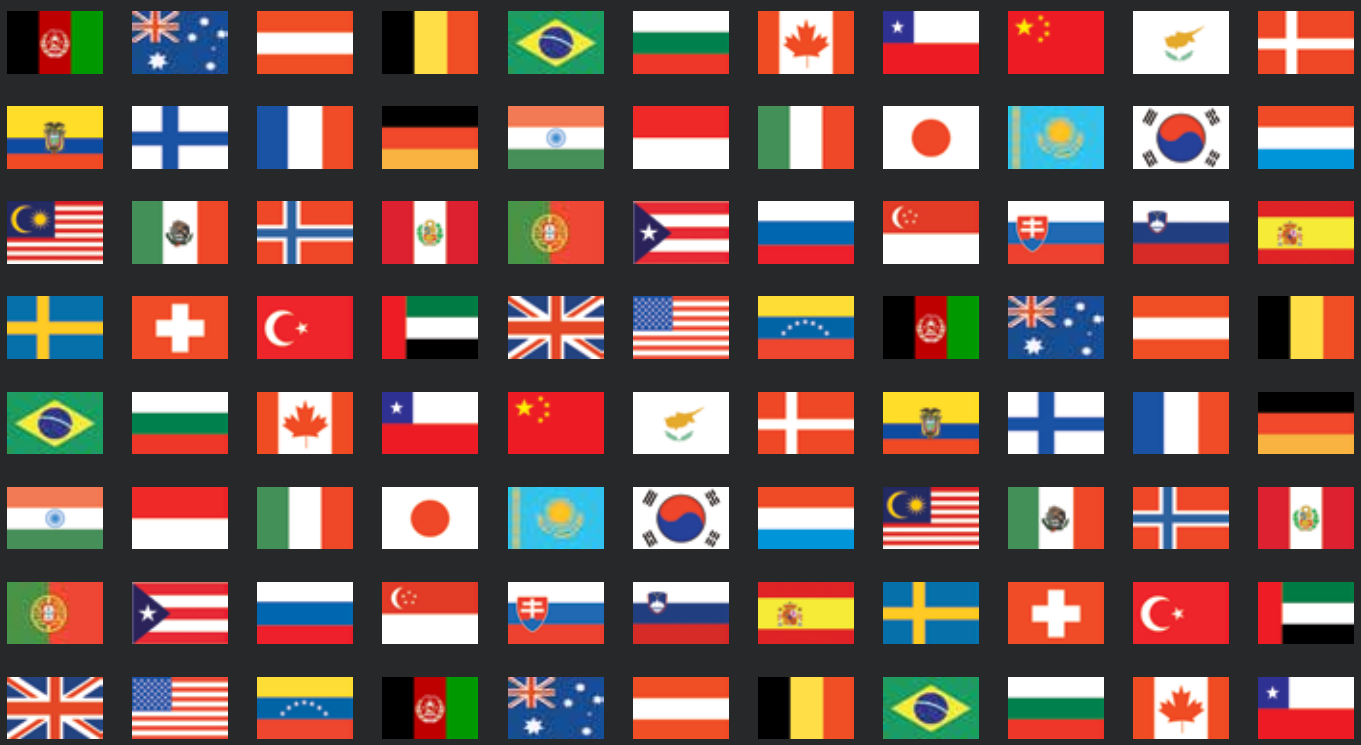
Labour & Employment

Contributing editors
Matthew Howse, Sabine Smith-Vidal, Walter Ahrens and Mark Zelek



2016

GETTING THE DEAL THROUGH

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Labour & Employment 2016

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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

First published 2006
Eleventh edition
ISSN 1750-9920

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

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Cyprus

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

The employment relationship in the private sector is generally governed by the terms of the contract of employment. In addition, there are certain statues which govern various specific issues. The main employment-related statutes are the following:

- the Termination of Employment Law of 1967 as amended;
- the Social Insurance Law of 1980 as amended;
- the Annual Paid Leave Law of 1967 as amended;
- the Protection of Maternity Law of 1997;
- the Minimum Salaries Law as amended;
- the Equal Treatment at Work and Employment Law of 2004 as amended;
- the Health and Safety at Work Law of 1996, as amended;
- the Law providing for an employer's obligation to inform employees about the conditions applicable to their contract or employment relationship of 2000; and
- the Collective Redundancies Law of 2001.

