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Baltic Labour Law Survey 2011/2012

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bnt Baltic Labour Law Survey 2011/2012

bnt international legal surveys analyze and portray certain areas of law relevant for businesses operating in the region. The Surveys are written by leading legal experts for industry practitioners in straightforward language and provide a cross section of relevant issues in several countries.

Labour law has not lost its relevance for businesses operating in the region, be it through a local branch, a local company, or simply by hiring local representatives who work for foreign companies. Changes in the marketplace during recent years have profoundly affected not only the legal framework of employment in terms of laws, regulations, and decisions by local courts of law, but also in a more general sense as to the practice of recruiting and dismissing employees.

What makes dealings between employers and employees even more challenging is lack of harmonization of legal norms dealing with employment between Estonia, Latvia and Lithuania. Companies operating in more than one country are therefore well advised to draw comparisons and choose the regulatory framework most favourable for their business. The bnt Baltic Labour Law Survey 2011/2012 will assist in this task.

Overview

	Latvia	Lithuania	Estonia
Salary levels: – average gross salary in all private businesses monthly ca.	612 EUR	597 EUR	677 EUR
– minimal mandatory gross salary monthly ca.	285 EUR	230 EUR	278 EUR
Overtime pay rate	Double	1.5 times	1.5 times
Probation period, maximal	3 months	3 months	4 months
Normal working time	8 hours daily, 40 hours weekly	8 hours daily, 40 hours weekly	8 hours daily, 40 hours weekly
Aggregated working time: – Maximal reference period	3 months. Upon collective agreement- 12 months.	4 months	7 days
– Maximal hours	24 consecutive hours and 56 hours weekly	12 consecutive hours and 48 hours weekly	At least 36 hours of consecutive rest per each 7 days
Dismissal notification periods	Immediately, 10 days or 1 month depending on reason	Immediately or 2 or 4 months notice depending whether an employee was at fault or not and on the category of employee	Immediately or 15, 30, 60 or 90 days depending on reason and period of employment
General annual paid leave	4 calendar weeks	28 calendar days	28 calendar days

Chapter I.
Latvian Labour law

1. Types of contract

Depending on the characteristics of the work likely to be involved, the possibility may exist to opt to engage personnel through other types of contract more favourable to the company as compared to employment contracts. For example, in service or consultancy contracts, representation (authorisation), agency contracts or royalty contracts parties are free to agree on termination provisions. In contrast, an employment contract may be terminated only in cases and under the procedure and terms laid down by law.

For instance, if a company decides to cease certain types of activity involving certain personnel, in the case of employment relationships this does not automatically entitle the company to terminate. Instead, the employer must undergo a time consuming redundancy procedure. Other types of contracts will not entitle personnel to payment for, e.g., overtime, idle time, and may provide unlimited withholdings or loss indemnification. Although certain risks of quasi-employment may remain, those risks may be limited, e.g. by excluding from contracts any terms similar to an employment relationship. However, the risks of quasi-employment still remain if the plan is that the internal rules of a company such as working procedures, work and leave schedules will in any event remain binding on affected personnel or if personnel otherwise remain dependent on a company. These risks may affect the level of taxation of an individual; moreover, the relationship between the parties may still be considered as an employment relationship.

2. Engagement

2.1. Mandatory content of an employment contract

The contract must describe at least:

1) name, surname, personal code, place of residence of the employee;
2) name, registration number and address of the employer;
3) commencement date and term of the contract;
4) place of work (if performance is not linked to a particular place, the contract must indicate that the employee may be employed in several places);
5) name and code of position according to the Professions Classificatory (adopted by Regulations of the Cabinet of Ministers) and a general description of working duties;
6) the amount and frequency of salary payment (i.e. all payroll- wages, predefined bonuses and other contractual extra payments);
7) daily or weekly working time plus length of annual paid leave;
8) the period for notifying termination of the contract (decreasing the dismissal term or prolonging the resignation term set by law are forbidden);
9) the provisions of any applied collective agreement or working regulations (internal rules).

The information at (6)-(8) above may be substituted by a reference to provisions in laws, in a collective agreement or in working regulations.

An employer with at least ten employees must mandatorily adopt written working regulations.

2.2. Term of validity of a contract

In general a contract must be for an indefinite term. A definite term may be agreed only in limited cases prescribed by law. A definite term may be applied in any of the following:

1) in certain business areas (such as art, sport, agriculture, property management) and positions (office

manager of an embassy) or seasonal work (e.g. landscaping, heating) described by law;
2) for temporary work related to short-term increase of activity (the increase must be provable, for example by increase of short term projects or increase of turnover in a particular period. The particular reason must be described in the contract - e.g. due to increase of turnover of a store more temporary sales assistants are needed);
3) for emergency work to deal with consequences of force majeure situations or accidents;
4) to replace a particular employee (named in the contract) who is temporarily absent;
5) with a trainee, if the work is related to their area of study;
6) for members of the board or council - until the end of their powers as determined by law and the articles of association of the company.

2.3. Probation

Probation may not exceed three months. During probation either party may terminate by giving three days prior written notice without disclosing a reason for termination. An employee is also entitled to remuneration accrued during probation due on termination, including compensation for unused leave (proportionally to days worked), even if employment was for less than six months (the period after which an employee can claim leave for the first working year: see 4.5).

If during employment the employee is assigned to a new position, a new probation can also be agreed for the new position. However, an employee who fails to pass the new probation cannot be dismissed but has to be returned to their previous position.

2.4. Setting duties and targets

The contract, job description, internal regulations, and written orders of the employer constitute the file of employee's obligations.

The employee's duties (type, quantitative amount, time, and place for carrying out duties) must be agreed on by the parties in the contract.

Specific duties beyond the contract may be specified in the job description, if executed as an annex to the contract and signed by the parties.

Working order (e.g. procedures, subordination, reporting, notifying absence) may also be set by way of working regulations. The employer must introduce all employees to the working regulations (advisably requesting each employee to sign these).

The employer may unilaterally specify the duties, working and behaviour rules of an employee by a written order within the scope of the duties and rules set by the contract.

In addition, the employer may set and unilaterally change "working norms" (i.e. specific targets in the scope of duties agreed on in the contract) by way of a certain procedure. These targets may be set after consultation with employees' representatives (if the employees have designated representatives by way of the procedure laid down by law).

Targets set for the employee are binding upon the employee if the targets comply with the duties as described in the contract, even if the employee has not consented to those targets.

The employer must notify an employee of new targets or of changes to existing targets not later than one month before the targets come into effect. Temporary or "one-time" targets may also be notified before the employee starts work (a one month term is not required), but these targets may not operate for more than three months. Duties should be agreed upon engagement. Later, during employment, an employee's non-agreement to change or supplement the contract cannot serve as the sole ground for dismissal.

