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Employment Law Commentary

Doing Business in Europe: Top 10 Labour Law Issues

By Ann Bevitt and Caroline Stakim

In this article we list the top ten labour law issues employers operating in Europe need to understand in order to avoid employment disputes, litigation and disruption to their businesses.

The European Union (EU) currently consists of twenty-seven member states with a combined population of over 500 million. As the EU has grown in size so has its remit (jurisdiction) over member states' affairs. Employment matters are now one of the key areas of involvement in the EU. In practice, this means that across the EU employees benefit from a number of similar employment law protections, as a matter of law, custom or practice. However, there are also individual member state requirements which give rise to significant differences. The ten issues we highlight below illustrate both the similarities and differences.

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Hiring

There are no EU-wide requirements in respect of the form of engagement of an employee. However, there are similarities across member states. Most, for example, require employers to confirm certain terms and conditions of employment in writing to an employee within a short period of commencing employment.

It is also very common to engage employees under contracts of employment as these can include, as well as the required terms and conditions of employment, additional protections for the employer such as express confidentiality obligations, assignment of intellectual property provisions, and post-termination restrictions.

Working Time

Working time across the EU is governed by the Working Time Directive (93/104/EC), which has since been consolidated as Directive 2003/88/EC (WTD). This Directive was introduced with the principal aim of protecting the health and safety of employees at work. Under it, employees are entitled to:

- A minimum daily rest period of 11 consecutive hours in every 24-hour period;
- A rest break after six hours of work;
- A weekly rest period of at least 24 hours in every seven-day period; and
- At least four weeks' paid annual leave.

In addition, the WTD imposes a maximum 48-hour average working week, calculated over a rolling four-month period. In just over half of member states, employees can opt out of this and agree to work more than the average weekly limit. However, they cannot be forced to do so and can cancel their agreement at any time with a notice sent to their employer.

Family Leave

Under the Pregnant Workers Directive (92/85/EEC) expectant mothers are entitled to at least 14 weeks' maternity leave (including a compulsory two-week leave period following childbirth). They are also entitled to paid time off to attend pre-natal examinations. Although it is not provided at an EU-wide level, most member states also offer a short period of paternity leave for fathers.

Under the Parental Leave Directive (2010/18/EU) parents, including mothers, fathers and adoptive parents, are entitled to take up to four months' unpaid parental leave to care for a child under eight years old. This can be taken in addition to maternity leave. Parents are also entitled, under this Directive, to take emergency time off to care for a dependent.

Discrimination

Across the EU, the following characteristics are protected from discrimination:

- Sex
- Race and ethnicity
- Age (with no minimum age requirements)
- Disability
- Religious views and belief
- Sexual orientation
- Part-time worker status
- Fixed-term worker status

Other characteristics are protected at a national level. For example, France and Portugal protect employees against genetic discrimination; Italy protects against discrimination on the basis of an individual's political opinion; and Belgium protects against discrimination based on language and wealth.

European Works Councils

The European Works Council Directive (2009/38/EC) applies to employers with at least 1,000 employees within the EU member states who have at least 150 employees in at least two separate member states. Employers covered by the Directive are subject to have a duty to provide arrangements to set up a European Works Council or, alternatively, an information and consultation procedure.

The idea is to encourage management to inform and consult with employee representatives on EU-wide issues that may affect the employees, such as the position of the employer's business and any proposed or anticipated changes to the working environment.

Informing and Consulting

Additional informing and consulting obligations apply in two specific circumstances: first, where an employer is proposing to transfer or sell its business (in which case, the Acquired Rights Directive (2001/23) may apply – see further below); and secondly, where an employer contemplates making collective redundancies (layoffs where the European Collective Redundancies Directive (98/59) may apply). Under both Directives, employers are to inform and consult with employee representatives, in good faith, with a view to reaching agreement.

Furthermore, it is prudent to consider any consultation obligations at the outset of a project as they can have a significant impact on timing. Given that there is a degree of co-decision making instilled into the process, the amount of time required will often depend on the reasons behind the transfer or redundancies and the impact the employer's proposals will have on employees.

Business Transfers

The Acquired Rights Directive (2001/23) applies where there is a relevant business transfer or sale – such as, a transfer of an economic entity which retains its identity post-transfer. Where this is the case, the employment of any employees assigned to the business will transfer from the transferor (normally the seller) to the transferee (normally the buyer). Employees are afforded protection against dismissal and their terms and conditions of employment are preserved.

As noted above, employers are also required to inform and/or consult in respect of the proposed transfer with employee representatives.

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Agency Workers

The Agency Workers Directive (2008/104/EC) is one of the newest employment-related EU Directives. It applies to agency workers who are workers employed or engaged by a temporary work agency under a contract of employment or engagement and who are temporarily assigned by the work agency to a hirer or end user to work temporarily under their supervision and direction.

Under the Directive, agency workers are to be treated in the same way as if they had been permanently employed by the hirer in respect of duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays, and, most significantly, pay. Member states may provide qualifications for these rights. For example, there is a twelve-week qualification period in the UK. Agency workers are also entitled to equal access to employment, collective facilities, and vocational training as the hirer's permanent employees. For example, they should be told of any job vacancies at the hirer and afforded access to any canteens, child-care facilities, and transportation services offered by the hirer to its permanent employees.

Dismissal

Like the rules on hiring, there are no EU-wide requirements in respect of dismissal. However, there are similarities across member states. The majority of member states require employers to have a fair or justifiable reason for dismissal and to follow a fair procedure before dismissing. There is often some form of consultation requirement, whether on an individual or collective basis and, in some member states, the dismissal itself will be subject to obtaining consent from works councils, employee representatives, or a government body.

Severance

There are no EU-wide requirements in respect of severance payments that may be payable to employees on the termination of their employment.

One common theme across the member states is an employee's right to notice of termination of their employment; "employment-at-will" is generally not recognized. The applicable notice period required to be provided by either party will be subject to national laws and applicable collective bargaining agreements.

Where an employee has accrued untaken vacation, he or she is entitled to payment in lieu of these under the WTD. Lastly, there may be some additional severance payments due to the employee. Whether this is the case or not and the level of any payment due often depends on the reason for the dismissal, the age of the employee, his or her length of service, and his or her current salary.

For further details or advice on any of these topics, please contact Ann Bevitt or Caroline Stakim or, alternatively, listen to our webinar at http://www.mofo.com/Doing-Business-in-Europe-Top-10-Labour-Law-Issues-10-16-2012/.

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