Furthermore, the Constitution guarantees certain fundamental rights relating to employment, such as the rights to work, to strike and to equal treatment. International treaties that were ratified by the Republic of Cyprus regarding employment issues are also applicable. European Union regulations or directives regarding employment and labour issues, are also applicable in Cyprus after the accession of Cyprus in the European Union in 2004.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Discrimination in employment, including harassment, is illegal under a number of legislative statutes including:

- Law 3 of 1968 Ratifying the Convention Relating to Discrimination (Occupation and Profession) of 1958;
- the Equal Treatment at Work and Employment Law of 2004;
- the Law on Equal Pay for the Same or Equal Work of 2002;
- the Part Time Employees (Prohibition of Discrimination) Law of 2002,
- the Equal Treatment of Persons Regardless of Racial or Ethnic Origins Law of 2004; and
- the Equal Treatment of Men and Women at Work and Professional Training Law of 2002.

The grounds of discrimination regulated by these laws include sex, religion or beliefs, age, sexual orientation and racial or ethnic origin. Protected categories include all private and public sector employees. Harassment at work is also considered as a form of discrimination under the relevant laws and is prohibited.

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Ministry of Labour and Social Insurance has the primary responsibility for the enforcement of employment statutes and regulations. The Ministry's Department of Labour Inspection is also responsible for the enforcement of a number of employment laws and regulations, including those relating to health and safety at work.

Worker representation

4 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

For purposes of harmonisation with the Directive 2009/38/EC the parliament of Cyprus enacted Law 106(I)/2011 providing for the establishment of a European Works Council for the purpose of safeguarding employees' rights to information and consultation in community-scale undertakings and community-scale groups of undertakings. The purpose of this Law is to guarantee and improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

Background information on applicants

5 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There are no specific restrictions or prohibitions against background checks on applicants. An employer will be allowed to carry out a background check on an applicant as long as this does not violate data protection laws and the rights of privacy and personal life. The safest way to do this is with the consent of an applicant. In any case, collected information must be relevant, appropriate and proportionate in relation to the purpose for which it is obtained.

6 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

There are no specific restrictions or prohibitions against requiring a medical examination as a condition of employment. However, medical information about a person is considered 'sensitive data' under data protection law. Consequently, submission of an applicant to a medical examination would require the applicant's unequivocal consent. In any event any medical examination must be relevant, appropriate and not disproportionate in relation to the employment position applied for. Employers can generally refuse to hire an applicant on any grounds and without giving any reasons for their decision, provided the refusal is not based on any ground that may be considered discriminatory.

7 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions or prohibitions against drug and alcohol testing of applicants. Employers can generally refuse to hire an applicant on any grounds and without giving any reasons for their decision, provided that the refusal may not be considered as discriminatory.

Hiring of employees

8 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

There is a legal requirement to give preference in hiring to particular people or groups of people in the case of an employer who has previously made employees redundant and wishes to increase its workforce of the same kind or specialisation within eight months from the date of the redundancies. In these cases, the employer must give priority to the employees who were dismissed due to redundancy. As regards discrimination, the prohibitions include the grounds of sex, religion or beliefs, age, sexual orientation and racial or ethnic origin. Regarding the applicant's health condition, employers cannot discriminate on the basis of physical condition or any disabilities, unless specific requirements for the position cannot be met.

9 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Employers are obliged by statute (Law providing for an employer's obligation to inform employees about the conditions applicable to their contract or employment relationship of 2000 – Law 100(I)/2000) to provide their employees with specific information about their terms of employment within one month from the commencement of the employment. The information may be given in any of the following ways:

- in a contract of employment;
- in a letter of appointment; and
- in any other document signed by the employer which contains at least all the information detailed below.