2.5. Non-competition clause

If the parties agree on a non-competition clause covering a period after termination, the employee is entitled to additional compensation for observing that clause. The amount of compensation cannot be included in the wage and must be specifically stated in the contract. According to case law, the amount for monthly non-competition compensation must be at 40%-60% of the previous salary.

Compensation may be paid out periodically during employment (for example, together with monthly salary) or after termination by a single lump sum or by several instalments.

If an employee is dismissed through their own fault, the employer need not pay non-competition compensation. In turn, if an employee ends the contract for moral or fair reasons (e.g. employer's involvement in court cases resulting in substantial damage to personal reputation), the employee may unilaterally terminate the non-competition clause by one month's prior written notice.

3. Posting employees

3.1. Choice of applicable law

A posted (seconded) employee is considered as an employee working for a specified period in a state other than the state in which they customarily work.
A growing number of companies post employees temporarily to work abroad. In cases of international employment, the employer may benefit by choosing another (foreign) law with provisions more favourable to the company instead of applying the national law (of the country where an employee habitually resides or the posting company was incorporated).
However, regardless of the agreed applicable law the contract cannot violate the mandatory rules of the country:
1) where an employee ordinarily works; or

2) with which the employee's work is mostly linked; or
3) where the entity that engaged the employee is located, if under the contract the employee works in various states.

Regardless of the law chosen by the parties, in any event the following mandatory provisions of Latvian law apply:
1) maximum work and minimum rest periods (Chapter 4);
2) minimum paid annual holidays (four weeks in Latvia);
3) minimum wage rates (currently 180 LVL monthly);
4) overtime rates (twice the hourly rate);
5) health, safety and hygiene at work;
6) protection measures for persons under 18, for pregnant women and women after childbirth, as well as provisions of work and employment of those persons;
7) equal treatment of men and women plus prohibition of discrimination in any other form.

3.2. Notifying the authorities

The Latvian Labour Inspectorate must be notified before posting an employee to Latvia.
The notification must indicate:
1) name, identity code and address of the employee;
2) initially planned workplace (if work is not connected with a particular workplace, that may be indicated);
3) planned beginning and end of work;
4) employer's representative in Latvia (must be authorised to represent a foreign employer before the Latvian Authorities and the court);
5) entity for which work will be done (receiver of services, e.g. a German constructor posting workers to Latvia indicates a Latvian construction customer);
6) for a citizen of a third country posted to Latvia - certification that the individual is legally employed by an employer in the EU or EFTA (this does not affect the right of a third country company to directly employ and post employees to Latvia).

In general, a requirement to present similar declarations or notifications under the EU Services Directive is prohib-

ited. However, a Member State may provide exemptions in respect of labour law and Latvia avails itself of this exemption by requiring prior notification of posting. The purpose of this requirement is to inform the Inspectorate about the fact and place of employment where, in case of need, the Inspectorate may check the working conditions and compliance with the law.

The notification must be delivered before posting starts. Notification also concerns Latvian citizens employed by foreign companies and posted to Latvia.

4. Working time

The particular working time system must be set out in the contract.

4.1. Normal working time

Normal working time is eight hours daily, 40 hours weekly.
The beginning and end of the working day and the time for lunch break (at least half an hour to begin not later than four hours from the start of the working day) must be included in the contract, working regulations or shift schedules (in cases of shift work) to be presented to the employee at least a month in advance.

4.2. Aggregated working time

An alternative to normal working time is aggregated working time.
Aggregated working time is set for each reference period. A reference period may not exceed three months (unless a collective agreement sets a longer period up to 12 months). For example, aggregated working time could be defined as 160 hours in four weeks.
Aggregated working time in any event may not exceed 24 consecutive hours and 56 hours a week.
Hours beyond normal working time (understood as 40 hours weekly) are considered as overtime and attract overtime extra payment. For instance, if aggregated

working time worked over four weeks is 200 hours (i.e. with four weeks as the agreed reference period) then 40 hours (i.e. over 160 hours as normal working time for four weeks) are considered as overtime.
An aggregated time system is more flexible for both parties, but requires more careful working time accounting.

4.3. Length of working week

In general, a working week is five days. Certain types of work require a six day working week, which may also be set after consultation with employees' representatives.
In a six day working week, daily working time must not exceed seven hours. Work on Saturdays must end earlier than on other days and working hours on Saturdays must be set by a contract or working regulations. The working day before a public holiday must be cut by at least an hour.
Work on Sunday or public holidays is only allowed if required to ensure continuity of the working process (for example, in medicine). Work on Sunday must be compensated by time off on another day. Work during public holidays must be paid at double the usual rate or compensated by time off on another day.

4.4. Overtime

Hours worked beyond normal working time constitute overtime. Overtime must be paid at double the usual hourly rate. Overtime extra payment may not be replaced by time off in lieu (compensatory time).
In general, overtime is allowed by written agreement between the parties. An employee's written acceptance of overtime work is not necessary if the work is required due to:

1) urgent immediate needs of the employer;
2) force majeure, accidental or external emergency cases;
3) completion of urgent, previously unexpected work.

In these cases double rate is payable for overtime. In addition, if these conditions last for more than six consecutive days, a written State Labour Inspection permit for

further overtime work is required.
In any case, total overtime work must not exceed 144 hours over four months.

If an employee works normal weekly hours less than the allowed maximum (e.g. 30 instead of 40), but for any reason has to work extra hours (e.g. 10 h) up to total maximum normal hours allowed by law, then the extra hours may be set in the contract as additional time not constituting overtime. Then in each case when such additional work is required the parties will have to sign a separate agreement on additional hours.
However, this must not complicate the daily work of the employer, as overtime work would similarly involve a separate agreement (for each particular overtime case).

4.5. Annual leave

Annual paid leave in Latvia is four weeks. Public holidays are not counted. Unused leave may not be compensated in money except on contract termination.
Vacations must be planned, assigned and if necessary transferred by:

1) a written vacation schedule prepared by the employer before the start of each year and signed by the employer and employees, or
2) a separate written agreement signed by the employer and employee (can also be done by an employee‘s written application to assign leave for a certain period and employer‘s written confirmation).

An employee may request leave for the first working year after having worked at least six months. The parties may agree on earlier assignment of leave.
Unused leave (not more than two weeks from the total four weeks) may be transferred to the next working year but only with the employee‘s written consent. Unused leave may not be transferred for more than one year (in the second year these unused leave days lapse). The part of the leave in the current year may not be less than two consecutive weeks. The remainder or the part transferred to the following year may be split (for example, if 20 days are used in the current year, in the following year

five days can be used in May and three days in July). Formally, the law states that part of leave may be transferred to the following year only if „using the whole leave in the current year may adversely affect the normal course of activities in the undertaking". This is a rather illogical formulation, as in any case leave may be assigned only upon request and consent of the employee, considering the employee's wishes as much as possible. An employer may not assign or transfer leave for a particular period without the employee's consent.
An employer may not force an employee to use the whole leave (four weeks) in one year. Transfer of the unused part of leave to the following year has a voluntary character: it is a collective right of the parties. Therefore, in any case the employer may, with the employee's request and consent, transfer that part of leave to the following year regardless of the possible effect on the undertaking.
An employee (on termination of a contract) whose unused leave has lapsed is entitled to compensation also for lapsed unused leave, unless the employer can prove that assignment of leave in the particular period was offered in writing to the employee.

