

Morgan Lewis



Managing the Global Workforce

webinar series

topic

The United Kingdom and European Union Countries

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Overview of European Labor Law

- Highly regulated to protect employees
 - Fundamental labor rights cannot be waived
- No employment at will
 - Employment contracts
 - Lengthy notice periods
 - Generous severance if no cause
 - Difficult to prove cause
- Employee benefits statutorily required

Overview of UK Employment Law

- Highly regulated in favour of employees
 - Number of required minimum standards
 - Range of employment claims available to employees
- Government push to make laws more employer friendly
- Employment claims can be waived/released by formal agreement (subject to minimum requirements)
- No employment at will

UK Employment Legislation

- European law
 - Many minimum employee rights derived from European law
 - UK has tradition of “gold plating” European law
- UK law
 - Statute
 - Case law
 - Contract

Primary Government Employment Agencies

- Employment Tribunals
- County Courts and High Courts
- Advisory, Conciliation, and Arbitration Service (ACAS)
- UK Border Agency
 - Part of the Home Office

Worker Representation

- Trade Unions
 - Increasingly active in the UK, but remain concentrated in public sector and former nationalised industries
 - Lobbying and industrial action (strikes)
- National Works Councils (NWCs)
 - Uncommon in the UK
 - Government has called for employees to request more NWCs
- European Works Councils (EWCs)

Background Information on Applicants

- Background Checks
 - Justification based on role
 - Data protection
 - Discrimination
- Medical Examinations
 - Relevant to role
 - Medical insurance benefits
- Drug and alcohol testing
 - Relevant to role, for example, for health and safety reasons
 - Relatively uncommon

Written Employment Contracts

- All employees have contracts of employment
- Minimum requirements for employment contracts
 - Name of employer and employee
 - Place of work and hours of work
 - Salary
 - Paid holiday entitlement
 - Sickness absence and pay entitlements
 - Details of pension entitlements
 - Length of notice required to terminate the employment
 - Disciplinary and grievance procedures
 - Whether a collective agreement applies to the employment

Posttermination Restrictions

- Void as restraint of trade and contrary to public policy unless
 - Legitimate business interest to protect
 - Reasonable protection
- Nonsolicitation, noncompete, nondeal
- Maximum of around 12 months
- Traditionally difficult to enforce
- Deterrent value
- Garden leave

Independent Contractors

- Genuinely self-employed
 - Contract
 - Operation in practice
- Risks
 - Tax
 - Employment status
- Hiring through a service company

Agency Workers

- Hired through an agency
- Agency Workers Regulations 2010
 - Access to facilities and information from day one
 - Right to same pay and other basic working conditions as permanent employees after 12 weeks
- Regulations became effective at the end of 2011
- Impact of Regulations still being assessed

Working Hours and Holidays

- Working Time Regulations 1998
- Maximum 48 hour work week
 - UK opt-out
- Rest periods and rest breaks
- Minimum 28 days' holiday
 - Can include public and bank holidays
 - Most commonly 25 days plus public and bank holidays

Employee Benefits

- Sick pay
 - Statutory sick pay
 - Contractual sick pay
- Maternity, paternity, adoption, and parental leaves
 - Statutory leave entitlements
 - Statutory pay entitlements
 - Contractual pay entitlements
- Autoenrolment for pension schemes
 - From October 2012, employers are required to enrol employees into pension schemes and make minimum contributions

Termination of Employment

- Minimum notice period
 - Up to 12 weeks' statutory notice depending on length of service
 - Contractual notice periods
- No statutory severance pay (other than notice)
 - Except for statutory redundancy pay
- Compromise agreements
 - Release of claims
 - Minimum requirements for valid release
 - Independent legal advice

Unfair Dismissal

- Fair reason
 - Conduct, capability, redundancy, statutory restriction, or some other substantial reason
 - Retirement abolished
- Fair procedure
 - Within band of reasonable responses
- Minimum service requirement
 - Currently one year
 - From 6 April 2012 rising to two years
- Capped compensation
 - But not if whistleblowing/discrimination