The information given by the employer must include at least the following:

- identity of the parties;
- place of work and the registered address of the business or the home address of the employer;
- the position or the specialisation of the employee, his grade, the nature of his or her duties and the object of his or her employment;
- the date of commencement of the contract or the employment relationship and its anticipated duration if this is for a fixed time;
- notice periods;
- the duration of any annual leave to which the employee is entitled, as well as the manner and time it may be taken;
- the time limits which must be observed by the employer and the employee in the event of a termination of the employment, either by consent or unilaterally;
- all types of emoluments to which the employee may be entitled and the time schedule for their payment;
- the usual duration of the employee's daily or weekly employment; and
- details of any collective agreements that govern the terms and conditions of the employment.

10 To what extent are fixed-term employment contracts permissible?

Employment contracts in Cyprus may be of a fixed term or for an indefinite period. If an employee is continuously employed for more than 30 months in total, then his or her contract will be considered to be for an indefinite period, unless the employer can show that such fixed-term employment can be justified on objective grounds.

11 What is the maximum probationary period permitted by law?

The default statutory probation period is 26 weeks, but it may be extended up to a maximum of 104 weeks with the consent of both parties. Throughout the duration of the probationary period the statutory provisions relating to notice and protection from termination of employment do not apply and the employee may be dismissed for any reason and without notice, save where more favourable provisions for the employee are stipulated within the contract of employment.

12 What are the primary factors that distinguish an independent contractor from an employee?

The question as to whether the relationship of employer and employee exists, is always a question of fact and all the facts of each particular case have to be taken into consideration. The criteria for a person to be considered an employee of another is not just the payment of a salary for services rendered by him or her and the way the parties choose to label their relationship will not be conclusive. On the contrary, the court will take into account whether the employer can exercise control over the work of the employee, whether the emoluments depend on the performance of the employee and the employee's role into the employer's business.

13 Is there any legislation governing temporary staffing through recruitment agencies?

Temporary Agency Work Law of 2012 (Law No. 174/2012) ensures the protection of temporary agency workers and its aim is to improve the quality of temporary employment through the principle of equal treatment and recognition of temporary agencies as employers.

Foreign workers

14 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

The maximum period of stay for all third-country nationals for the purposes of employment is four years, with the exception of the livestock farming and agriculture sectors, where the maximum period has been set to six years. This limitation does not apply only in a few exceptional cases such as highly skilled personnel employed in companies with a significant turnover and athletes or coaches of sports teams. EU nationals may work in the Republic of Cyprus provided that they comply with a relatively simple and straightforward registration procedure, without any further restrictions. On the other hand, non-EU nationals are required to obtain a residence and employment permit prior to any employment in Cyprus.

15 Are spouses of authorised workers entitled to work?

Family members and dependants of citizens of EU member states who are not EU citizens themselves generally enjoy the same rights but in order to work they need a visa and a work permit. Third-country nationals who reside legally within the controlled areas by the government of the Republic for a period of at least two years are holders of resident permit valid for at least one year and who have reasonable prospects of obtaining the right of permanent residence, can apply for family reunification.

16 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

The terms and conditions of employment must be the same for all individuals either foreign or Cypriot nationals. Illegal employment of non-EU nationals is a very serious criminal offence punishable with imprisonment for up to three years, a fine of €8.543 or with both of the above sentences. In addition, the employee will be deported and the convicted employer may be prohibited from employing foreign nationals for a period that will be specified by the court.

17 Is a labour market test required as a precursor to a short or long-term visa?

The main precondition for the granting of permit for employment of third-country workers is the inability of the Employer to satisfy the needs of his business with local workers (Cypriot or EU nationals). This inability will be ascertained following an investigation conducted by the competent service of the Ministry of Labour and Social Insurance. The applications for the permit of the non-EU national will be submitted to the District Labour Offices which will have to confirm that the criteria for employment of foreigners are being met. Moreover, the interested employer is required to publish in the daily newspapers the available position via the employment services of district labour offices. In case where there are no Cypriot or European citizens available and capable to fill the specific positions, the employer submits the special application form for employment of foreign workers duly completed together with any other necessary documents, listed in the said form.