5. Salary payment

The parties may agree either on time or piecework salary systems. Time salary is calculated in line with the actual time worked irrespective of the amount of work done. Piecework salary is calculated based on the amount of work done irrespective of the time taken.
Monthly gross wage for normal working time may not be below the minimum set by law (currently 180 Latvian lats, ca. 256 EUR). The current hourly gross wage must be at least 1.083 Latvian lats (ca.1.54 EUR).
Salary must be paid at least twice monthly in cash, unless the parties have agreed in the contract on payment once monthly or by bank transfer respectively. The contract must set a particular payment date. If that date occurs on weekly rest days or public holidays then payment must be made before those days. For an employee on leave, salary for the period before leave and payment

during leave must be paid before leave begins.
With each payment, the employer must present to the employee a written statement showing the calculations.

The statement must contain at least:
1) net salary;
2) taxes withheld;
3) social insurance contribution paid;
4) time worked (overtime, night work and work during public holidays are shown separately).

A statement of calculation must also be presented upon payment of outstanding amounts in case of termination (must be paid on last working day),

At the employee's request, the employer must also issue a written "statement on employment" (including data on employment term and employee's position in addition to the above information) in three business days.

6. Violations and penalties

If a violation occurs (e.g. deadline delay, absence, non-fulfilment of assignments) the employer issues a written notice (indicating the substance of the violation and the deadline for explanation) requiring a written explanation from the employee. After receiving explanations, sanctions may be applied - disciplinary penalty or dismissal (7.1).

Only two types of disciplinary penalty are available - reprimand and reproof. Both penalties have equal force and involve no automatic consequences. However, if an employee receives several penalties, these can serve as additional proof of substantial violation of duties and afterwards serve as additional grounds for dismissal. Explanations must be required and sanctions applied not later than a month from discovery of the violation (but in any case no later than twelve months from commission of the violation). If dismissal is not planned, it is advisable to apply a disciplinary penalty (reproof or reprimand). Otherwise the violation (with no sanctions) later may not

be considered of significant importance (thus, in case of repeated violations, not substantiating dismissal).

7. Terminating employment

7.1. Dismissal by the Employer

Unilateral termination by the Employer is allowed only in cases stated by law:

1) the employee has without justified cause significantly violated the contract or the working procedure laid down;
2) the employee at work:
   (a) has acted illegally and therefore has lost the trust of the employer;
   (b) has acted contrary to moral principles and the action is incompatible with a continuing employment legal relationship;
   (c) is under the influence of alcohol, narcotic or toxic substances.
3) the employee has substantially violated work safety regulations and has jeopardised the safety and health of others;
4) the employee lacks adequate professional competence;
5) the employee is unable to work due to a health condition certified by a doctor;
6) an employee who previously did the work has been reinstated at work (usually relates to cases when an employee is engaged only for a definite term to replace another named employee due to sickness, leave, incapacity or other justified absence);
7) the number of staff is being reduced (permanent layoff or redundancy);
8) the employee is absent due to incapacity for more than six consecutive months, or for a year (with interruptions) in a three year period;
9) the employer is being liquidated.

In all these dismissal cases written termination notice must be delivered to the employee. Periods for notice

are (unless the contract or a collective agreement sets a longer term):

- in cases 2(a) and (c): immediately;
- in cases 1, 2(b), 3, 5 and 8: ten days;
- in cases 4, 6, 7 and 9: one month.

Termination notice may not be issued (delivered to the employee to start the term of notice) during an employee's incapacity, leave or other justified absence. Incapacity (sick leave) or leave or other justified absence occurred after reception of the termination notice proportionally prolongs (except in case 8) the respective ten days or one month notice term, if the employee has requested the employer in writing particularly to exclude the absence period from the notice term.
The employee must sign the termination notice. If the employee refuses to do so, a written declaration confirming the fact must be executed by the employer and certified by witnesses (advisably at least two). In case of unjustified absence, the notification may be sent to the employee by registered mail (advisably with a post office notification of mail receipt). Notice starts to run upon receipt of notice.

In cases 1-3 above the employer must initially require from the employee an explanation in writing. The explanations must be required and termination notice may be issued only within one month from the moment when the employer is aware of the violation (but in any case not later than 12 months from commission of the violation). To avoid later misunderstandings, the employer must issue a written request to the employee to present written explanations. The request must include a description of the violation and (advisably) the deadline for presenting explanations, and a contact person to whom the explanations must be presented. The employer must ask the employee to sign the request, (i.e. that the employee has received it) to later prove that explanations have been asked for if the employee fails to respond. If the employee refuses to sign the request or fails to present an explanation, this fact must be stated in a declaration attested by witnesses.

When considering termination of an employment contract, the employer must assess the seriousness of the violation, the circumstances in which it was committed, as well as the personal characteristics of the employee and their previous work.
By law the employer must ensure work organisation and working conditions as necessary for an employee to do their particular job. Therefore, the employer's own operational conditions may not amount to grounds for dismissal (except in cases 6, 7 and 9).

Termination in cases 4- 7 is allowed only if it is impossible to find alternative employment for the employee within the employer's entity.
In termination for redundancy (7), the employer must inform the State Employment Authority one month in advance.
As an exception, an employer may within a month bring a claim before a court for termination of a contract for other reasons not referred to above, if the employer has good cause (e.g. due to morality and fairness) to be assessed by the court.

In cases 4-9 dismissal compensation must be paid to the employee on their last working day in an amount set by law (unless the contract or a collective agreement sets a higher amount) calculated on the basis of the employee's average earnings:

- one month's earnings - if the employee has worked for the company less than five years;
- two months earnings - if the employee has worked for the company from five to ten years;
- three months earnings - if the employee has worked for the company from ten to 20 years;
- four months earnings - if the employee has worked for the company more than 20 years.

7.2. Termination by the employee

An employee may terminate the contract by one month's prior notice, unless the contract or collective agreement sets a shorter term. The parties may agree on shorter notice.

An employee may recall a termination notice only with the employer's consent, unless the contract or collective agreement does not require consent.
The parties may not agree on a longer period of notice or a contractual penalty or other sanctions if the employee exercises their termination rights.

7.3. Mutual termination

A contract may also be terminated based on mutual written agreement between the parties. In that case the procedure for termination and compensation, if any, may be freely agreed by the parties.

