection offered by the legislation on social security contributions (maternity leave and payment as per points 1 and 2 of question 4.2 above).

Furthermore, article 108 of the Labour Code stipulates requirements and conditions regarding working night shifts for mothers until the child reaches the age of one. In this regard, it is provided that the employer cannot require from a mother to carry out work during night shifts, in the case a medical report certifies that such work may endanger the health of the mother and child. The same protection and benefits as those attributed to mothers working under hazardous working conditions, as provided in the above paragraph, are also applicable to work during night shifts.

### 4.4 Do fathers have the right to take paternity leave?

The latest amendments to the Labour Code and Social Security Law introduced additional rights for the father.

Article 96.3 of the Labour Code provides that a father, being a spouse or a partner living with the mother, is entitled to three days of paid leave.

Furthermore, the Social Security Law, under point 7 of article 27, provides that the right of maternity leave after the period of 63 days after birth, in case the mother does not fulfil the necessary insurance requirements or does not wish to exercise such right, can also be granted to the *father or adoptive male parent*, if he is insured.

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

Article 132/1 of the Labour Code determines other parental leave rights. Under such provision, the employee, who has more than a year of continuous employment with the same employer, is entitled to an unpaid leave of no less than four months, until the dependent child reaches the age of six. The right to request parental leave for each parent is individual and not transferable, except when one of the parents dies. The leave may be granted partially, but in any case no less than one week a year. The duration is determined through a written agreement between the employer and employee.

In case of adoption, such parental leave is granted within six years from the date of adoption of the child, but no later than when the child reaches the age of 12.

In addition, the Labour Code provides for special protection with leave benefits for a mother during pregnancy, such as:

1. In case the job position consists of standing or leaning for a long period of time, paid breaks of 30 minutes for every three hours of work.

2 In agreement with the employer, the pregnant employee has the right to paid breaks for attending medical examinations during working hours.

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

With regards to flexibility on working hours because of caring for a child, the Labour Code does not provide any specific provisions. However, under article 132 of the Labour Code, employees that take care of dependents have several benefits, as follows:

1. Up to 12 days of paid leave per year.
2. When the dependent children are three years' old, up to 15 days of paid leave per year, provided that the sickness of the children is proven by a medical report.
3. Additional sick leave for up to 30 days, not paid.

The right of sick leave for the dependents is granted to the parent that is effectively involved with the taking care of the child, or otherwise to both parents, one after the other.

## 5 Business Sales

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

According to article 138 paragraph 2 of the Labour Code, the partial or the complete business sale (share sale or asset transfer) would not affect the rights and obligations deriving from the employment contract in force up to the moment of transfer. The same paragraph stipulates that the employee is obliged to follow the new employer up to the termination of the notice period, even in the case he/she is against the transfer.

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

As indicated under questions 5.1, all rights and obligations arising out from employment contracts in force at the moment of transfer will pass to the new employer.

### 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?

Both the transferor and the transferee have the duty to inform the trade union (recognised as the representative body of the employees), or in its absence the affected employees, on the transfer, especially on the reason of the transfer, legal, economic and social consequences and measures that will be carried out from them. The obligation on information and consultation should be carried out regardless of whether the decision on the transfer is made by the employer or another controlling entity. The notification has to be made at least 30 days from the transfer date (i.e. consultations should be carried out within the same period).

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

Generally, the dismissal of employees based on the business sale grounds is considered null and void. However, there exist some exceptions, such as dismissals based on economic, technological or structural reasons, which do require changes in the employment plan. In the latter case, the procedure and rules as detailed in the following section 6, Termination of Employment, must apply.

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

The Labour Code stipulates that the transferor and transferee are obliged to observe the obligations deriving from the employment contract until the end of the notice period or the term set out in the employment contract.

## 6 Termination of Employment

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

During the first three months of employment, considered as a probation period, each party may terminate the employment contract upon a notification delivered to the other party at least five days in advance.

Furthermore, pursuant to article 143 of the Labour Code, the following notification periods are applicable for each party (i.e. employer or employee) that intends to terminate the employment contract:

i. Two weeks for the first six months of employment.

ii. One month for more than six months and up to two years of employment.

iii. Two months for more than two years and up to five years of employment.

iv. Three months for more than five years of employment.