Terms of employment

18 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Section 7(1) of the Organisation of Working Time Law L.63(I)/2002 provides that the number of working hours should not exceed 48 per week,

including overtime. However, in certain sectors (such as the hotel industry) different limitations may apply. Employees are also entitled to a minimum of 11 continuous hours of rest per day, 24 continuous hours of rest per week and either two rest periods of 24 continuous hours each or a minimum of 48 continuous hours within every 14-day period. Night workers should not, on average, exceed eight working hours per day within a period of one month or within any other period specified in a contract. Night workers whose work is hazardous or physically or mentally demanding should not exceed eight hours of night work. According to section 7(4) of the above legislation, the 48 hours maximum shall not apply if:

- the worker consents to perform the work concerned;
- the worker is not subjected to any adverse consequences by his or her employer if he or she does not accept to perform such work;
- the employer keeps up to date records of all workers engaged in such work;
- the records are placed at the disposal of the competent authority, which may prohibit or restrict the possibility of exceeding the maximum weekly working hours for reasons of the health or safety of the workers or both; or
- the employer provides the competent authority at its request with information regarding the consent of the workers. Managing executives or other persons with autonomous decision-taking powers are also exempted from any limitation on the working hours;

19 What categories of workers are entitled to overtime pay and how is it calculated?

Overtime pay is generally not regulated by law in Cyprus and is usually a matter of agreement between employer and employees. However, in certain industries in which working time is regulated by specific legislation and regulations or any collective agreements, overtime payment may also be regulated accordingly.

20 Can employees contractually waive the right to overtime pay?

Yes.

21 Is there any legislation establishing the right to annual vacation and holidays?

The Annual Holidays With Pay Law L.8/1967 provides that the minimum holiday entitlement per year is 20 working days for employees working five days a week and 24 working days for employees working a six days a week, provided that the employee has already worked for at least 48 weeks within the year. An employee is not entitled to paid annual leave if he or she has worked for less than 13 weeks in the year. If the employee had worked for a period, more than 13 weeks the employee will be entitled to the pro-rata amount of holiday. The annual leave may be accumulated, for a period of two years, only if this is agreed between the employer and the employee. The above are only the statutory minimum and the parties are free to agree to more generous terms for the employee.

22 Is there any legislation establishing the right to sick leave or sick pay?

The number of unpaid sick leave is a contractual matter. If there is no different provision within the contract of employment, sick pay is paid by the Social Insurance Department for any period of three days or longer in which an employee is unable to work. The weekly entitlement is 60 per cent of the weekly average of basic insurable earnings within the previous year and is increased by one third for the employee's first dependent (including a spouse, whether or not in employment) and one-sixth for each child or other dependant. The maximum number of days for which sick pay is payable is 156 days in relation to every period of interrupted employment. This can be extended for a further period of 156 days during the same period of interrupted employment, provided that the insured is eligible to receive incapacity pension but is not expected to remain permanently incapacitated from working.

23 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Apart from paid annual leave and sick leave, employees may also take maternity leave up to 18 continuous weeks. Female employees who are about to adopt a child under the age of 12 years are entitled to 16 continuous weeks starting immediately from the date on which they begin to have the care of the adopted child. In addition to maternity leave, for nine months after childbirth a female employee is entitled to start working one hour later or finish work one hour earlier for the purposes of breastfeeding or for the increased needs of child raising. In accordance with the law, that time must be considered and paid as normal working time. Employees of either gender who have completed six months or more of continuous employment with the same employer can claim unpaid parental leave for up to 18 weeks in total on the grounds of childbirth or adoption. Of course, provisions that are more favourable to the employee than the provisions of the Law may be applied through collective agreement or by agreement between the employer and the employee. The employee is entitled to seven days' leave per year without pay on grounds of force majeure.

24 What employee benefits are prescribed by law?

The social insurance scheme provides for a wide range of benefits including old age pension, invalidity pension, widowhood pension, social pension, funeral allowance, sickness benefit, unemployment benefit, maternity benefit, orphan's benefit, missing persons benefit, labour work-related accident and sickness benefit and other specific benefits such as housing benefits and benefits in relation to certain disabilities.

25 Are there any special rules relating to part-time or fixed-term employees?

According to the proportionality principle, the part-time employee is entitled to receive the same salary and benefits as a comparable full-time employee, pro-rata to the number of weekly working hours. Any disparate treatment between employees of the same company requires objective justification, such as, for example, different sort of work, different positions or duties and more/fewer qualifications and work experience.