7.4. Redundancy procedure

Conditions for redundancy are as follows and must also be described in redundancy documentation:

1) Redundancy is adequately substantiated on the basis of urgent economic, organisational, technological or similar measures in the company (e.g. due to decrease of turnover).
2) An assessment is provided that the education, qualifications and other criteria of the employee are worse than those of other employees in the same position remaining in the company. If the results of the assessment are equal for several employees, then assessment proceeds on the basis of other criteria set by law.
3) No free positions are available in the company to offer to the employee.

The employer must inform the State Employment Authority one month in advance before dismissal due to redundancy becomes effective.
If within 30 days the employer by redundancy dismisses at least:

- five employees from a total of 21-49 employees; or
- ten employees from a total of 50-99 employees; or
- 10% of employees from a total of 100-299 employees; or
- 30 employees from a total of more than 300 employees,

then the collective redundancy requirements providing longer notification periods applies. Collective redundancy may begin not earlier than 45 days after notifying the State Employment Agency, unless the employer and representatives of employees have agreed a longer term. The State Employment Agency may in exceptional cases prolong the 45 day term to 60 days.

Chapter II.
Lithuanian Labour Law

1. Types of contract

In Lithuania individuals are free to choose their form of occupation. Therefore, they may work for an employer under an employment contract or be an individual entrepreneur engaged in individual activity and provide services under a civil contract (services, agency or other). These two main forms of occupation differ in legal and tax treatment for both parties.

Employment relations based on an employment contract are regulated by law. For example, the procedure for concluding and terminating a contract, guarantees and privileges for employees, work and rest and other details are extensively covered. In contrast, relations based on a civil contract mainly depend on agreement between the parties unless some mandatory provisions are set by law to which the parties must adhere. Thus, many employers would prefer civil relations to employment relations. Nevertheless, the dividing line is very slim and involves quite a significant risk that a civil contract is qualified as an employment contract. This depends on the principle that substance overrules form. Quite extensive jurisprudence of the Lithuanian courts has developed the concept of individual activity compared to employment relations. The main two criteria distinguishing individual activity are independence and continuity.

Independence means that the contractor is independent in working decisions, assumes risks and liability relating to their work, bears their own costs, amongst others. In contrast, the existence of such circumstances as a workplace, the requirement to follow some company's internal discipline, regular remuneration, reporting requirements leads to a situation where a civil contract is qualified as an employment contract. The criterion of continuity implies, for example, that a person has to continue work

for some period and have more than one buyer for their services.

2. Engagement

2.1. Mandatory content of an employment contract

The parties must agree in an employment contract on the essential conditions, which include:
1) workplace, and
2) employee working duties.

Additional requirements may be set for some categories of contract. If the essential conditions are not agreed, the matter is treated as if the parties did not conclude an employment contract at all.

Apart from the essential conditions of a contract listed above the parties have to establish pay conditions. Although not an essential condition of the contract pay still has to be covered by agreement between the parties.

The parties may also agree on other conditions. For example, they may agree on probation or additional benefits.

An employment contract is executed in writing following the typical recommended form as approved by the Government and covers the following:
1) name, surname, personal code, social insurance number, place of residence of the employee;
2) name, registration number and address of the employer, details of representative;
3) type of contract;
4) work commencement date;
5) place of work;
6) work functions;
7) the amount and period of salary payment (i.e. all payroll-wage, predefined bonuses);
8) daily or weekly working time;
9) indication whether a collective agreement exists and whether the employee has seen it;

10) other.

Note: in an employment contract the parties may not set conditions less favourable to the employee than those established by law or collective agreement.

2.2. Term of validity of a contract

As a rule, an employment contract is concluded for an indefinite term.

To conclude a definite term contract, requirements set by law must be met. Firstly, a definite term contract may only be agreed for permanent work where permitted by law or a collective agreement. For example, a definite term contract is allowed in cases of short-term increase of volume of work, definite duration of projects, and substitution of temporarily absent employees. Some exceptions to this rule apply during and after the economic crisis. In any case, the term may not exceed five years.

2.3. Probation

The parties may agree on probation on the initiative of either party. This must be stated in the employment contract. Probation cannot exceed three months. Periods of absence from work (for example, illness) are not included in the probation period.

Probation is prohibited for certain categories of employees, for example, those under 18.

The party on whose initiative the probation clause is established may terminate by three business days prior written notice if probation results are unsatisfactory. Termination on the basis of failed probation, where established by the employer, does not entail payment of severance pay.

During probation the employee is entitled to all employee rights and privileges, including compensation of unused annual leave to be paid on termination.

2.4. Setting duties and targets

An employment contract is a primary source for determining employee duties. The job description should also specify them.

The working order (e.g. procedures, subordination, reporting, notifying absence) may also be set by working regulations. Working regulations are approved by the employer subject to prior coordination with employees' representatives. The employer must ensure all employees read the working regulations before they start work. The procedure is laid down by law.

The orders of the employer may specify the duties, working and behaviour rules of an employee.

2.5. Non-competition clause

Lithuanian law does not expressly prohibit parties from agreeing on non-compete obligations with employees. However, the courts only some time ago confirmed in their jurisprudence that these agreements can be concluded as civil contracts with employees, thus rebutting the argument that these agreements infringe a person's constitutional right to choose their occupation. Nevertheless, a non-competition agreement must not infringe the principles of fairness, justice and prudence. They cannot be concluded with every employee and due account must be taken of the position and functions of the employee concerned. These agreements must fairly balance the interests of both parties. Among other issues, depending on particular circumstances these agreements must properly cover compensation (including the amount of remuneration and payment terms), definite term, and other issues.

3. Posting employees

3.1. Choice of applicable law

By law an employee customarily working in Lithuania but temporarily posted in other Member State is considered as a posted employee, as is an employee working in other Member State but temporarily posted to Lithuania.

The parties may choose to apply foreign law to their employment contract. However, the mandatory rules of Lithuanian labour law will apply regardless of choice of foreign law by the parties. If the foreign law sets less favourable conditions for the employee compared to Lithuanian law, the relevant Lithuanian rules will apply – and vice versa, if the foreign law sets more favourable conditions, then the foreign law will apply.

Despite the choice of foreign law by the parties, the rules of the state in which the posted employee temporarily works will apply concerning:

1) maximum work and minimum rest periods;
2) minimum length of annual leave;
3) minimum pay including overtime pay. For this purpose the daily allowance is part of the minimum pay;
4) conditions of temporary employment;
5) health, safety and hygiene at work;
6) protection measures for those under 18, for pregnant women and women after childbirth;
7) prohibition of discrimination at work.

3.2. Notifying the authorities

If the posting does not exceed 30 days, no notification to the authorities is required except if the posting relates to construction work. In the latter case and in case of long-term posting, notification must be filed with the Lithuanian State Labour Inspectorate in advance.

4. Working time

The working time system of a particular employee must be stated in the employment contract.

4.1. Normal working time

Normal working time is eight hours daily, 40 hours weekly, five days weekly. Exceptions may be established by law and collective agreements. In any case the maximum working time including overtime may not exceed 48 hours in any seven days.