Discrimination Laws

- Protected characteristics
 - Age (younger or older workers)
 - Disability
 - Race
 - Religion or beliefs
 - Sex (includes gender reassignment, marriage and civil partnership, and pregnancy and maternity)
 - Sexual orientation
- No minimum service requirement
- No cap on compensation

Whistleblowing

- Protected disclosure
 - In good faith
- Unfair dismissal
 - No service requirement
 - No cap on compensation
- Unlawful detriment
- Bribery Act 2010
 - Corporate criminal liability
 - Companies should have adequate procedures in place to prevent bribery

Employee Data Privacy

- Data protection law
 - European Directive
 - UK law
- Prohibition on exporting data
- Data subject access requests
- Proposal to overhaul European data protection law
 - Data protection law will be increased
 - Higher fines
 - At least two years before this will be enforced

Immigration

- Prevention of illegal working and penalties
 - Civil penalty and establishing a statutory defence
 - Criminal offence
- European nationals
- Working visas for non–European nationals
 - Sponsorships under Tier 2
 - Tier 1 migrants
 - Business visitors

Overview of French Employment Law

- Significant points
- High level of protection of employees
- Employment relationship is very regulated
 - Constitution
 - Labor Code
 - Criminal Code
 - Collective Bargaining Agreement (CBA)
- No employment at will
- Labor system tends to safeguard employment
 - Indefinite term employment contract
 - Termination requires real and serious cause
- Importance of employee representation

Hiring of Employees

- Background Check:
 - Restricted to information necessary to assess applicant's professional capacities
 - Hiring is subject to medical examination
 - Drug and alcohol testing (principle of relevancy)
 - Nondiscrimination
- Written Employment Contract :
 - Mandatory for certain categories of employees (fixed-term contracts, temporary employees, part-timers)

Hiring of Employees

- Probationary period
 - 2 months – workers
 - 3 months – supervisors
 - 4 months – executives
- Posttermination covenants are valid if:
 - In writing
 - Limited (duration, territory)
 - Financial compensation

Hiring of Employees

- Working time:
 - 35-hour work week
 - Overtime hours possible
 - Limited (max 220 hours/year)
 - Increased compensation (+25% 35-43 hours, +50% over 43 hours)
 - Flexibility

Hiring of Employees

- Paid vacations: 25 working days a year
- Sick leave/maternity leave
- Benefits:
 - Mandatory social security covers :
 - Pension
 - Healthcare
 - Family events
 - Work-related accidents/illness
 - Unemployment

Hiring of Employees

- Benefits (cont'd):
 - Social security contributions:
 - Net salary = 80
 - Gross salary = 100
 - Total cost for employer = 145
 - Mandatory profit-sharing scheme in companies employing more than 50 employees

Termination of Employees

- Requires a “real and serious cause” for termination (as defined on a case-by-case basis by courts)
- Termination is subject to a notice period (except in case of gross negligence or serious misconduct). Release is possible (payment in lieu).
- Termination gives rise to payment of a severance indemnity (except in case of gross negligence or serious misconduct).
 - Amount:
 - 1/5th of one month salary for years of service below 10 years
 - 1/3rd of one month salary for years of service above 10 years
 - CBAs often provide for higher severance

Termination Procedure

Formal Process:

- Convene the employee to attend a preliminary meeting
 - Five working days notice
- Preliminary meeting (employee can be assisted): discussion of the reasons/grievances leading to possible termination
- Formal dismissal letter (cooling period: two working days minimum after the meeting)
 - Includes detailed description of the reasons for termination

Dismissals on Economic Grounds

- Effective elimination transformation of the employment
- Economic reasons – reasons not related to the employee such as:
 - Financial difficulties (i.e., losses or decrease in the company's turnover)
 - Technological changes
 - *NOTE: In the absence of economic difficulties or technological changes, a reorganization may constitute a valid ground for dismissal only if carried out to preserve the competitiveness of the company or of the company's sector of activity within its group.*
- Dismissal on economic grounds may not occur before all possible efforts have been made to avoid termination by:
 - Training
 - Redeployment
- Rehiring Priority