Post-employment restrictive covenants

26 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Post-termination covenants of these kind are in most instances, considered to be an unlawful restraint from exercising a lawful profession, trade or business of any kind, and to that extent they are declared as void and unenforceable. However, there were instances where the Cyprus courts ruled that on the circumstances, post-termination covenants with limited duration and within very limited geographical borders were reasonable and enforceable.

27 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

No.

Liability for acts of employees

28 In which circumstances may an employer be held liable for the acts or conduct of its employees?

An employer is vicariously liable for any damage caused to other employees or third parties by any negligent acts or omissions of the employee committed during the course of employment and the performance of his or her duties.

Taxation of employees

29 What employment-related taxes are prescribed by law?

The main employment-related taxes prescribed by law are income tax and social insurance contributions. Employers are also required to make contributions to a number of statutory funds including the statutory annual leave fund (unless they have obtained an exemption), the redundancy fund, the industrial training fund and the social cohesion fund.

Employee-created IP

30 Is there any legislation addressing the parties' rights with respect to employee inventions?

Article 11 of the Patents Law (L.16(I)/1998) as amended provides that when an invention is made in execution of a commission or an employment contract, the right to the patent for that invention shall belong, in the absence of contractual provisions to the contrary, to the person having commissioned the work or to the employer. However, the employee shall have a

right to equitable remuneration taking into account his or her salary, the economic value of the invention and any benefit derived from the invention by the employer. In the absence of agreement between the parties, the remuneration shall be fixed by the court. Article 11 of the Copyright Law (L.59/1976) as amended, provides that the copyright shall be deemed to be transferred to the person or body corporate who commissioned the work or to the author's employer, save in cases where an agreement between the parties excludes or limits such transfer.

31 Is there any legislation protecting trade secrets and other confidential business information?

No.

Data protection

32 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The processing of Personal Data Law [L. 138(I)2001] as amended protects employee's privacy and personal data. Employers are not prohibited from controlling the use of company emails and internet for the purpose of limiting the risk of excessive or unnecessary use of the internet by employees and for ensuring network security, provided the provisions of the Law are observed. Such processing must also be in accordance with the Electronic Communications Law and the Guidance Note of the Commissioner on the Processing of Personal Data in the Context of Employment. In all cases employers must ensure that data are processed fairly, in accordance with the Law; for specific and legitimate purposes; and that the data are relevant, appropriate and not excessive in relation to the purpose of processing.

Business transfers

33 Is there any legislation to protect employees in the event of a business transfer?

The Safeguarding of Employees' Rights in the Event of Transfers of Undertakings, Businesses or Parts of Undertakings or Businesses Law 104/2000 transposed into national law the provisions of the EU Acquired Rights Directives. The Law applies where there is a transfer of an economic entity that retains its identity, meaning an organised grouping of resources that has the objective of pursuing an economic activity, whether or not that activity is central or ancillary. The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall be transferred to the transferee. This, however, does not prevent dismissals for economic, technical or organisational reasons. A transfer of shares alone is not considered a business transfer for the purposes of the law since the identity of the employer remains the same.

Termination of employment

34 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Dismissals that cannot be justified under any one of the grounds below are considered unlawful per se:

- unsatisfactory performance (excluding temporary incapacitation owing to illness, injury and childbirth);
- redundancy;
- force majeure, act of war, civil commotion, or act of God;
- termination at the end of a fixed period;
- conduct rendering the employee subject to summary dismissal; and
- conduct making it clear that the relationship between employer and employee cannot reasonably be expected to continue, commission of a serious disciplinary or criminal offence, indecent behaviour, or repeated violation or ignorance of employment rules.

