



## Lex Mundi Guide to International Employment Law

A Global Practice Guide prepared by the Lex Mundi Labor and Employment Practice Group

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## Lex Mundi Guide to International Employment Law

### Cyprus

Prepared by Lex Mundi member firm Dr. K. Chrysostomides & Co LLC

<p><b>General remarks</b></p>	<p>The employment relationship in the private sector is generally governed by the terms of the contract of employment. In addition, there are certain statutes which govern various employment issues.</p> <p>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.</p>
<p><b>Employment agreement</b></p>	<p>As a general practice, employment agreements are entered into for an indefinite duration with a probationary period of up to 26 weeks. However, a number of contracts may be entered into for a fixed term. Pursuant to section 7 of the Employees on Fixed Term Work (Prohibition of Unfavourable Treatment) Law 98(I)/2003, where an employer has employed an employee on a fixed-term contract or upon renewal of the contract or otherwise, and this employee has worked in total for 30 months or more the contract is then to be considered as a contract of indefinite duration, unless the employer can prove that the fixed-term duration is based on objective grounds, i.e.</p> <ol style="list-style-type: none"> <li>a. the needs of the company for the specific operation are temporary,</li> <li>b. the employee replaces another employee,</li> <li>c. the particularity of the work justifies the definite term,</li> <li>d. the employee is employed on probation,</li> <li>e. the employment on fixed term is upon application of a judicial decision, or</li> <li>f. military-related work.</li> </ol>
<p><b>Terms and conditions of employment</b></p>	<p>Employers are obliged by statute (Information of the Employee by the Employer about the Conditions Applicable to the Contract or Employment Relationship 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:</p> <ol style="list-style-type: none"> <li>a. in a contract of employment,</li> <li>b. in a letter of appointment, and</li> <li>c. in any other document signed by the employer which contains at least all the information detailed below.</li> </ol> <p>The information given by the employer must include at least the following:</p> <ol style="list-style-type: none"> <li>a. identity of the parties,</li> <li>b. place of work and the registered address of the business or the home address of the employer,</li> </ol>

	<ul style="list-style-type: none"> <li>c. the position of the employee, his grade, the nature of his or her duties and the object of his or her employment,</li> <li>d. the date of commencement of the contract or the employment relationship and its anticipated duration if this is for a fixed time,</li> <li>e. notice periods,</li> <li>f. the duration of any annual leave to which the employee is entitled, as well as the manner and time it may be taken,</li> <li>g. 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,</li> <li>h. all types of emoluments to which the employee may be entitled and the time schedule for their payment,</li> <li>i. the usual duration of the employee's daily or weekly employment, and</li> <li>j. details of any collective agreements that govern the terms and conditions of the employment.</li> </ul> <p>The general rule with regard to remuneration is that there is no general statutory minimum and the salary is freely set in accordance with the individual employment contract or the collective agreement. However, the Council of Ministers has adopted the Minimum Wage Decree No. 180/2012, pursuant to the Minimum Wage Law, Cap. 183, which sets a minimum wage for specific professions.</p> <p>The number of working hours should not exceed 48 per week, including overtime. However, in certain sectors (such as the hotel industry) different limitations apply.</p> <p>Overtime pay is generally not regulated by law in Cyprus and is usually a matter of agreement between employer and employees. Nevertheless, 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.</p> <p>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.</p>
<b>Changing terms and conditions of employment</b>	<p>Permanent and substantial changes to the terms and conditions of employment may be effected only by mutual agreement or according to the provisions of the collective agreement.</p>
<b>Trade Unions and the consultation obligation</b>	<p>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. Further, there are certain provisions on information and/or consultation pertaining to situations of collective dismissals and transfers of undertakings.</p>