The length of working day of an employee doing several jobs or under several contracts with the same employer may not exceed 12 hours.

Allocation of work and rest time for daily, weekly or other accounting periods as well as the beginning and end of working time has to be set in working regulations. Specific allocation has to be set in schedules approved and announced two weeks in advance after being coordinated with the employees' representatives.

The beginning and end of the working day and the time for lunch break (at least half an hour to start not later than four hours from the beginning of the working day) must be set in the contract, working regulations or shift schedules (in the case of shift work, to be presented to the employee at least a month in advance).

4.2. Aggregated working time

An alternative to normal working time could be aggregated working time.

Aggregated working time is set for a particular reference period. This cannot exceed four months. Aggregated working time in any case cannot exceed 12 consecutive hours and 48 hours weekly.

4.3. Length of working week

In general, a working week is five days. Due to the nature of the work a six day working week may also be set.

As a rule, the common rest day is Sunday and in the case of a five day working week – Saturday and Sunday. Rest days are set according to schedules where due to technical production conditions or uninterrupted service it is not possible to provide rest days on Saturday and Sunday. This also applies in cases of aggregated working time. The unbroken length of weekly rest time must not be less than 35 hours.

Work on rest days is prohibited apart from exceptions such as continuous service companies.

4.4. Overtime

Any hours worked beyond normal working time constitutes overtime. Overtime must be paid at the rate of 1.5 times normal pay. Overtime pay cannot be replaced by time off (compensatory time).

As a rule, overtime is allowed only in exceptional cases set by law or if the written consent or application of the employee is given. Employees in some categories must consent in advance to overtime. These include young workers (under 18), pregnant women and women after childbirth, employees raising a child under 3, employees alone raising a child under 14.

Exceptional cases cover the following:

1) work is necessary for national defence or to prevent accidents or dangers;
2) work is needed for the public at large, or when tackling incidental and unexpected consequences as a result of accidents or natural disasters;
3) when it is necessary to finish work which could not have been finished during working time because of an unforeseen or accidental obstacle, or if production materials may get spoiled or working equipment

may break down as a result of an interruption in work;
4) work is related to repairs and renovation of mechanisms or equipment, if many workers would have to interrupt their work due to breakdown of these mechanisms and equipment;
5) if the working process may be impeded when another shift worker fails to arrive at the workstation; in these cases the administration must immediately replace the shift worker by another employee but not later than in the middle of the shift;
6) loading and unloading operations and related transportation work, when it is necessary to vacate warehouses of transport enterprises, as well as to load and unload means of transportation in order to avoid accumulation of freight in dispatch and destination points and idle vehicle time;
7) cases set in a collective agreement.

Work beyond normal working hours by administrative personnel is not considered as overtime. These administrative positions must be listed in working regulations or collective agreements.

Overtime may not exceed 4 hours daily (shift) (from 1 January 2011 – 4 hours over two consecutive days) and 120 hours a year, unless a collective agreement states otherwise. In any case overtime cannot exceed 180 hours in any one year.

4.5. Annual leave

As a rule, minimum annual leave in Lithuania is 28 calendar days. Some categories of employee may be entitled to annual minimum leave of 35 calendar days. Public holidays are not counted in. In addition, some categories of employees may be entitled to extra annual leave days, which are added to annual minimum leave and may be arranged together or separately.

Annual leave is arranged for the same year. The parties agree on the time for annual leave unless a collective agreement sets a queue or rules for forming a queue.

Although annual leave may be taken in parts, at least one part must be 14 consecutive days minimum.

Unused vacation cannot be compensated in money except on termination.

An employee may request leave for the first working year after having worked at least six months. The parties may agree on earlier assignment of vacation.

Only with the employee‘s written consent or request may part of unused vacation be transferred to the next working year.

On termination of employment, the employee is compensated for all unused vacation.

5. Salary payment

The parties may agree on either a time or a piecework salary system. A time salary is calculated in conformity with the actual time worked irrespective of the amount of work done. A piecework salary is calculated based on the amount of work done irrespective of the time of performance. However, lately the latter is quite rarely applied. Conditions and rates of remuneration for work, tariffs and qualification requirements are set in local regulations or collective agreements (starting from 1 January 2011 – in collective agreements only).

Monthly gross wage for normal working time cannot be below the legal minimum (800 Lithuanian Litas, ca 230 Euros). Hourly gross wage must be at least 4.85 Lithuanian lits (ca 1.40 Euros).

Overtime and night work is paid at the rate of at least 1.5 times an employee’s pay. Work on a public holiday is paid at the rate of at least 2 times an employee‘s pay. Where work done on a public holiday was not scheduled, different conditions apply.

Special rules cover pay for idle, incomplete working

time, increased scope of work, shorter working hours, manufacturing defective products or when output quotas are not met.

Salary must be paid in cash at least twice monthly unless the employee in writing requests payment once a month. Particular payment dates, place and procedure must be specified in the collective agreement or employment contract. Salary for the period before leave must be settled before the leave. Pay for annual leave must be paid at least three calendar days before the leave.

On termination, full settlement with the employee must be made not later than on the day of dismissal (if a contract of employment is terminated with an employee who does not work on the day of dismissal then within one day after the dismissed employee requests payment).

Each time salary is paid, the employer must give the employee a pay slip with the following information:
1) calculated gross salary;
2) salary paid;
3) taxes withheld;
4) time worked (specifying the duration of overtime work).

6. Violations and penalties

The law differentiates between simple breach of labour discipline (non-performance or improper performance of duties) and gross breach of duties (breach of discipline involving gross violation of laws and regulations which directly regulate the employee‘s work or any other gross transgression of duties or working regulations). The law also lists example cases constituting gross breach.

Disciplinary measures are strictly regulated. Non-compliance typically involves annulment of measures imposed. Firstly, the employer must request the employee in writing to provide a written explanation. When requesting an explanation, the employer must clearly state the breach, its time, place, main indications of employee

fault and other important circumstances, as well as the period set for giving an explanation. After an explanation is received, the employer has to decide on the type of disciplinary measure. If an explanation is not received within the period set without a substantial reason, the measure may be imposed without explanation. In certain cases disciplinary measures require prior consent of a body (for example, trade union). Disciplinary measures are applied by written order of the employer or administration and the employee is informed in writing.

By law, there are three types of disciplinary measure:
1) caution;
2) reprimand; or
3) dismissal.

Caution or reprimand may be imposed for any breach at the employer's discretion – this is not regulated by law, i.e. the employer need not impose them in the order mentioned, and indeed need not impose any sanction at all. Dismissal applies only as laid down by law, as follows:
1) the employee performs duties negligently or commits other violations of labour discipline and disciplinary sanctions were imposed at least once during the last 12 months;
2) the employee commits one gross breach of duty.

