



Labour & Employment

in 43 jurisdictions worldwide

Contributing editors: Mark Dichter, Kenneth Turnbull,
Christopher Hitchins and Mark E Zelek

2011



Published by
Getting the Deal Through
in association with:

- Advokatfirman Cederquist
- Andreas Neocleous & Co LLC
- Bae, Kim & Lee LLC
- Basham, Ringe y Correa, SC
- Biedecki
- Blesi & Papa
- Bloomfield Advocates & Solicitors
- Brandi Advogados
- Bustamante & Bustamante Law Firm
- Castegnaro Cabinet d'Avocats
- Díaz Durán & Asociados – Central Law
- Dittmar & Indrenius
- DMK Abogados – Central Law
- Engelbrecht und Partner
- ENS (Edward Nathan Sonnenbergs)
- F Castelo Branco & Associados
- Geoffrey Dunne & Co Solicitors
- Gómez-Pinzón Zuleta
- Grette law firm DA
- Heenan Blaikie LLP
- Hoet Peláez Castillo & Duque
- Iason Skouzos & Partners
- Kochhar & Co
- Lee, Tsai & Partners Attorneys-at-Law
- Lydian
- Medina, Rosenthal & Fernández – Central Law
- Molina & Asociados – Central Law
- Morgan, Lewis & Bockius LLP
- Norrbom Vinding
- Philippi, Yrarrázaval, Pulido & Brunner Ltda
- Quirós Abogados – Central Law
- Randl Partners
- Rusconi, Medina & Asociados – Central Law
- Sagardoy Abogados
- SmitsDeLange
- Țuca Zbârcea & Asociații
- TMI Associates
- Toffoletto e Soci
- Vivien Chan & Co

Labour & Employment 2011

Contributing editors:

Mark Dichter, Kenneth Turnbull,
Christopher Hitchins and
Mark E Zelek
Morgan, Lewis & Bockius LLP

Business development managers

Alan Lee
George Ingledew
Robyn Hetherington
Dan White

Marketing managers

Ellie Notley
Sarah Walsh
Alice Hazard

Marketing assistants

William Bentley
Sarah Savage

Subscriptions manager

Nadine Radcliffe
Subscriptions@
gettingthedealthrough.com

Assistant editor

Adam Myers

Editorial assistant

Lydia Gerges

Senior production editor

Jonathan Cowie

Chief subeditor

Jonathan Allen

Subeditor

Davet Hyland

Production editors

Anne Borthwick
Martin Forrest

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

Labour & Employment 2011

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
© Law Business Research Ltd
2011

No photocopying: copyright
licences do not apply.

ISSN 1744-0939

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of July 2011, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Law