<p><b>Data privacy and personal integrity</b></p>	<p>The Data Protection Law 138(I)2001, as amended, protects the employee's privacy and personal data. However, 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 the said Law 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. 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 Data Protection Law 138(I)2001 are observed. Such processing must also be in accordance with the Electronic Communications Law and the Guidance Note of the Data Protection Commissioner in the Context of Employment. In all cases, employers must ensure that data is processed fairly, in accordance with the said Law, for specific and legitimate purposes and that the data is relevant, appropriate and not excessive in relation to the purpose of processing.</p>
<p><b>Regulations regarding parental leave or other forms of absence regulated by law</b></p>	<p>The Annual Paid Leave Law 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 six days a week.</p> <p>Employees may 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 or take a one-hour break in the meantime 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.</p> <p>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.</p> <p>Employees are also entitled to seven days' leave per year without pay on grounds of force majeure.</p> <p>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 Fund for any period of three days or longer in which an employee is unable to work.</p>
<p><b>Termination of employment</b></p>	<p>There is no lawful dismissal at the will of the employer, unless the employee has been employed for less than 26 weeks. After the above said period, dismissals that cannot be justified under any one of the grounds listed in section 5 of Law 24/1967 are considered unlawful per se. These grounds are:</p> <ul style="list-style-type: none"> <li>i. unsatisfactory performance (excluding temporary incapacitation due to illness, injury, and childbirth),</li> <li>ii. redundancy,</li> <li>iii. force majeure, act of war, civil commotion, or act of God,</li> <li>iv. termination at the end of a fixed period,</li> <li>v. conduct rendering the employee subject to summary dismissal,</li> </ul>

	<ul style="list-style-type: none"> <li>vi. conduct making it clear that the relationship between employer and employee cannot reasonably be expected to continue,</li> <li>vii. commission of a serious disciplinary or criminal offence, indecent behaviour, or (h) repeated violation or ignorance of employment rules.</li> </ul> <p>In all cases, a written letter of termination outlining the grounds for the termination, must be given to the employee.</p> <p>The statutory minimum notice which the employer has to give to the employee, varies from 1 to 8 weeks, depending on employee’s period of continuous employment. Termination without notice is only possible during the first 6 months of employment or where the employee has been terminated for the following reasons:</p> <ul style="list-style-type: none"> <li>a. the employee’s conduct indicated that the relationship between employer and employee cannot reasonably be expected to continue under the circumstances</li> <li>b. the employee committed a serious disciplinary or criminal offence</li> <li>c. the employee behaved indecently; or</li> <li>d. repeatedly violated or ignored his/her employment rules.</li> </ul>
<p><b>Sanctions for wrongful termination</b></p>	<p>Statutory compensation for unlawful dismissal payable by the employer depends upon the period of continuous employment.</p> <p>This compensation is calculated as follows:</p> <ul style="list-style-type: none"> <li>• two weeks’ wages for each year of service up to four years;</li> <li>• two-and-a-half weeks’ wages for each year of service from five to 10 years;</li> <li>• three weeks’ wages for each year of service from 11 to 15 years;</li> <li>• three-and-a-half weeks’ wages for each year of service from 16 to 20 years; and</li> <li>• four weeks’ wages for each year of service beyond 20 years.</li> </ul> <p>In cases of lawful termination due 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.</p> <p>Before deciding, the Industrial Disputes Tribunal considers employee’s age, his/her family situation, career prospects and all the circumstances of termination. Any compensation in excess of one year’s wages is payable to employee by the National Redundancy Fund and not by the employer.</p>
<p><b>Whistleblower protection</b></p>	<p>There is no specific employment protection for whistleblowers under Cypriot law. However, employees may be protected by their constitutional right to freedom of expression, general labour legislation (dismissal on grounds of whistleblowing is potentially “unfair dismissal”), and data protection legislation.</p> <p>Nevertheless, employees owe an implied duty of loyalty and fidelity to their employer. Employees should offer their services in a trustworthy and faithful manner, which implies inter alia that, during employment, employees are restrained from providing services to competitors, from soliciting clients and</p>