35 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

According to the provisions of the Termination of Employment Law L.24/1967, the statutory minimum notice which the employer has to give to the employee, varies according to the employee's period of continuous employment as per the table below:

Length of service	Notice period
More than 26 weeks, but less than 52 weeks	1 week
More than 52 weeks, but less than 104 weeks	2 weeks
More than 104 weeks, but less than 156 weeks	4 weeks
More than 156 weeks, but less than 208 weeks	5 weeks
More than 208 weeks, but less than 260 weeks	6 weeks
More than 260 weeks, but less than 312 weeks	7 weeks
312 weeks or more	8 weeks

The notice period can be effectively extended by agreement but cannot in any event be less than the statutory minimum. Therefore, any provision in a contract providing for the reduction of the length of statutory notice period is void ab initio and not enforceable. No notification is required to be given to an employee during the probation period. The employer has the right to require the employee to accept payment in lieu of notice, which covers the employee's salary entitlement, pro rata, for the period of the notice.

36 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

According to the Termination of Employment Law, a dismissal without notice or payment in lieu of notice can take place only when:

- the employee's conduct indicated that the relationship between employer and employee cannot reasonably be expected to continue under the circumstances;
- the employee committed a serious disciplinary or criminal offence;
- the employee behaved indecently; or repeatedly violated or ignored employment rules.

37 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Statutory compensation for unlawful dismissal payable by the employer depends upon the period of continuous employment and is calculated in the same way as the compensation for redundancy. This compensation is calculated in accordance with Table 4 of the Termination of Employment Law, which provides as follows:

- two weeks' wages for each year of service up to four years;
- two-and-a-half weeks' wages for each year of service from five to 10 years;
- three weeks' wages for each year of service from 11 to 15 years;
- three-and-a-half weeks' wages for each year of service from 16 to 20 years; and
- four weeks' wages for each year of service beyond 20 years.

In cases of lawful termination of his or her employment owing to redundancy, the employee is not entitled to any compensation by the employer. In such case the employee is entitled to compensation from the National Redundancy Fund to which all employers pay monthly contributions. The maximum amount of compensation that the Industrial Disputes Tribunal are entitled to award, amounts up to two years' of the claimant's salary. Depending on the circumstances of the case, the Tribunal may award any amount between the minimum (that is the amount that is calculated in the same way as the compensation for redundancy) and the maximum (two years' wages). Before deciding, the Tribunal considers employee's age, his or her family situation, career prospects and all the circumstances of termination. When the maximum amount is awarded, any payment in excess of one year's wages is payable to employee by the National Redundancy Fund and not by the employer.

38 Are there any procedural requirements for dismissing an employee?

If nothing is stipulated within the contract of employment, internal discipline procedures are not required. Therefore, there is no obligation for the employer to follow internal disciplinary rules in the private sector. However, disciplinary proceedings are required regarding employees of governmental and semi-governmental bodies or organisations. Even without internal discipline procedures, according to the case law, dismissal of an employee should always be necessary, reasonable and must be treated as an employer's 'last resort'. In view of the above, before dismissing an

Update and trends

The Attorney-General of the Republic submitted a petition to the Supreme Court seeking a ruling that parliament's decision dated 10 December 2015 which rejected Cabinet-approved regulations regarding shop opening hours, 'violates the principle of separation of powers and is invalid'. At the time of writing the Supreme Court was expected to issue its ruling sometime in March 2016.

On 7 March 2016 the Eurogroup and the IMF confirmed Cyprus' exit from the three-year adjustment programme and hailed the country's financial progress. Soon after, all major trade unions announced that the time had come for employers to restore wages and undo the salary freeze in the private and public sector. Hotel workers had threatened to go on strike after hoteliers refused to restore their rights in line with a 2013 agreement, but on 23 February 2016 both sides accepted a proposal submitted by the Minister of Labour to bridge their differences.

While praising Cyprus for exiting the €9 billion bailout with 30 per cent of the money unspent, the Eurogroup announced that privatising of Cyprus Telecommunications Authority would contribute to growth and was a last step that had not been completed. Although unions oppose the government's decision to denationalise the company, a government bill allowing the creation of a new state-owned entity to take over the company's operations and staff has been forwarded to parliament. The unions have warned that they would take measures, including strikes, if the government insists on going ahead with its plans.