Business

Research

Global Overview Mark S Dichter, Kenneth Turnbull, and Ellyn Pearlstein Morgan, Lewis & Bockius LLP	3
Social Media and Employment Christopher Hitchins, Angela Gill and Denise Backhouse Morgan, Lewis & Bockius LLP	8
Austria Stefan Kühteubl and Nathalie Buchner Engelbrecht und Partner	11
Belgium Jan Hofkens, Alexander Vandenbergen, Stijn Demeestere and Isabel Plets Lydian	17
Brazil Denise Bastos Guedes and Paulo Lima de Campos Castro Brandi Advogados	24
Canada Douglas G Gilbert, Roy L Heenan and Rhonda R Shirreff Heenan Blaikie LLP	29
Chile Enrique Munita Philippi, Yrarrázaval, Pulido & Brunner Ltda – member of Ius Laboris	38
China Vivien Chan Vivien Chan & Co	44
Colombia Paula Samper-Salazar, Patricia Vergara-Gómez and Ana Lucía Fernández De Soto Gómez-Pinzón Zuleta	50
Costa Rica Graciela Fuentes Brealey Quirós Abogados – Central Law	56
Cyprus Nicholas Ktenas Andreas Neocleous & Co LLC	62
Czech Republic Nataša Randlová Randl Partners – member of Ius Laboris	67
Denmark Morten Langer Norrbom Vinding – member of Ius Laboris	74
Dominican Republic Jesús R Almanzar Rojas DMK Abogados – Central Law	80
Ecuador Patricia Ponce Bustamante & Bustamante Law Firm	85
El Salvador Piero Antonio Rusconi Gutierrez and Erwin Alexander Haas Rusconi, Medina & Asociados – Central Law	91
Finland Seppo Havia Dittmar & Indrenius	95
France François Vergne and Antoine Jouhet Morgan, Lewis & Bockius LLP	101
Germany Walter Ahrens Morgan, Lewis & Bockius LLP	108
Greece Theodoros Skouzos Iason Skouzos & Partners	115
Guatemala Juan Pablo Carrasco de Groote and Carla Beatriz Ramírez Cabrera Díaz Durán & Asociados – Central Law	124
Honduras Jesús Humberto Medina Alva and Claribel Medina Medina, Rosenthal & Fernández – Central Law	129
Hong Kong Vivien Chan Vivien Chan & Co	134
India Manishi Pathak and S Valarmathi Kochhar & Co – member of Ius Laboris	140
Ireland Geoffrey Dunne Geoffrey Dunne & Co Solicitors	146
Italy Paola Tradati Toffoletto e Soci – member of Ius Laboris	155
Japan Motoi Fujii and Rie Taiko TMI Associates	162
Korea Jeong Han Lee Bae, Kim & Lee LLC	172
Luxembourg Guy Castegnaro Castegnaro Cabinet d'Avocats – member of Ius Laboris	179
Mexico Oscar de la Vega and Monica Schiaffino Basham, Ringe y Correa, SC – member of Ius Laboris	187
Netherlands TMJ (Dorothe) Smits SmitsDeLange	192
Nicaragua Maricarmen Espinosa Molina & Asociados – Central Law	199
Nigeria Dayo Adu Bloomfield Advocates & Solicitors	204
Norway Johan Hveding, Jens Kristian Johansen and Sigurd K Berg Grette law firm DA	208
Poland Radosław Bieddecki and Katarzyna Zwierz-Wilkocka Bieddecki	214
Portugal Alexandra Almeida Mota F Castelo Branco & Associados	220
Romania Șerban Pâslaru <i>Juca Zbârcea & Asociații</i>	226
South Africa Alex Ferreira ENS (Edward Nathan Sonnenbergs)	232
Spain Iñigo Sagardoy and Carlota Riquelme Sagardoy Abogados – member of Ius Laboris	240
Sweden Robert Stromberg and Linda Karlsson Advokatfirman Cederquist	245
Switzerland Roberta Papa and Thomas Pietruszak Blesi & Papa	252
Taiwan Chung-Teh Lee Lee, Tsai & Partners Attorneys-at-Law	259
United Kingdom Mark Dichter, Christopher Hitchins and Matthew Howse Morgan, Lewis & Bockius LLP	268
United States Kenneth Turnbull and Melissa Rodriguez Morgan, Lewis & Bockius LLP	275
Venezuela Fernando Peláez and John Tucker Hoet Peláez Castillo & Duque	283

Global Overview

Mark S Dichter, Kenneth Turnbull, and Ellyn Pearlstein

Morgan, Lewis & Bockius LLP

In this sixth annual publication of Labour & Employment, we have maintained the same general question-and-answer format to address many common issues that arise in the employment setting. The questions have been organised into the following categories:

- legislation and agencies;
- worker representation;
- background information on applicants;
- hiring of employees;
- foreign workers;
- terms of employment;
- liability for acts of employees;
- taxation of employees;
- employee-created IP;
- business transfers;
- termination of employment; and
- dispute resolution.

As with past years, this year welcomes new chapters for 2011, which include reviews of the labour and employment laws in Austria, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Norway. Although 2011 continues to see the effect of the global economic crisis, the various chapters deal less with the crisis than in years past, in the hope of moving on despite continued economic uncertainties.