Dismissal on Economic Grounds: Procedure

- Depends on the size of the company and the number of dismissals.
- Includes the following steps:
 - Offering state-subsidized retraining program (*contrat de sécurisation professionnelle*)
 - Informing and consulting with employee representative bodies:
 - Gives information on reasons for the reduction in force (RIF)
 - Employee selection criteria
 - Measures to avoid dismissal or limit the consequences thereof
 - Informing other relevant labor authorities
 - Issuing formal dismissal letters

Dismissal on Economic Grounds: Procedure

- Where dismissals concern more than 10 employees over a 30-day period:
 - Labor plan must be prepared and discussed with the employee representative body (e.g., works council)
 - Plan is under the control of labor authorities
 - Absence of robust social plan may lead to nullity of the procedure
 - Sanctions in cases of dismissal without “a real and serious cause” (either economic or personal cause will result in litigations and court-awarded damages)
 - Termination by “mutual consent”(Law of 2008)

Employee Representation

Conditions:

- Staff Delegate (threshold: 10 employees)
- Works Council (threshold: 50 employees)
- Health and Safety Committee (threshold: 50 employees)
- Union Representation
- Group Works Council
- EWC

Involvement of Employee Representative Bodies:

- Prior consultation with works council on any decision that affects operations of the business
- RIF

Sanction:

- Hindrance (criminal offense)
 - Risk of a court-awarded suspension of the corporate decision

Employee Representation

Protected Employees:

- Termination subject to clearance by labor authorities

Employee Representation

Court System/Dispute Resolution

- Arbitration not possible
- Exclusive jurisdiction of labor courts to adjudicate employment claims
- “Up-front” waiver of claim by an employee not valid
- Settlement possible to put an end to existing or threatened claim
 - Possible only after termination
 - Parties must be at arm's length

Discrimination

- Discrimination is prohibited by the labor code
 - No one may be:
 - Excluded from a hiring procedure
 - Sanctioned or dismissed
 - Subject to any discriminatory measure in particular regarding compensation
 - On the basis of his/her:
 - Origin
 - Gender
 - Behavior
 - Sexual orientation
 - Age
 - Family situation
 - State of health
 - Genetics
 - Belonging to an ethnic group, nation, race, or union
 - Political opinion
 - Religion
 - Physical appearance
 - Name
 - Disability

Discrimination

Sanctions

- Discriminatory measures are null and void
- Discrimination is a criminal offense sanctioned by three years' imprisonment and/or 45,000 € fine

Overview of German Employment Law

- Introduction
 - High level of regulation and employee protection
 - Unions, collective bargaining agreements
 - Works councils, works agreements
 - No employment at will, employment contracts
 - Termination protection

Hiring of Employees

- Background Checks
 - Limited to information relevant to the position and work to be performed
 - Employers not normally entitled to obtain applicant's criminal or credit record
 - Medical examination if relevant to the applicant's physical ability to perform the work; only with applicant's consent
 - Alcohol/drug testing if applicant, by drug- or alcohol-related misconduct, could endanger either himself or others or cause substantial property damage; only with applicant's consent

Hiring of Employees

- Written Employment Contracts
 - Requirement for fixed-term contracts, temporary workers, and contracts with posttermination noncompetes
 - Otherwise best practice
 - Minimum contents
 - Names and addresses of employer and employee
 - Commencement date
 - Envisaged term of employment for fixed-term contracts
 - Place of employment
 - Brief characterisation or description of the work to be performed

Hiring of Employees

- Minimum contents (cont'd)
 - Composition and amount of remuneration including due dates
 - Working hours
 - Annual vacation time
 - Notice periods
 - General reference to applicable collective bargaining and works agreements
- Intense judicial control of terms and conditions of employment
- Probationary Period
 - Maximum six months
 - Short statutory notice period (two weeks)