Such term is suspended due to disability, maternity leave or during holidays given by the employer and resumes upon expiration of such suspension. Additionally, during the notice period, the employee shall benefit from at least 20 hours paid leave per week, in order to seek another job.

### 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 employment relationship terminates at the end of the notice period; however, the parties may agree that the employee, although being 'formally' under contract, is released from obligation to discharge his/her duties.

### 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?

There are different levels of protection, spanning from the grounds of termination to the procedure of the termination itself. As for the grounds of termination, article 143 paragraph 3 of the Labour Code stipulates that the decision of the employer on termination should be for grounds related to the employee's performance, behaviour or operational needs of the company. Moreover, the employee cannot be dismissed for the so-called unreasonable grounds listed under article 146 of the Labour Code. With regard to the procedure to be followed, the employer is bound to follow the termination procedure detailed under question 6.6 below. The employee is considered dismissed in the case the employer has terminated the employment contract (i.e. with the elapsing of the notice period or with immediate effect in case of dismissal for justified grounds).

Generally, no third party consent is required for an employee's dismissal; however, exception is made in case of employees being representatives of trade unions. In the latter case, the employer should request the consent of the trade union, and the latter might withhold its consent should the dismissal heavily impair or make impossible the operation of the trade union, or violate the principle of equal treatment.

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

According to the provisions of the Labour Code, an employer cannot terminate the employment contract of:

i. employees benefiting from allowances for temporary disability from the employer or Social Security Institute, for a period of time of up to one year; and

ii. employees on a vacation granted by the employer.

**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 dismiss for reasons related to performance, behaviour or for the operational needs of the company. In this case, an employee is entitled to the following:

i. Notice period.
   a. two weeks for the first six months of employment;
   b. one month for more than six months and up to two years of employment;
   c. two months for more than two years and up to five years of employment; and
   d. three months for more than five years of employment.

ii. Seniority bonus, in the case the employee has served at least three years. The seniority bonus is not less than the employee's salary for 15 days for each employment year calculated on the salary at the moment of the termination of the employment contract.

iii. Accrued annual leave.

On the other hand, in the case an employee has been dismissed with immediate effect for justified causes, which do not allow the continuation of the employment on a good faith basis, the latter will be entitled to receive only the accrued leave. In any case, the grounds leading to the termination with immediate effect will be checked by the judge, should the employee bring the case in front of the courts.

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

Article 144 of the Labour Code establishes that before termination of the contract, the employer should deliver a prior notification to the employee, requiring a meeting to discuss its intentions to terminate the employment.

At least 72 hours from the delivery of the notice, a meeting must take place in order to discuss the intention of terminating the employment. In the meeting, the employee presents its counterarguments (if any). Should the employer fail to comply with such procedure of termination, he might be liable to pay to the employee a penalty equal to two monthly salaries.

The decision for termination of the employment is notified in writing to the employee starting from 48 hours and up to one week after the date of the meeting.

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

The employee can address the court and challenge the dismissal for procedural breaches and/or material breaches. Should the employer fail to comply with the termination procedure, the employee must be indemnified with two monthly salaries. On top of that, in case of termination without reasonable cause, the employee can be indemnified with up to one year of salary, the salary that the employee should have received during the notice period, plus the accrued annual leave, and the relevant seniority bonus (if applicable).

Moreover, for cases of immediate termination of employment without justifiable cause, the employee is entitled to the salary it should have received during the notice period or until the end of the employment contract (in case of contracts with limited duration). An indemnification, not exceeding one year of salary, plus the relevant seniority bonus (if applicable) will also be included. The same will apply for breaches of the notice period.

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

Yes, both options are applicable.

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

Based on article 148 of the Labour Code, a collective dismissal of employees occurs when the employer terminates the employment for reasons that are not related to the employees. It is considered as collective employment termination when, within 90 days, the employer dismisses at least 10 employees for enterprises having up to 100 employees, 15 employees for enterprises having from 100 up to 200 employees and 20 employees for enterprises having more than 200 employees.

The employer should notify the employees' trade union, which represents the employees, or in case there is no such union, the employer should publish a notification in the working place. Such notification should indicate, especially:

(i) the reason for termination;
(ii) the number of employees to be dismissed;
(iii) the total number of employees employed; and
(iv) the period when the terminations shall occur.

Furthermore, such notification should also be delivered to the competent ministry for employment.