Significant changes in labour and employment laws

As noted above and through a review of the chapters in this year's edition, there have been numerous changes in labour and employment laws around the world. Here, we highlight significant distinctions and changes that have occurred in various jurisdictions.

World financial crisis

The world financial crisis again permeated labour markets worldwide, resulting in vast changes to the global corporate landscape including business closures, large-scale reductions in force and soaring unemployment rates. To meet the growing changes and concerns, both globally and domestically, many countries sought to revise their labour codes and have introduced new laws or methods of dealing with these changes, or both. Governments are taking a more proactive role in reorganisations and outplacement to protect the workforce and working with employers and employees to preserve businesses and jobs. For example, in Portugal, a new Social Security Contributions Code came into force in 2011. In Greece, due to its debt crisis, Greek labour law has been an area of rapid change. The Greek government adopted two emergency measures – Law No. 3833/2010 ‘Protection of National economy-emergency measures facing fiscal crisis’ and Law No. 3845/2010 ‘Measures for the support mechanism of the Greek economy by the member states of the euro zone and the International Monetary Fund’ – which, among other things, reduce wages and benefits of covered employees by 10 to 20 per cent. Likewise, the Greek government has moved

towards more flexible labour rules and less protective labour law, with the passing of Law No. 3988/2010, which allows employers to set remuneration and working terms less favourable than those set by collective employment agreements. In Ireland, wage cuts have become commonplace in the private sector and, in the public sector, wage cuts have been introduced by the government in recent budgets. There, a recent deal provides various reforms, including a more flexible approach to assignment of staff in the public sector, in exchange for a commitment from the government that there would be no further public sector pay cuts for a certain period. In the Netherlands, the government has expressed the intention to increase the pensionable age to 66 to increase the employable population and to reduce public spending. Without easy answers, governments are making changes to the laws, legal systems and infrastructure that will shape the employment landscape for years to come.

Anti-discrimination laws

There have been new anti-discrimination legal developments in several countries with legislation pending in several others. In the United Kingdom, the Equality Act 2010, the majority of which came into force in October 2010, unifies the existing strands of anti-discrimination laws into one piece of legislation. Among other things, the Equality Act 2010 prohibits and renders unenforceable terms of employment or appointment that prevent or restrict individuals from disclosing their pay to their colleagues, to the extent that such terms would prevent or restrict such a discussion. Similarly, the Act encourages private sector employers with 250 or more employees in the United Kingdom to publish information voluntarily on an annual basis about the difference in pay between male and female employees. The Act also abolishes the mandatory retirement age and requires all age-related compulsory retirement to be justified under the Equality Act 2010 and the Employment Rights Act.

In Costa Rica, the government introduced Title XI, an amendment to the Costa Rican Labour Code, which ensures that all hiring decisions be made without judging the applicant's race, colour, religion, national origin, age and gender. The amendment allows the employer to establish job requirements and work standards, but prohibits the employer from using criteria that may discriminate against any protected group. Similarly, in December 2010, the Department of Labour in South Africa published four employment bills for consideration, of which one prohibits the discrimination of employees by providing different terms and conditions of employment to employees of the same employer who perform the same or substantially the same work. Lastly, in several jurisdictions including Belgium, Luxembourg and Switzerland, workplace violence, mobbing and bullying in the workplace continue to be a focus of legislation.

Union representation

Recently, many countries have seen increased growth of work councils and unions. In China, unions and other workers' committees can be set up voluntarily by employees. By the end of 2011, the

All-China Federation of Trade Unions hopes to have more than 80 per cent of enterprises establish trade unions. In Germany, courts have allowed more than one union to exist within a single workplace and have required the company to adhere to both agreements, much to the dismay of the German Employer's Association and Confederation of German Trade Unions. In addition, beginning in July 2011, Korea will allow more than one trade union to exist in a workplace. Trade union members will, however, still be required to bargain collectively through a single representative body. Thus, for collective bargaining purposes, the trade union members must choose, within a defined period of time, one of the trade unions as their bargaining representative. The rules also addresses various scenarios in the event the trade union members fail to elect one union as their bargaining representative. For example, if the membership fails to elect a specific trade union, a default mechanism provides that the union that represents the majority of the employees of the workforce will become the bargaining representative.