Terms of Employment

- Working Hours
 - Governed by CBA or employment contract
 - Normally up to eight hours per day
 - Up to 10 hours per day if average of 48 hours per week is not exceeded for 24 weeks or 6 months
 - Restrictions for work on Sundays and public holidays
 - No opt-out
- Overtime
 - No statutory overtime pay

Terms of Employment

- Annual Vacation
 - Statutory minimum 20 days per year (basis: five-day workweek)
 - In practice about 30 days per year on average
 - Five additional days per year for severely disabled employees
- Public Holidays
 - 9 to 13 days per year (varies by state)
- Sick Leave, Sick Pay
 - Requires medical certificate if absence is longer than three days
 - Paid by the employer (up to six weeks per illness)

Terms of Employment

- Leaves of Absence
 - Maternity Leave
 - Six weeks before childbirth and eight weeks thereafter
 - Mainly paid by employer
 - Parental Leave
 - Up to three years
 - Unpaid (part-time work possible)
 - Nursing Care Leave
 - Family Care Leave (voluntary)

Terms of Employment

- Posttermination Noncompetes
 - Invalid if not agreed upon in writing
 - Unenforceable if employer fails to hand over to the employee a signed document with the noncompete provision/agreement
 - Unenforceable if employer fails to agree to pay compensation of at least 50% of the employee's most recent contractual remuneration for the term of the noncompete
 - Unenforceable to the extent that it is not justified by the employer's legitimate business interests or makes the employee's professional advancement unreasonably difficult
 - Term must not exceed two years
 - If noncompete is valid but unenforceable employee may elect to reject or accept the noncompete

Employee Benefits

- Mandatory social security system

Branch	Total contribution rate	Employer contribution rate	Contribution assessment ceiling
Pension	19.60%	9.80%	€67,200
Unemployment	3.00%	1.50%	€67,200
Health	15.50%	7.30%	€45,900
Nursing care	1.95%	0.975%	€45,900
Occupational accidents and illnesses	Fully financed by employer	Based on total wages and risk categories	

- External providers, employers do not need to worry about providing benefits (just cost factor)
- Additional company pension schemes (voluntary or deferred compensation)

Termination of Employment

- Notice Periods
 - Governed by CBA
 - Otherwise, statutory minimum notice periods
 - Four weeks, expiring at the 15th day or the end of a calendar month
 - Increases to one month, expiring at the end of a calendar month, after two years of service
 - Increases by one additional month each after 5, 8, 10, 12, 15, and 20 years of service
 - May be extended by employment contract
- Termination with immediate effect only in very limited circumstances

Termination of Employment

- Termination Protection Statute
 - Employees with at least six months of service
 - Working in businesses in Germany that employ more than 10 employees on a regular basis
 - Permits terminations for:
 - Personal reasons (e.g., sickness)
 - Conduct-related reasons (breach of contract in spite of prior warning)
 - Urgent business requirements

Termination of Employment

- Urgent business requirements (cont'd)
 - Employer's actual headcount exceeds required headcount (detailed analysis of future workload required)
 - Employee cannot be further employed in a vacant position, even after reasonable training or under different terms and conditions
 - Selection in accordance with social criteria (length of service, age, number of dependents, severe disability)
 - Additional requirements for collective redundancies
 - Information of and consultation with works council
 - Implementation agreement and social plan to be agreed with works council (or adopted by dispute resolution panel)
 - Mass dismissal notice to federal employment agency

Termination of Employment

- Standard Procedure
 - Information of and consultation with works council
 - Works council has seven days to consider
 - Written termination notice
 - Employee may challenge termination in the labor court within three weeks of receiving termination notice (quite common)
 - Alternative: termination agreement
- Severance
 - Normally no statutory severance
 - Social plan severance (negotiated with works council)
 - Very often individually negotiated severance (e.g., in court)