The employer should meet and consult with the employees' union, or if there is no such union, with the respective employees. Such consultations are being held for at least 30 days, starting from the notification date, except in the case the employer agrees for a longer duration. Upon conclusion of the consultations with the employees' union or the employees, the employer should notify the competent ministry. In case the employer and the union or the employees have not reached any agreement, the ministry should assist the parties in reaching an agreement within 30 days from the date the ministry is notified for the conclusion of the consultations with the employees' union or the employees. The ministry cannot halt the collective dismissal.

In case no agreement has been reached, the employer may continue with the collective dismissal procedures. The notice period indicated under question 6.5 above will apply.

The employer failing to respect the procedure of the collective dismissal from work is obliged to pay the employee a damage, which is equal to six months' salary (other damages compensation of up to one year of salary are due in case the employer fails to respect the notice period).

It is to be noted that the employer should give priority to the re-employment of the employees dismissed from work for reasons that have nothing to do with the employees, if the employer employs employees of comparable qualification.

### 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?

Employees may address the competent court and ask for damage relief.

## 7 Protecting Business Interests Following Termination

### 7.1 What types of restrictive covenants are recognised?

Based on the provisions of the Labour Code, during the period of employment, the employee cannot perform paid work for third parties, which harms or competes with that of the employer. Additionally, the employee, during and after conclusion of his/her employment, is bound by secrecy with regard to the manufacturing and business secrets of the employer.

Article 28 of the Labour Code stipulates for the possibility to enter into a non-to-compete agreement by which the employee undertakes, following conclusion of the relationship with the employer, not to compete and especially not to establish a competitive enterprise, work for, or gain an interest from it.

### 7.2 When are restrictive covenants enforceable and for what period?

As indicated in the first paragraph of question 7.1 above, the employee is prohibited to work for third parties, or undertake work that harms or competes with that of the employer, during the entire period that they are under contract with the employer.

As for the non-to-compete agreement, in order for it to be enforced, the following conditions should apply:

i. The employee is at least 18 years old.

ii. The employee has knowledge of the manufacturing/business secrets.

iii. The employee should receive a remuneration of at least 75 per cent of the salary he/she would have received in case of continuation of the employment.

The agreement is only valid for one year.

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

Please refer to the answer to question 7.2.

### 7.4 How are restrictive covenants enforced?

Restrictive covenants are enforceable before the courts. Employees found in breach will be liable for damage relief.

## 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 protection of employees' personal data and privacy is guaranteed by the Albanian Constitution, the Labour Code, Law no. 9887, dated 10.03.2008 "On Personal Data Protection and Freedom of Information" as amended ("Law on Personal Data Protection") and respective secondary legislation (jointly, the "Legislation on Personal Data Protection").

To this effect, article 35 of the Albanian Constitution sets out, *inter alia*, that the collection and public disclosure of personal data is allowed only upon approval of the data subject (i.e. employee), unless provided for otherwise by letter of law.

Furthermore, according to article 35 of the Labour Code, the employer, during the employment relationship, has, *inter alia*, the following obligations with regards to the protection of employees' personal data and/or information:

(i) The employer should not process employees' information (i.e. data), except when such information is related to the professional capabilities of the employee or is necessary for the applicability of the employment contract.

(ii) The employer should take the relevant security measures to protect employees' personal data, especially the sensitive data (i.e. employees' data concerning provenience, race, ethnicity, political opinions, adherence in trade unions, religious or philosophic beliefs, criminal conviction, health and sexual life), in accordance with the legislation on personal data protection.

(iii) The employer must protect the confidentiality and credibility of employees' personal data. Such data should not be divulged, unless otherwise provided for by letter of law. Such obligation survives the duration of the employment relationship and is not limited in time.

(iv) The employer should retain the personal data processed in an employee's file up to the termination of the employment relationship. Personal data processed in excess of this term is allowed only upon consent of the employee.

Additionally, the legislation on personal data protection reinforces the obligation of the employer (i.e. in the quality of the data controller) for obtaining an employee's consent prior to processing the personal data of the latter.

In addition, such legislation sets out through several acts of the Commissioner for Freedom of Information and Personal Data Protection ("Commissioner") the obligation of the employer to take precautionary measures regarding the safety of personal data of their employees.

Regarding the cross-border transfer of an employee's personal data, the Labour Code does not contain any specific provision dealing therewith.