In contrast, Canada recently saw a narrowing of its protection of collective bargaining. In a recent case, the Supreme Court of Canada narrowed the protection and confirmed that legislators have considerable latitude in determining what provisions and schemes apply to particular industries and occupations. Specifically, the court found that only legislation that 'makes good faith resolution of workplace issues between employees and their employer effectively impossible' will violate section 2(d) of the Charter of Canadian Rights and Freedoms.

Cross-country comparisons of labour and employment principles

We note that there are common threads in approaches by countries to the various labour and employment principles that are addressed in this publication. There are also noteworthy differences to the approaches. The purpose of this section is to provide cross-country comparisons of labour and employment principles at various stages of the employment relationship.

Hiring of employees

Immigration

All of the countries profiled in this book have some sort of legislation applying to the employment of foreign workers, but virtually none have limits on short-term visas and allow for easy transfer of employees from one related entity to another. Most notable of the rules and regulations regarding the hiring of foreign nationals are those among EU countries. For employees who are nationals from the EU or the EEA countries, employers need not obtain visas. Such employees may freely move among EU nations. For those newly added EU member states, special provisions regarding visas may be applicable. Otherwise, nationals from non-EU member states are required to obtain the necessary visas before being lawfully employed in an EU country. These laws are constantly changing.

Many countries, however, have limitations on the number of foreign individuals who can be employed by a single company and the amount they can be paid. For example, a Brazilian company may not employ more than one-third of its total workforce with foreign individuals. This number is much smaller in Guatemala and Honduras, where a company can only employ foreign workers as 10 per cent of its workforce, and El Salvador, where employers are obligated to hire at least 95 per cent El Salvadorian employees, unless the employer had a previous resolution of the Ministry of Labor. In Costa Rica, a company can employ foreign workers, but the foreign worker must earn 25 per cent more than a Costa Rican who performs the same job, and must be included on the company's payroll.

Many of the countries profiled also regulate spouses of those who are legally permitted to work in those countries. For the most part, the countries either prohibit or greatly restrict the ability of spouses to work. For example, in Japan, spouses are not allowed to work without the permission of the local immigration bureau, and then they are only allowed to work a maximum of 28 hours per

week. To otherwise work in Japan, the spouse must obtain residence status, which would allow him or her to work independently. The spouse of an authorised worker may work in China and Nigeria, as long as they first obtain a work or residence permit, or both. In other countries, such as Spain, there are no spousal work authorisations available and spouses are generally not allowed to work. Finally, with respect to enforcement and sanctions, all the countries profiled provide for some form of punishment for violation of the immigration laws. Usually this is in the form of a monetary sanction. Some countries, such as Japan, also provide for the imprisonment of those who violate the immigration laws. In some EU countries, employers may also be subject to being placed on a blacklist, prevented from obtaining future visas and even required to close their establishments. The monitoring of employment of foreign workers is therefore critical.

Employee privacy

Whether an employer may require a background check, medical examination or drug and alcohol testing as a condition of employment depends on the particular country. The European countries generally have greater restrictions in these areas due to their implementation of Directive 95/46/EC of 24 October 1995, which regulates the processing of personal data. Countries such as Austria, Germany, Italy and Spain have specific data privacy legislation that protects employee privacy. The legislation places limitations on the circumstances under which an employer may require a background check, medical examination or drug and alcohol testing of applicants and the scope of such check, examination or test.

For example, Germany requires that most information be obtained directly from the applicant rather than a third party. Germany also mandates that security checks are permitted only if the position concerned is security sensitive. Similarly, medical examinations and drug and alcohol testing are limited in Austria, Germany, Italy and Spain to those situations where it is necessary to determine an applicant's fitness for duty or for safety concerns involving co-workers or where consent is first obtained. It is interesting to note, however, that medical examinations are mandatory at the time of hiring in certain European countries such as the Czech Republic, France, Luxembourg and Poland.