Works Councils

- May be elected in businesses with at least five employees
- Industrial action not permitted
- Rights to information, consultation, codetermination
- Rights to approve or veto
- Rights cover personnel, social and economic matters
 - Personnel matters
 - Right to object to hirings, pay scale groupings or regroupings, transfers
 - Information and consultation about terminations
 - Social matters: Codetermination with respect to the following matters (usually governed by works agreements)
 - Questions with respect to maintaining order and conduct of employees in the business
 - Scheduling of daily work hours and their allocation to individual weekdays
 - Temporary reduction or extension of usual work hours (including overtime)

Works Councils

- Social Matters: Codetermination with respect to the following matters (cont'd)
 - *Time, place, and method for payment of wages*
 - *Vacation policies and plans*
 - *Introduction and application of technical equipment that may be used to monitor employees' performance or conduct (e.g., information and communication systems)*
 - *Workplace safety rules*
 - *Institutions administering employee benefits at business, company, or group level*
 - *Questions regarding pay and benefits structure (excluding amounts)*
 - *Piecemeal pay (including amounts)*
 - *Principles regarding employee suggestion schemes*
 - *Principles regarding group work*
- Economic matters (see slide 47 collective redundancies)

Discrimination

- Discrimination based on race, ethnic origin, gender, religion or beliefs, disability, age, or sexual orientation is prohibited
- Discrimination covers direct and indirect discrimination, harassment, sexual harassment, and instruction to discriminate
- Exemptions in accordance with EU directive
- Hot topic: age discrimination
- Compensation for financial and nonfinancial damages

Polling Question

Please take a moment to answer the polling question located on the right-hand side of your screen (right under the Q&A tab.)

NY CLE CODE

Below is the CLE code for the state of New York. This code is ONLY for New York CLE – all other CLE will be processed automatically.

03MGW07

Please write this code down. After the webcast, you will receive a form from Morgan Lewis that you will need to submit, with that special code, in order to confirm your attendance and receive credit.

Implementation of Equity Plans

- Plan Design
 - Global plan
 - Discretion to modify for local compliance
- Compliance with U.S. Law
 - S-8 prospectus
- Country-Specific Analysis of Local Compliance
- Administration

Compliance Issues

- Tax
- Securities Law
- Employment Law
- Data Privacy

Tax Consequences

- Taxation Event
 - Options: generally, tax at exercise
 - Tax at sale for tax-favored plans (e.g. approved or EMI plan in UK, qualified plan in France)
 - RSUs: generally, tax at vesting
 - Tax at sale for tax-favored plans (e.g., free shares plan in France)
 - Restricted Shares: generally, tax at grant
 - Tax at vesting in UK if vesting less than five years

Tax Consequences

- Withholding and reporting
 - Who withholds and reports
- Social insurance
 - Employer and employee contributions
 - UK employer NIC pass on
- Mobile employees
 - Tax in multiple jurisdictions
 - Tracking issues

Securities Law Compliance

- Varies by country
- EU Prospectus Directive
 - Exemptions for small offerings
 - May need notification (e.g., Hungary)
- Other
 - UK financial promotion rules

Employment Laws

- Plan entitlement/acquired rights
 - Clauses to protect employers
 - Acquired rights in Denmark
- Vesting during notice period or leave of absence
- Discrimination
 - Age
 - Part-time/agency employees
 - Other
 - Works councils

Employment Laws

- Clawback/penalty clauses
 - Enforceability
 - Effect on taxation
- Works council
- Governing law
- Translation

Data Privacy

- Data privacy laws restrict processing and transfer of personal data
- Personal data is any data that identifies a person
- EU Data Protection Directive
 - Safe harbor
 - Consent

Deferred Compensation

- Deferred delivery of shares
- IRC Section 457A impact on U.S. taxpayers

Practical Tips

- Review local compliance
- Adopt tax-qualified plans if appropriate
- Prepare securities filing if necessary
- Prepare form agreements
 - Entitlement
 - Data privacy
 - Vesting during leave/notice
- Prepare tax supplements
- Analyze tax withholding/reporting
 - Establish process
 - Track mobile employees

Q&A