However, paragraph 3 of article 35 of the Labour Code stipulates that the employer is not entitled to disclose the information (including the personal data) of an employee to any third party (inside and/or outside the country), unless consented by the employee him/herself or as provided for otherwise by the letter of law.

To such an end, the general rules on personal data cross-border transfer, as per the legislation on personal data protection, shall apply in the ambit of employment relationships as well.

According to articles 8 and 9 of the Law on Personal Data Protection, the cross-border transfer of personal data (to countries with and/or without adequate level of personal data protection – as determined in virtue of Commissioner's decision) is allowed, *inter alia*, in the following cases:

a) If consented to by the employee.

b) Is necessary for the purpose of realisation of the relevant contract in place between the data controller and the data subject or for purpose of implementation of the pre-contractual measures, taken upon request of the data subject, or if the transfer is necessary for the fulfilment or realisation

of a contract in place between the data controller and a third party, which is in the interest of the data subject.

c) Is necessary for the protection of the vital interests of the data subject.

d) Is necessary or constitutes a legal requirement for an important public interest or for the exercising and protection of a legal right.

e) Is done through a public register.

f) Is authorised by the Commissioner (as per the procedure set out through the acts of the latter).

As per the above, the cross-border transfer of personal data of the employee should take place in compliance with the applicable legislation.

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

Yes. According to article 35 of the Constitution, everybody is entitled to be informed about the his/her personal data that is processed by any third party, and request the correction or deletion of untrue or incomplete or unlawfully processed personal data.

Furthermore, according to article 12 of the Law on Personal Data Protection, any data subject is entitled to receive from the data controller, free of charge, upon written request addressed to the latter, *inter alia*, the following information:

(i) Confirmation of whether their personal data is being processed or not, information regarding the scope of the processing, the categories of processed data, as well as the data receivers and categories thereof.

(ii) The personal data and the available information about the source thereof.

Additionally, any data subject is entitled to request the blocking, correction or deletion of his/her data, free of charge, whenever becoming aware that his/her data is incorrect, untrue, incomplete or have been processed in violation of the provisions of the law (article 13 of the Law on Personal Data Protection).

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

According to Commissioner's instruction no. 42, dated 22.07.2014 "On Processing of Personal Data of Employment Candidates", the employer is entitled to process the personal data of employment candidates, *inter alia*, only if their use is lawful and to the extent that such data is necessary for the scope of recruitment (article 2).

When processing the personal data of (or performing pre-employment checks on) a candidate, the employer is obliged to inform the latter, through the written declaration on recruitment privacy policies, about the requirements of the applicable legislation regarding the protection of personal data (articles 2 and 7). This means that the employer might perform the pre-employment checks, personally, on the relevant candidates, and in compliance with the provisions of the legislation on personal data protection (including, but not limited to, through obtaining the consent of the candidates).

The employer is not entitled to process personal data of individuals, if there is no vacancy at all (at the moment of publication of the relevant announcement), or by having the scope of data processing solely for the testing of the labour market (article 4).

In addition, article 7 of the Law on Personal Data Protection stipulates that the processing of sensitive data (including, but not limited to, the criminal records) might take place, *inter alia*, upon consent of the data subject.

Save for the above, the processing of criminal records should be also assessed in view of the legislation on the protection against discrimination.

To this effect, article 12 of Law no. 10 221, dated 04.02.2010 "On Protection Against Discrimination", in harmony with article 5 of the Labour Code, prohibits any form of discrimination (i.e. any distinction, exclusion, restriction or preference based on, *inter alia*, gender, race, ethnicity, economic, educational or social state, political opinions, or any other cause (i.e. criminal background), which has the purpose of causing the hindering of or making impossible the exercising of the employment right) in relation to the recruitment of employees.

Such distinctions, exclusions, restrictions or preferences shall not be considered as discrimination if, due to the nature of the professional activities, or the conditions under which the profession or the activity (of the employer) is being performed, such characteristic (i.e. criminal background) forms a true and professionally necessary requirement for employment, upon the condition that the different treatment is lawful and in accordance with the principle of proportionality.

In light of the above, the criminal background check, in the pre-hiring phase, might be conducted in accordance with the mandatory provisions of all of the above-mentioned legal acts, and, especially, if this is justified by the scope of the recruitment.

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

Albanian legislation does not deal explicitly with such subject matter. Moreover, to the best of our knowledge, such issue has not been tested before any public authority and/or court.