In contrast, certain countries, such as El Salvador, specifically prohibit employers from requiring any type of medical examination as a condition of employment, although they are silent on the use of drug and alcohol tests.

With respect to other parts of the world, many countries do not have specific legislation regulating employee privacy, but their constitutions may provide a general privacy right to citizens. An employer intending to conduct a background check, medical examination or drug and alcohol testing in these countries must be mindful of an applicant's constitutional right to privacy. For example, in India and South Africa, it is important to consider an applicant's constitutional right to privacy and ensure that the check is necessitated by the inherent requirements of the job position. Similarly, legislation regulating employee privacy is not common in Asia, but there are government guidelines and other laws that require employers to have adequate business-related reasons to gather employee data. Japan, for example, has issued government guidelines that prohibit employers from acquiring certain background information from applicants unless otherwise permitted under a specific law or such information is essential for employers to carry out their business. Similarly, Taiwan is in the process of enacting the Personal Data Protection Act. Although this legislation allows employers and third parties to conduct employee checks, the employer is required to adhere to different obligations regarding the collection of information based upon its sensitivity. An employer who violates this legislation may be subject to civil, criminal and administrative liabilities.

Form of contract of employment

In many countries, certain types of employment contracts must be in writing to be valid. Contracts that are required to be written include fixed-term, part-time and temporary-employment contracts. Denmark, France and Venezuela are examples of countries that have such a requirement. Portugal and Taiwan require written contracts for foreign employees. Additionally, Nicaragua requires written employment contracts except for employees undertaking domestic work, fieldwork or occasional or temporary work that does not exceed 10 days. In contrast, some countries, such as Chile, China, Costa Rica, the Czech Republic, Mexico and Romania require a written contract for all types of employment.

Generally speaking, a number of European countries do not require a written contract for employment that is full time and open-ended in term. However, in accordance with Directive 91/533/EEC of 14 October 1991, these countries require employers to provide employees with certain essential terms in writing. For example, in Austria and Ireland, the following terms must be written:

- commencement date;
- full name and address of employer and name of employee;
- work location;
- job title or nature of work;
- details of pay and pay schedule;
- hours of work and overtime;
- paid leave entitlement;
- pension terms and conditions, if any;
- sick-pay terms and conditions, if any (Ireland only);
- collective agreements affecting terms of employment;
- notice requirement (Ireland only); and
- details in relation to working outside of the country (Ireland only).

In addition, and depending on the European country, certain terms and conditions may be null and void if they are not written. For example, Italy and the Netherlands require an employee's probationary period to be agreed upon in writing.

The employment relationship

Working time

Virtually all the countries profiled in this publication have some form of legislation that limits the number of working hours per day or per week that may be required by the employer. A notable exception is the United States' Fair Labor Standards Act, which does not restrict an adult employee's working hours in a single working day or week if the employee agrees to work those hours. Employers should be mindful, however, of state restrictions that may impact employee schedules, such as restrictions in some jurisdictions on working seven days in a workweek, absent approval from the state (eg, Illinois).

Generally, the maximum workday is eight hours, while the maximum workweek ranges from 35 hours to 48 hours depending on the country. France provides for a 35-hour workweek unless otherwise specified by an applicable bargaining agreement. At the other end of the working spectrum, Cyprus, Denmark, Ireland, Mexico and the United Kingdom have a maximum 48-hour workweek. In many countries, such as Brazil, an employee may not individually opt out of the working time restrictions. The United Kingdom permits an individual to opt out by written agreement and Norway permits an individual to opt out with permission of the Labour Inspectorate.