Disciplinary measures must normally be applied immediately but not later than within one month after the breach is disclosed (a longer period may apply in some unusual cases when the employee was not at work). Where a breach of discipline is disclosed during an audit or taking inventory of cash or other assets, a disciplinary sanction may be imposed not later than within two years after commission of the breach.
If no new measure is imposed for one year after a measure was imposed, the measure automatically expires and if the employee works diligently the disciplinary measure may be lifted before expiry.

7. Terminating employment

7.1. Dismissal by the Employer

The basis and procedure differ depending on whether the employee is at fault.

Pregnant women cannot be dismissed. Employees raising a child (children) under 3 cannot be dismissed unless due to employee fault.

7.1.1. Terminating employment without fault by the employee

An employment contract may be terminated for serious reasons only, e.g.

1) circumstances related to employee qualifications, professional skills or conduct;
2) economic or technological grounds, restructuring of the workplace and similar reasons;

Additionally, no possibility exists to transfer the employee with consent to another job.

The law does not establish an exhaustive list of reasons amounting to serious reasons, but these typically include e.g. insufficient professional qualifications or qualities, behaviour at work, health conditions, which prevent proper performance of working duties, and similar reasons.

The employee must be given 2 months advance written notice. For certain categories of employee, 4 months advance notice must be given: for example, persons under 18, disabled persons, employees raising children under 14 years.

During the notice period the employer must also allow the employee some time off from work to look for a new job.

Notice terminating an employment contract must specify:

1) reasons for dismissal and motivation for terminating the contract;

2) date of dismissal from work;
3) procedure for settling accounts.

Notice is extended to cover the period of an employee's sickness or leave. If an employee is dismissed from work before expiry of notice, the date of dismissal is carried over to the date when the term of notice should have expired.

On termination, a dismissed employee is paid severance pay. This depends on continuous length of service at that workplace and the average monthly salary:
1) under 12 months – one monthly average salary;
2) 12 to 36 months – two monthly average salaries;
3) 36 to 60 months – three monthly average salaries;
4) 60 to 120 months – four monthly average salaries;
5) 120 to 240 months – five monthly average salaries;
6) over 240 months – six monthly average monthly salaries.

An employer must make full settlement with a dismissed employee on the day of dismissal, unless the law or agreement between the employer and the employee sets a different procedure. If settlement is delayed without fault of the employee, the employee must be additionally compensated with their average wage for the period of delay.

Note: some categories of employee have a priority right to retain their jobs in cases of layoff for economic or technological reasons or structural changes.

7.1.2. Terminating employment in cases of employee fault

Employment must be terminated when:
1) a court decision which prevents an employee from continuing work becomes effective;
2) an employee is deprived of special rights to perform certain work;
3) bodies or officials authorised by law so instruct;
4) an employee is medically certified as unable to (unfit for) work;
5) an employee is under 14 to 16 years of age and

parents, statutory representative, paediatrician, or school require the employment to be terminated;

6) the employer (a company) goes into liquidation.

Termination on this basis also occurs as a result of employer's disciplinary measures.

No advance notice is required.

7.2. Termination by the employee

The employee may terminate employment before its expiry by written notice. As a rule, 14 working days advance notice applies, unless a collective agreement provides a shorter term. In any case the parties may agree to shorten the notification term.

A shortened notice of 3 working days applies in cases of employee illness or disability restricting proper performance of work, or other valid reasons set out in a collective agreement, or where the employer fails to fulfil its obligations under the employment contract, violates laws or the collective agreement.

An employee may unilaterally withdraw notice for the first three days after giving it but after that only with the employer's consent.

7.3. Mutual termination

Employment may also be terminated by mutual written agreement between the parties based on an offer by one party, which is accepted within 7 days, failing which the offer is taken to be rejected.

Having agreed to terminate the contract, the parties conclude a written agreement which indicates the date of termination, as well as other conditions, such as compensation for unused leave.

The right to terminate employment by mutual agreement is not limited by law.

7.4. Collective redundancy procedure

Conditions precedent for collective redundancy are both of the following:

1) redundancy is substantiated on the basis of economic, technological reasons, structural reorganisation at the workplace, or other reasons not related to individual employees;
2) the number of projected redundancies over a period of 30 calendar days is: 10 employees in enterprises having in total 20-99 employees; or 10% of employees in enterprises having in total 100-299 employees; or 30 employees having in total more than 300 employees.

Consultations must be held with employees' representatives and the local Labour Exchange Office must be informed in writing of any projected redundancies not later than prior to notifying termination.

An employment contract may not be terminated in breach of the obligation to notify the local Labour Exchange Office or the obligation to hold consultations with employees' representatives.

In the event of reduction due to economic, technological or structural reorganisation, the following categories of employee have a right of priority to retain their job (if their qualification is not less than others of the same specialty in that company), that is, employees:

1) who sustained an injury or contracted an occupational disease at that workplace;
2) who are alone raising children under sixteen years of age, or care for other family members;
3) whose continuous length of service at that workplace is at least ten years, except employees who have become entitled to or are receiving full old age pension;
4) who will be entitled to old-age pension in not more than three years;
5) to whom such a right is granted in the collective agreement;

6) who are elected to employee representative bodies.

Chapter III.
Estonian Labour Law

1. Types of contract

Depending on the characteristics of work (e.g. permanent, temporary, seasonal), a company may choose among an employment contract and other types of contract. These others are mainly contracts for the supply of services, including authorisation agreement, contract for services, agency agreement, and commission contract. The difference between an employment contract and a contract for the supply of services is that in terms of terminating a contract, employment contracts may be terminated only as laid down by law, while a contract for the supply of services can be terminated as agreed between the parties.
Even then, however, quasi-employment risks may remain. For example, if work must be done at the employer's workplace, at certain times, under the employer's guidance and control and the worker is entitled to a salary and vacation, then even if the contract is called a contract for services, the relationship is deemed to be employer-employee. This may also involve the employer in retrospective tax obligations.

A contract for supply of services will not enable the employee to claim employee payments and compensation (such as overtime, unemployment insurance benefit) under the same conditions as under employment contracts.

2. Engagement

2.1. Mandatory content of an employment contract

A written employment contract must contain at least the following data:
1) name, personal identification code or registry code, place of residence or seat of the employer and the

employee;
2) date of the employment contract and commencement of work by the employee;
3) description of duties;
4) official title if this brings about legal consequences;
5) agreed pay (wages), including pay based on economic performance and transactions, the manner of calculation, the procedure for payment and time falling due (pay day), as well as taxes and payments payable (and withheld) by the employer;
6) other benefits if agreed;
7) working time;
8) place of work;
9) duration of holidays;
10) termination provisions;
11) rules of working organisation where approved;
12) reference to a collective agreement where applicable.

Additionally, the following must be notified to the employee in writing:
1) probationary period;
2) if the contract is for a fixed term;
3) any restraint on competition or confidentiality obligation (business secrets), which the employer must specify;
4) teleworking (employee's duties performed outside employer's premises);
5) employee duties are performed by way of temporary agency work with a user undertaking (client of the employer).