The anachronistic provision allowing the Industrial Disputes Tribunal to award damages only up to two years' salaries of the claimant proved to be ineffective and unfair and recently several proposals for reform have been forwarded to parliament.

employee, the employer should bring to his or her attention any complaints regarding his or her efficiency or unsatisfactory conduct or behaviour; and should warn the employee accordingly to give him or her the chance to express his or her views and improve. In the event of redundancy, the employer must always give notice in writing to the employee who is about to be dismissed and inform accordingly the Ministry of Labour at least one month before the intended day for termination.

39 In what circumstances are employees protected from dismissal?

Employees are generally protected from dismissal for any reason that does not justify dismissal under the law (see answer to question 34). There is a rebuttable presumption that any dismissal is unlawful, until the employer proves the contrary. Furthermore, an employer may never lawfully terminate the employment agreement for the following reasons:

- membership of trade unions or a safety committee established under the Safety at Work Law of 1988;
- activity as an employees' representative;
- the filing in good faith of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations, civil or criminal;
- race, colour, sex, marital status, religion, political opinion, national extraction or social origin;
- pregnancy or maternity;
- parental leave or leave on the grounds of force majeure; or
- while the employee is on sick leave (exceptions apply).

40 Are there special rules for mass terminations or collective dismissals?

As per the provisions of the Collective Redundancies Law of 2001 (L.28(I)/2001) 'collective redundancies' are redundancies made by an employer for one or more reasons not connected with the employees, provided that the number of employees dismissed within a period of 30 days is: (i) at least 10, in undertakings which normally employ more than 20 and fewer than 100 employees; (ii) at least 10 per cent of the number of employees in undertakings that normally employ at least 100 and fewer than 300 employees; and (iii) at least 30, in undertakings that normally employ at least 300 employees. Where any employer intends to make any collective redundancies it shall be obliged to consult in good time with the workers' representatives with a view to reaching an agreement. The employer shall notify the Minister of Labour and Social Security in writing of any intended collective redundancies as soon as possible. Any intended collective redundancies which have been notified to the Minister of Labour shall be valid only after the expiration of the period of 30 days accruing from the day of the provision of such notification.

41 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

There is no provision for class or collective action within the employment statutes and regulations. However, the Civil Procedure Rules provide that where several persons have the same interest in one cause or matter, one or more of them may be authorised by the court to pursue or defend an action on behalf or for the benefit of all interested persons. So far, employment claims are filed on an individual basis and it has not been tested yet whether class or collective actions will be allowed on the basis of the relevant provision contained in the Civil Procedure Rules.

42 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

There is no mandatory retirement age. However, according to the provisions of the Termination of Employment Law, an employee is not entitled to compensation for termination of employment or redundancy if he or she has reached the pension age (65 years) prior to the date of termination of employment.

Dispute resolution

43 May the parties agree to private arbitration of employment disputes?

The Industrial Disputes Tribunal has exclusive jurisdiction to hear and decide any disputes arising from the application of the law relating to the termination of employment. However, any person has the right to apply to

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a district court in relation to a dispute concerning employment where his or her claim is greater than the maximum amount that may be ordered by the Industrial Disputes Tribunal (two years' salary) or for any claim arising during the first 26 weeks of employment. Recourse to one court excludes the jurisdiction of the other. The parties therefore cannot agree to arbitration of all employment disputes. Under the Industrial Relations Code and certain collective agreements mediation may be possible but the parties' rights to apply to the Court are reserved.

44 May an employee agree to waive statutory and contractual rights to potential employment claims?

Recent case law suggests that the right to bring a claim can be waived only if such waiver is clear and unequivocal. In addition, the case law of the Industrial Disputes Tribunals recognised that in accordance with general contract law principles, a contract of employment may be terminated by mutual agreement between both parties. For such an agreement to be valid, a consideration would be necessary.

45 What are the limitation periods for bringing employment claims?

The limitation period for bringing employment claims before the Industrial Disputes Tribunal is 12 months from the date when the dispute arose. If the employee was dismissed due to redundancy and he or she applied to the National Redundancy Fund for compensation, then he or she can also file a claim before the Industrial Disputes Tribunal within nine months from the date of receipt of the notice of rejection of his claim by the Redundancy Fund. The limitation period for filing a claim with the District Courts is six years from the date that the cause of action arose.

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