Vacations and holidays

In contrast to the United States, where there is no law requiring employers to provide employees with paid vacation or paid holidays, the other countries profiled in this publication mandate such benefits for employees. Although some countries provide a set amount of vacation days for each employee, such as Denmark, in most situations the number of vacation days is based on an employee's length of service, while the holidays are set by the government or labour

authorities. For example, in India, employees are entitled to at least 12 days of vacation per year, depending upon the type of job, and additional days for holidays and festivals. Additionally, certain countries permit employees to earn vacation with pay immediately upon commencement of employment on a pro rata basis. Other countries require employees to work a certain period of time before they are entitled to receive paid vacation; for example, Ecuador, Taiwan and Venezuela provide paid vacation upon completion of one full year of employment. Still other countries, such as Norway, provide a set amount of vacation for each employee, but with vacation pay differing from the employee's salary and being dependent upon the salary paid in the prior year.

Leaves of absence

Many of the countries in this publication allow maternity leave. The length of time permitted for such leave varies from country to country. A majority of the countries do not require employers to pay employees during maternity leave. However, employees may be entitled to receive pay (either for the entire duration or a portion of the leave) through the social security system. In the Netherlands, an employee is entitled to receive 16 weeks of paid maternity leave, with the benefit being paid by the UWV WERKbedrijf. In Austria, a mother is required to take eight paid weeks before and after the birth. Ireland provides 28 weeks of paid maternity leave and an additional 16 weeks of unpaid maternity leave. The Czech Republic provides up to 28 weeks for maternity leave, which is paid by the Czech Social Security Administration, with an option for parental leave until the child reaches three, which is covered by the Labour Office. In contrast, the United Kingdom requires employers to pay up to 39 weeks (at a rate set by the government) to employees on maternity leave.

Leaves of absence related to child and family care are particularly common (and quite lengthy in duration) in the European countries. Significantly, Germany provides parental leave up until the child's third birthday. Ireland provides 14 weeks of parental leave per child under the age of 14, at least 24 paid weeks (with the possibility of an additional 16 unpaid weeks) for an adoptive mother and carer's leave to take care of a person who is in need of full-time care. Although not as long in duration, the United States provides 'eligible' employees (ie, those employed at least 12 months and who worked at least 1,250 hours during the preceding 12-month period) a leave of absence of up to 12 weeks during a 12-month period to care for a parent, spouse or child who has a serious health condition. In Cyprus, employees may take up to 18 continuous weeks for maternity leave and 16 continuous weeks upon the adoption of a child under 12.

Finally, it is interesting to note that certain countries profiled in this publication provide leaves of absence for such events as an employee's marriage or death of a family member. In Luxembourg, employees are entitled to six days of marriage leave and up to three days of bereavement leave for the death of a spouse, relative or first-degree relative. Spain provides 15 days of pay for marriage leave and two days of pay for the birth of a child or death of a relative. In Latin America, Chile grants three to seven days of bereavement leave. In Asia, Taiwan grants eight days of marriage leave and three, six or eight days of bereavement leave, depending on the relationship to the deceased.

Individual dismissals

Cause requirement

Unlike the United States, most countries do not recognise the concept of 'at will' employment and require dismissal of an employee to be justified by the employer. This means a dismissal must be related to either the employee's capacity or conduct, or the employer's business. Each country has its own definition of what constitutes 'cause' for termination. Spain, for example, considers cause to include the following circumstances:

- incompetence of the employee;
- failure of the employee to adapt to technical modifications affecting his or her job;

- the employer's demonstrated business need to eliminate the job position for economic, technical, organisational or production reasons;
- the employee's absences from work that reach a certain percentage total during a specific period;
- the employee's lack of discipline or disobedience in the workplace; and
- the employee's harassment of other employees.

Notice of dismissal

A majority of countries require that an employer provide prior notice of dismissal to an employee unless the employee has engaged in gross misconduct, which may include intentional disobedience, theft of the employer's property and drunkenness or fighting in the workplace. The minimum period of notice varies from one country to another. For example, the United Kingdom provides one week for each year of service up to a maximum of 12 weeks and Germany provides between four weeks and seven months depending on an employee's length of service and collective bargaining agreements.