	suppliers and acting in a manner that is prejudicial to their employer's interests.
<b>Non-Competition Laws</b>	Restrictive covenants 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.
<b>Discrimination and equal employment opportunity</b>	Discrimination in employment, including harassment, is illegal under a number of legislative statutes. The grounds of discrimination regulated by these laws include sex, religion or beliefs, age, sexual orientation, racial or ethnic origin and physical conditions and disabilities. 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. Any infringement of these statutes constitute criminal offences and dismissals based on such discriminatory grounds are considered <b>"unfair"</b> .
<b>Transfer of business and outsourcing</b>	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 and, in case of collective agreements, the same terms and conditions have to be maintained by the new employer until the date of expiry or termination of the collective agreement, or the implementation of a new collective agreement with a minimum period of maintenance of these terms and conditions for at least one year. This, however, does not prevent dismissals for genuine economic, technical or organisational reasons.
<b>Global mobility (brief overview of common issues and visa requirements)</b>	<p>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 agricultural 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.</p> <p>EU/EEA/Swiss 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/EEA/Swiss nationals are required to obtain a residence and employment permit prior to any employment in Cyprus. Family members and dependants of citizens of EU/EEA member states and Switzerland who are not EU/EEA/Swiss citizens themselves generally enjoy the same rights, but in order to work they need a visa and a work permit.</p> <p>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/EEA/Swiss nationals). This inability will be ascertained following an investigation conducted by the competent service of the Ministry of Labour, Welfare and Social Insurance. The applications for the permit of the non-EU/EEA/Swiss national will be submitted to the District Labour Offices, which will have to confirm that the criteria for</p>

	<p>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 EU/EEA/Swiss citizens available and capable to fill the specific positions, the employer submits the special application form for employment of foreign workers.</p>
<p><b>Criteria for independent contractor status</b></p>	<p>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.</p>
<p><b>Corruption, regulation and sanctions</b></p>	<p>The legal framework against bribery and corruption principally comprises of the following statutes:</p> <ul style="list-style-type: none"> <li>a. The Prevention of Corruption Law, Cap 161.</li> <li>b. The Civil Servants Law, Law 1 of 1990.</li> <li>c. The Criminal Code, Cap 154.</li> <li>d. The Law on the Illicit Enrichment of Public Officials and Officers, Law 51(I) of 2004.</li> <li>e. The Political Parties Law, Law 175(I) of 2012</li> </ul> <p><u>Prevention of Corruption Law</u></p> <p>Under section 3 it is a criminal offence for any agent [which includes any person employed or acting on behalf of another and any person who serves the Republic or any other public body or any other foreign civil servant or employee of an international organisation] or any person to corruptly obtain, directly or indirectly, any gift or consideration, either for himself or for any other person, as an inducement or reward for doing or forbearing to do any act in relation to the affairs or business of his principal (or employer) or for showing or forbearing to show favor or disfavor to any person in relation to his principal's affairs or business.</p> <p>In addition, it is prohibited for any person to give to an agent (and for any agent to knowingly use), any receipt, bill, or other document in relation to which the principal has an interest and which contains any statement that is false or misleading or inadequate.</p> <p>All the above offences are punishable with imprisonment for up to seven years and/or a fine up to €100.000.</p> <p><u>Cyprus Criminal Code</u></p> <p>Pursuant to section 100 of the Cyprus Criminal Code, it is a criminal offence if (a) any person employed in the public service corruptly asks, receives or obtains or agrees to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge his official duties and (b) if any person corruptly gives, confers, procures, promises or offers to give any property or benefit of any kind on account of any</p>