However, this might be assessed on the basis of the rights and obligations that the employer and the employee have in virtue of the applicable legislation (including, but not limited to, the Labour Code).

The Labour Code sets out several obligations that the employee should accomplish during the employment relationship, what the accomplishment might be, subject to the monitoring actions on the part of the employer.

In this view, according to article 23 of the Labour Code, the employee must perform his/her tasks as per the orders and/or instructions of the employer and to the best interest of the latter.

The employee should carry out diligently his/her job and use with due care, and in accordance with the rules set out by the employer, the equipment, devices and other means made available by the employer (article 24).

Moreover, the employee is obliged to protect the best interest of the employer and, especially, preserve the secrecy of the fact and/or information received by the employer, as requested by the latter (article 26).

Additionally, as mentioned in question 8.1 hereinabove, the employer is allowed to collect, during the employment relationship, any information about the employee that relates to the professional capabilities or to the applicability of the employment contract.

Therefore, it might be considered a lawful and reasonable right of the employer to monitor, supervise, and become aware of (including through the communication means made available to the employee by the employer itself) the compliance of the employee with the

employment contract and the abovementioned provisions of the Labour Code. In any case, it is crucial for the lawfulness of the monitoring process that the employee is aware of such activity.

On the other hand, article 36 of the Constitution stipulates that the freedom and confidentiality of the correspondence and of any other communication means is guaranteed.

To such an end, article 123 of the Criminal Code sets out, *inter alia*, that the intentional monitoring (placement under control) or interception of telephone calls or any other communication means constitutes criminal contravention and is punishable with a fine or up to two years of imprisonment.

In light of the above, the employer is entitled to exercise its monitoring rights (*inter alia*, through the communication means and/or equipment that the latter has made available to the employee) without violating the privacy rights of the employee. Otherwise, the monitoring process would be unlawful.

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

This subject matter, as mentioned in question 8.4, is not explicitly regulated by labour legislation and has not been tested, to the best of our knowledge, before any public authority and/or court.

Social media represents a fully private domain of an employee's life and it is exclusively his/her right to use such communication means as the latter might consider appropriate. The use of communication means is, in general, related to the freedom of speech, which constitutes a constitutional right of any citizen (article 22 of the Constitution) and the freedom and confidentiality of the correspondence of the communication means (article 36 of the Constitution).

Based on the above, the employer cannot control how the employee uses his/her social media, both inside or outside of the workplace. Notwithstanding the foregoing, the employer would be entitled to restrict the use of such media through the equipment and/or devices that are property of the latter, and which have been made available to the employee, by the employer, for the purpose of the performance of his/her contractual tasks.

Additionally, the employer might set out specific rules in connection with the use of social media, emphasising the various obligations of the employee (duty of care, protecting the interest of the employer, etc.) in the ambit of the employment relationship.

## 9 Court Practice and Procedure

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

Any dispute related to employment relationships involving private parties shall be subject to the jurisdictions of the District Civil Courts of the Republic of Albania. As a rule at the First Instance Court, the cases are judged by a single judge.

The court may comprise a panel of three judges should the dispute amount be higher than ALL 20 million (approx. EUR 147,000) and the creation of the panel is required from one of the disputing parties. During the appeal, the court panel comprises three judges. In the Supreme Court, the case is examined by a panel of three judges for cases judged by a single judge in the first instance and five judges in other cases.

Any dispute to an employment relationship, when the employee is part of the public administration, shall be subject to the jurisdiction of the Administrative Courts of the Republic of Albania. In relation to employment disputes, the cases are judged by a single judge in the first instance, three judges in the Administrative Appeal Court and five judges in the Administrative Panel of the Supreme Court.

### 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?

Employment-related complaints may be filed with the competent court within 180 days from the termination of the employment/damage suffered. There is not any mandatory conciliation procedure to be followed prior to the filing of the lawsuit. The official fees applicable to employment-related complaints actually vary from ALL 0 up to ALL 3,000 (approximately EUR 22).

A new draft law is being prepared in relation to court-related fees, and such amounts are expected to change.

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

Employment-related complaints typically take up to six months to be decided in the civil court and approximately three months in the administrative court.

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

First instance court decisions are challengeable before the competent civil or administrative court of appeal. The decision may take approximately one year.

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