Certain countries including Belgium, Denmark, Finland, France, Japan, Spain and Sweden permit payment in lieu of notice. Such payment generally includes not only an employee's base salary but also all other remuneration the employee would have received had he or she worked through the period of notice. In those countries where payment in lieu of notice is not an option, such as Germany, Poland and Switzerland, an employer may release the employee from performing his or her job functions during the notice period. In contrast, Costa Rica does not require notice in fixed-term contracts, or open-ended contracts when the employee is dismissed for just cause. If notice is required, the notice extension period depends on the length of employment. However, and like the countries described above, an employer can provide pay in lieu of notice.

Severance indemnity

Payment of a severance indemnity is commonly required for dismissals without cause or redundancy (eg, position elimination for operational requirements). The Latin American countries, in particular, provide specific calculations of severance in cases where employees are dismissed without cause. For example, Mexico requires an employer to pay to the dismissed employee a severance package consisting of three months' aggregate salary, 20 days' aggregate salary per year of service, seniority premium of 12 days' salary per year of service (capped at twice the minimum salary) and back salaries. In Chile, an employer is required to pay the severance that was contractually agreed upon or legal severance, which is an amount equal to one month's salary for each year worked with certain limitations.

In cases of dismissal for redundancy, the laws generally require employees to meet minimum service length requirements to be eligible for severance indemnity. For example, in the United Kingdom, statutory redundancy pay exists for employees with two or more years of service. The exact amount is linked to an employee's age and length of service and the national industrial average 'weekly pay'. Ireland has similar requirements. South Africa provides one week's remuneration for every year of completed service, while Korea grants 30 days of average wages for each year of continuous employment. Similarly, China provides one month's salary for every year of service with the employer, but if the monthly salary is three times higher than the average monthly salary of employees at the municipal level, the rate shall be three times the average month's salary of employees and may not exceed 12 years of work.

Procedural rights

Employees may have procedural rights during their dismissals. For example, France requires strict dismissal procedures, which include written notice of a preliminary meeting, a face-to-face preliminary

meeting and a dismissal letter to be sent after the preliminary meeting. The Netherlands requires prior consent of the government or court dissolution of the employment contract before an employee can be dismissed. In the United Kingdom, employers must act 'reasonably' and engage in procedural fairness when dismissing employees. In Norway, an employer is required to hold discussions with affected employees prior to any decision and is required to show due process.

Furthermore, in certain countries, employee representatives may also be involved in the individual dismissal process. For example, in Germany, employers are required to inform and consult the works council (if one exists in the workplace) before every dismissal.

Mandatory retirement

Certain countries allow employers to implement and enforce the mandatory retirement of employees. Some countries, such as Austria, Denmark, Finland, Japan and Taiwan, allow employers to require mandatory retirement of employees at a certain age, regardless of their position or sector. In Finland, an employer can enforce mandatory retirement when the employee turns 68, unless there is an agreement stating otherwise. Other countries, such as Brazil and China, allow mandatory retirement within the public sector, but not the private sector. In contrast, other countries specifically prohibit such practices, including Belgium, Chile and Cyprus. Similarly, and as of April 2011, the United Kingdom abolished the default retirement age, which allowed employers to retire employees compulsorily on their achievement of the retirement age without offending age discrimination legislation. Now, all age-related compulsory retirement will have to be justified under the Equality Act 2010 and Employment Rights Act.

Legal developments and trends to monitor closely

Many legal developments and trends relate to the world financial crisis. In response to this crisis and the vast changes to the workforce, including downsizing and corporate restructuring, numerous countries have passed legislation or have modified their application of the law to provide for protection to employees who have lost their jobs and to employers who seek to save jobs.

Additionally, many employers facing the challenges of the current economy are considering revising the compensation packages they offer employees; however, they are limited by the laws of each jurisdiction. In certain countries such as Korea, employee benefits or wages, or both, are often set out in the work rules. In order to reduce such benefits or wages, the work rules must be amended, which requires an employer to go through a similar process of obtaining consent from the applicable union or the majority of the employees. In Greece, significant potential changes to the procedures and methods for compensation of employees following collective dismissals are expected to take place after the upcoming issuance of the Minister of Economy's and Minister of Employment's joint decrees. Furthermore, some countries have focused on enforcement and have increased the penalties for employers who violate wage laws.