2.2. Term of validity of a contract

In general, employment contracts are presumed to be for an unspecified period. A fixed-term employment contract may be signed for up to five years if justified by good reasons arising from the temporary fixed-term characteristics of the work, especially a temporary increase in work volume or seasonal work. Additionally, a fixed-term employment contract may be made for the period of replacement of an employee who is temporarily absent.

If an employee and an employer have on more than two consecutive occasions entered into a fixed-term employment contract for similar work or extended a fixed-term contract more than once in five years, the employment relationship will be deemed to have been entered into for an unspecified term from the start.

2.3. Probation

Probation may not exceed four months. The parties may agree a shorter period or even no probation period at all. The parties may cancel a fixed-term employment contract made for up to eight months during a probationary period that is not longer than half of the contract term. During probation either party may terminate by giving no less than 15 calendar days' advance notice. The employer may not cancel the employment contract for a reason that conflicts with the goal of the probationary period. The employee is also entitled on termination to remuneration accrued due during probation, including compensation for unused leave (proportionally to days worked).

2.4. Setting duties and targets

The employment contract is the primary source for the employee's duties. The employment contract must describe duties, working time, and place of work. The parties may specify these conditions in a job description, which must be executed as an appendix to the contract and signed by the parties.

Employer working organisation rules (e.g. procedures, subordination, reporting, notifying absence) must be notified to the employee upon hiring as well as during employment.

The precepts of the employer may specify the duties and work organisation rules of the employee.

2.5. Non-competition clause

An agreement on restraint of trade (non-competition)

may be entered into if necessary to protect the employer's special economic interest in the confidentiality of which the employer has a legitimate interest, especially if the employment allows the employee to become acquainted with the employer's clients or access the employer's production and business secrets and use of this knowledge may considerably harm the employer. The non-competition clause has to be reasonably and recognisably limited in terms of space, time and objects. The employer does not have to pay remuneration to the employee for implementing the non-competition obligation while the contract is valid.

If the parties agree on a non-competition clause covering a period after termination, then the agreement on non-competition is valid only if it has been made in writing for a maximum up to one year after termination, the employer pays the employee reasonable monthly compensation for performing the non-competition obligation after termination and it is necessary to protect the employer's special economic interests.

The employer may terminate a non-competition agreement at any time by giving the employee no less than 30 calendar days advance notice. The employee may terminate the non-competition agreement by notifying the employer no less than 15 calendar days in advance if the employer's interest in restricting competition is no longer reasonable due to changes in circumstances.

3. Posting employees

A posted employee is a natural person who usually works in a foreign country on the basis of an employment contract, and whom the employer has posted to work in Estonia for a certain period.

3.1. Choice of applicable law

The parties may choose to apply foreign law to their employment contract. However, the mandatory rules established by Estonian labour law will apply regardless of

choice of foreign law by the parties. If the law of a foreign country on employment contracts is more favourable to a posted employee than Estonian law, then the law more favourable to the worker will apply.

The following working conditions established in Estonia are applicable to posted workers:
1) standard working time;
2) rest periods;
3) free time for ante-natal examination;
4) pay rates and conditions for extra pay for overtime work;
5) duration of annual holiday;
6) equal treatment and equal opportunities.

3.2. Notifying the authorities

If an employee has been posted to work in Estonia, the Estonian Tax and Customs Board must be notified for taxation purposes.

4. Working time

The working time of the employee must appear in the employment contract.

4.1. Normal working time

Normal working time is eight hours daily, 40 hours weekly (full-time work). However, working time cannot exceed on average 48 hours in any seven days over any period of four months. Exceptions may be set by law.

Allocation of work and rest time for the day, week or other accounting period as well as the beginning and end of the working day must be set in the employment contract or job description.

Breaks during the working day are not considered working time unless due to the characteristics of the work it is impossible to give a break and the employer gives the employee the opportunity to take a break and lunch

during working time. A break of not less than 30 minutes during a working day must be foreseen after at least 6 hours work.

4.2. Aggregated working time

An alternative to normal working time is aggregated working time.

In calculating aggregated working time a period of 7 days applies.

An employee must have not less than 36 hours consecutive rest over a period of seven days.

4.3. Length of working week

In general, a working week is five days. An agreement that the consecutive rest period for an employee over a period of seven days is less than 48 hours is void unless otherwise provided by law (e.g. aggregated working time). It is presumed that weekly rest time is on Saturdays and Sundays. The employer must allow an employee a consecutive rest period of no less than 11 hours over a period of 24 hours.

Working days must be shortened by three hours on the working day preceding New Year's Day, the anniversary of the Republic of Estonia, Victory Day, and Christmas Eve.

4.4. Overtime

Hours worked beyond normal working time constitute overtime. In the case of aggregated working time, overtime means work exceeding the agreed working time at the end of the calculation period. The employer must compensate overtime by time off equal to overtime unless the parties have agreed that overtime is compensated in money. Overtime must be paid at 1.5 times the usual pay rate.
In line with the principle of good faith the employer may require an employee to do overtime work due to unfore-

seen circumstances in the enterprise or activity of the employer, in particular to prevent damage.

An overtime agreement is void with an employee, who is:
1) a minor;
2) a pregnant woman;
3) entitled to pregnancy and maternity leave;
4) previously in contact with hazards in the working environment and whose working time has therefore been shortened.

4.5. Annual leave

Annual paid leave in Estonia is 28 calendar days. Some categories of employee may be entitled to annual minimum leave of 35 calendar days.

Annual holidays are on the basis of time worked. Public holidays are not counted. In addition to time worked, time serving as the basis for calculating annual holidays includes time off for temporary incapacity, holidays (except parental leave and holidays without pay granted by agreement between the parties), time when employees are legally entitled to refuse to work and other time agreed on between the parties.
An employee may request leave for the first working year after having worked at least six months. The parties may agree on earlier assignment of leave.

Annual holidays must be used in the same calendar year and may be divided into parts only by agreement between the parties. An employee must take one holiday every calendar year which lasts at last 14 consecutive calendar days. Employers may refuse to divide annual holidays into parts shorter than seven days. Unused parts of holidays are transferred to the next calendar year. However a claim for annual leave expires within one year of the end of the calendar year for which holidays are calculated.

The employer sets the time for annual holidays, taking into account employee requests which can be reasonably combined with the interests of the employer's

enterprise.

The employer must draw up a holiday schedule for each calendar year and notify employees within the first quarter of the calendar year. Annual holidays and unused holidays must be shown in the holiday schedule. A holiday schedule may be changed by agreement between the parties.
The following may claim annual holiday at a suitable time:
1) women immediately before and after pregnancy and maternity leave or immediately after parental leave;
2) men immediately after parental leave or during the pregnancy and maternity leave of the wife;
3) parents raising a child of up to seven years of age;
4) parents raising a child of seven to ten years of age, during the child's school holidays;
5) minors who have to attend school, during school holidays.