Apart from legal developments and trends associated with the global economic crisis, several countries this year have considered or have implemented changes to the laws concerning unions and collective representation. For example, in Spain, significant social dialogue continues among the unions, government and companies in order to explore alternatives for labour reform. Similarly, Korea has expanded the significance of collective representation by allowing more than one trade union to exist in one workplace, as long as all bargaining is accomplished through a single representative body. In contrast, Canada has narrowed the scope of the protections afforded to collective bargaining.

Likewise, in the United States, since 2009 there has been a significant shift in the legislative, regulatory and enforcement environment on labour and employment issues. For example, utilising a new vehicle for issuing guidance in lieu of its prior practice of dispensing opinion letters, the Department of Labor (DOL), going forward, will issue more generalised guidance in the form of Administrator Interpretations when it needs to provide clarity and interpretation of a statutory or regulatory issue.

Lastly, countries have been forced to react to natural disasters that have a deep impact on the country, including its economic and labour industries. For example, since the March 2011 earthquake, Japan has had to make decisions regarding its workforce and the requirements that companies continue to pay their employees when work is suspended. Specifically, Japan has determined that an employer is required to pay its employees:

- nothing if the suspension in work was caused by force majeure;
- their wages in their entirety if the suspension was caused by the employer's intention, negligence or their equivalent; or

- an allowance for the employees' absence in work equal to at least 60 per cent of each worker's average wages if the suspension was caused by neither force majeure nor the employer's intention, negligence or their equivalent.

* * *

Readers are encouraged to review the individual country chapters for a more detailed discussion of the topics briefly discussed in this overview.

Finally, in this introductory chapter, we wish to thank all the contributing authors and their respective law firms, including the input provided for this overview. This publication is only possible due to the incredible contributions by the many law firms and contributing authors around the world who have spent countless hours crafting easy-to-read overviews of their respective countries' labour and employment laws, and to all of them we are extremely grateful. We also wish to thank the editors of *Getting the Deal Through* for helping make this publication a reality and for their many hours of editing to ensure that readers receive a timely and up-to-date report on current labour and employment laws around the globe.

Morgan Lewis

Mark S Dichter
mdichter@morganlewis.com

Kenneth Turnbull
kturnbull@morganlewis.com

Mark Zelek
mzelek@morganlewis.com

Condor House
5-10 St Paul's Churchyard
London EC4M 8AL
United Kingdom
Tel: +44 20 3201 5663
Fax: +44 20 3201 5001
www.morganlewis.com

101 Park Avenue
New York, NY 10178
United States

Tel: +1 212 309 6055
Fax: +1 212 309 6001

200 South Biscayne Boulevard, Suite 5300
Miami, FL 33131
United States

Tel: +1 212 415 3303
Fax: +1 212 415 3001

GETTING THE THROUGH*

Annual volumes published on:

Air Transport	Life Sciences
Anti-Corruption Regulation	Merger Control
Arbitration	Mergers & Acquisitions
Banking Regulation	Mining
Cartel Regulation	Oil Regulation
Climate Regulation	Patents
Construction	Pharmaceutical Antitrust
Copyright	Private Antitrust Litigation
Corporate Governance	Private Equity
Dispute Resolution	Product Liability
Dominance	Product Recall
e-Commerce	Project Finance
Electricity Regulation	Public Procurement
Enforcement of Foreign Judgments	Real Estate
Environment	Restructuring & Insolvency
Foreign Direct Investment	Right of Publicity
Franchise	Securities Finance
Gas Regulation	Shipping
Insurance & Reinsurance	Tax on Inbound Investment
Intellectual Property & Antitrust	Telecoms and Media
Labour & Employment	Trademarks
Licensing	Vertical Agreements

**For more information or to
purchase books, please visit:
www.GettingTheDealThrough.com**



The Official Research Partner of
the International Bar Association



Strategic research partners of
the ABA International section