Unused leave may be compensated in money only on termination of employment and only if unused vacation days have not expired.

5. Salary payment

The parties may agree either on a time or piecework salary system. A time salary is calculated in conformity with actual time worked irrespective of the amount of work done.
A piecework salary is calculated on the basis of the amount of work done irrespective of the time of performance.

The monthly gross wage for normal working time must be not less than the legal minimum (4 350 EEK, 278 EUR) and the hourly gross wage must be at least 27 EEK (1,73 EUR).

Overtime is paid at the rate of at least 1.5 times, night work (between 10 pm – 6 am) is paid 1.25 times and work on public holidays is paid at the rate of at least 2

times salary. The employer and employee may agree to compensate work done at night or on public holidays by extra time off.

The law sets special rules for remuneration where the employer fails to provide work, for refusal to work or for fulfilling other tasks and upon impediments to work. The parties may also agree on extra pay for economic performance of the company or on transactions.

Pay must be in cash at least once a month, unless a shorter term is agreed. Taxes and contributions deductible by law must be withheld from the employee's pay by the employer.

If a pay day falls on a public holiday or a day off (Saturday, Sunday), then the pay day is taken to be the next working day. Particular payment dates, place and procedure must be specified in the employment contract.

Pay for annual vacation must be paid not later than the working day before starting the holiday. On termination, the employer must fully settle with the employee not later than the day of dismissal.

6. Violations and penalties

If the employee breaches a duty arising from an employment contract, the employer may use legal remedies only if the employee is guilty of the breach.

An employee who intentionally breaches an employment contract is liable for resulting damage caused to the employer.

An employee who breaches an employment contract due to negligence is liable for damage caused to the employer to the extent which is determined taking into account:
1) the employee's duties;
2) level of guilt;
3) instructions given to the employee;

4) working conditions;
5) risk arising from the nature of the work;
6) length of employment with this employer;
7) previous behaviour;
8) the employee's pay and reasonable possibilities for the employer to reduce or insure against damage.

If an employee without good reason does not commence work or leaves work without advance notification, the employer may claim compensation upon terminating the employment contract on that ground. The amount of damage that the employer can claim from the employee for the breach is presumed to correspond to the average monthly pay of the employee.

The limitation period against an employee for damage caused during performance of duties is 12 months from the time when the employer finds out or should have found out the damage caused and the person obliged to compensate it, but not later than three years after the damage was caused.

Disciplinary measures are strictly regulated. The employer may require an employee in writing to give a written explanation. If the offence is proved by other evidence, a disciplinary punishment may be imposed without requiring an explanation. After an explanation is received, the employer has to decide on the type of disciplinary measure. The disciplinary punishment must be proportionate to the gravity of the offence, the circumstances of its commission and the prior conduct of the employee.

The law lays down three types of disciplinary measure:
1) money penalty;
2) suspension without pay;
3) termination.

The employer must prepare a statement to formalise a disciplinary punishment:
1) the name of the employee;
2) the date of commission of the offence;
3) a description of the offence and other circumstances taken into account;

4) the punishment imposed and, in the case of a fine the amount plus the sum deducted from each payment of wages expressed as a percentage of the total;
5) the date when the document is prepared;
6) the name and signature of the person imposing the punishment.

7. Terminating employment

7.1. Dismissal by the employer

The employer can unilaterally terminate an employment contract only for good reason depending on the employee as a result of which, upon respecting mutual interests, continuing the employment relationship cannot be expected, especially if the employee has:

1) for a long time been unable to work for health reasons which do not allow continuance of the employment relationship (decrease in capacity for work for health reasons). A decrease in capacity for work for health reasons is presumed if the employee‘s health prevents work for over four months;
2) for a long time been unable to perform their duties due to insufficient skills, unsuitability for the job or inadaptability, which prevents continuance of the employment relationship (decrease of capacity for work);
3) in spite of a warning, disregarded the employer’s reasonable instructions or breached their duties;
4) in spite of the employer’s warning appeared at work in a state of intoxication;
5) committed a theft, fraud or an act resulting in loss of the employer’s trust in the employee;
6) brought about a third party’s distrust in the employer;
7) wrongfully and significantly damaged the employer’s property or caused the threat of such damage;
8) violated an obligation to maintain confidentiality or in restraint of trade;

or

9) if continuing employment on the agreed conditions

becomes impossible due to a decrease in work volume, reorganisation of work or other cessation of work (lay-off).

In all the above extraordinary dismissals, written termination notice must be delivered to the employee. The employer must present advance notice of extraordinary cancellation if the employee's employment relationship with the employer has lasted:

1) less than one year of employment – no less than 15 calendar days;
2) one to five years of employment – no less than 30 calendar days;
3) five to ten years of employment – no less than 60 calendar days;
4) ten or more years of employment – no less than 90 calendar days.

7.2. Termination by the employee

As a rule, an employee may terminate employment entered into for an unspecified period at any time. However a fixed-term contract may not ordinarily be terminated by the employee except where made for replacement of an absent employee.
The employee must notify the employer of ordinary termination at last 30 calendar days in advance.
In case of extraordinary termination, the employee need not notify the employer of extraordinary cancellation if, considering all circumstances and mutual interests, it cannot be reasonably required that performance of the contract be continued until expiry of the agreed term or term of advance notice.

7.3. Mutual termination

A contract may also be terminated based on mutual written agreement between the parties. In that case the procedure for termination and compensation, if any, may be freely agreed by the parties.

7.4. Redundancy procedure

The conditions for redundancy and collective redundancy are as follows:

1) redundancy is adequately substantiated based on decrease in work volume, reorganisation of work, or other cessation of work;
2) no free positions are available in the company to offer to the employee.
3) in case of collective redundancies - the number of projected redundancies over a period of 30 calendar days is: 5 employees in an enterprise where the average number of employees is up to 19, 10 employees in an enterprise where the average number of employees is 20-99, 10 percent of the employees in an enterprise where the average number of employees is 100-299, 30 employees in an enterprise where the average number of employees is at least 300.

The employer must take into account the principle of equal treatment. The employees' representative and employees raising children under three years of age have the preferential right to keep their job.

Consultations must be held well in advance with the employees' representative or, in their absence, employees with the goal of reaching agreement on preventing planned cancellations or reducing the number of cancellations and mitigating the consequences of cancellations, including helping employees to be laid off to seek jobs or with retraining. After consultations the employer must file information about consultations with the Labour Market Board of the place of business.

On terminating an employment contract for redundancy, an employer must pay the employee compensation of one month's average pay.

On cancellation of an employment contract for redundancy, an employee has the right to insurance benefit as set in the Unemployment Insurance Act.

No guarantee is given for the completeness of the data in this publication. The information quoted does not represent a legal consultation.

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