	<p>such act or omission on the part of such person employed in the public service. The penalty for any infringement of section 100 is imprisonment for up to three years, a fine up to €100.000 or both the above sentences.</p> <p>Further, section 101 prohibits any person employed in the public service from taking or accepting from any person for the performance of his duties any reward beyond his proper pay and emoluments, or any promise of such reward. The penalty for any infringement of section 101 is imprisonment for up to three years and a fine.</p> <p>In addition, section 102 prohibits any person employed in the public service from receiving any property or benefit for himself, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or anyone in whom that person is interested, in any pending transaction, or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service. The penalty for any infringement of section 102 is imprisonment for up to two years and a fine.</p> <p>Under section 118 any bribery of witnesses in legal proceedings is a criminal offence punishable with imprisonment for up to three years.</p> <p><u>Civil Servants Law</u></p> <p>Pursuant to section 69, civil servants are prohibited to directly or indirectly receive or offer any gifts consisting of monies, other goods, free trips or other personal favours. Any infringement of this legislation will lead to disciplinary proceedings against the civil servant involved.</p> <p><u>Illicit Enrichment of Public Officials and Officers</u></p> <p>Any illicit enrichment by public officials and officers is punishable with imprisonment for up to seven years, a fine of €42.715 or with both of the above sentences. In addition, any assets acquired in breach of the provisions of the law may be confiscated.</p> <p><u>Political Parties Law</u></p> <p>Article 5 allows political parties or affiliated organisations to receive lawful private monetary contributions up to €50.000 per year. Any breach of the monetary limits in respect of donations to political parties constitutes a criminal offence punishable with a fine. In addition, administrative fines up to €20.000 may also be imposed for infringements of this legislation.</p> <p>Cyprus has also ratified the Criminal Law Convention on Corruption, [Law 23(III) of 2000] and the United Nations Convention Against Corruption [Law 25(III)/2008].</p>
<p><b>Final remarks</b></p>	<p>It is customary, but not obligatory, to pay a thirteenth salary at the end of the year.</p> <p>Employees who were made redundant have a right of priority for re-employment, where the need arises to employ persons in the future, for a period up to eight months after their dismissal.</p>

## Non-Competition Global Practice Guide

### Cyprus

Prepared by Lex Mundi member firm Dr K. Chrysostomides & Co LLC

#### **Does your state or country recognize and/or enforce restrictive covenants against employees?**

Under Cyprus law, employees owe an implied duty of loyalty and fidelity to their employer. Employees should offer their services in a trustworthy and faithful manner. This means *inter alia* that, during employment, employees are restrained from providing services to competitors, from soliciting clients and suppliers and acting in a manner that is prejudicial to his/her employer's interests.

With regard to post-termination restrictions, the position under Cyprus Law is the following. Under section 27 of our Contract Law – Cap 149, (hereinafter referred to as “Cap 149”), any agreement which restricts the freedom to conduct a legitimate profession, trade or business is void. The exceptions are the following:

- One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business;
- partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding subsection;
- partners may agree that someone or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

In view of the above, post-termination covenants of this kind in employment contracts 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.

#### **What are enforceable protectable business interests that courts will protect?**

The courts will protect a legitimate business interest, such as customer information, goodwill, trade secrets, know-how, and confidential information, to the extent necessary for the purpose of protection. In addition, non-disclosure covenants are generally enforceable in Cyprus, both during and post-termination of employment.

#### **What are considered reasonable restrictions as to geography, duration and scope of activity?**

In examining the reasonableness of a restrictive covenant, the Court will take into consideration the geographical area, duration and type of activity, and the assessment will depend on the circumstances of the case.

### **Can a customer-specific restriction substitute for a geographic restriction?**

The Court's assessment will focus on whether the restrictive covenant is reasonable under the specific circumstances. Therefore, a restriction will not be declared as valid and enforceable only because it will be limited to a specific customer.

### **Will the court revise, reform, and/or “blue pencil” a restrictive covenant to make it “reasonable?”**

The Court will not re-write the terms of the covenant to make it reasonable but if it decides that the terms of the restriction are reasonable and enforceable, it may limit its duration.

### **Will the court recognize a choice-of-law provision in a restrictive covenant?**

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) provides that an individual employment contract shall be governed by the law freely chosen by the parties, unless it results in depriving the employee of the protection afforded to him by provisions that cannot be waived by agreement.

Further, in *Oterom Ltd and other v Kyriakos Z. Christodoulides and others* (2012) 1 C.L.R. 2072 the Supreme Court held that in cases where there is a choice-of-law provision, Cypriot Courts may adjudicate the case and implement the foreign law.

### **Are there any exemptions or classes of employees against whom restrictive covenants may not be enforced?**

The lower the level of an employee in the hierarchy of a company and the less the access of the employee to clients and/or confidential information, the less likely it is that a restrictive covenant may be enforceable.

### **What consideration is necessary for a restrictive covenant to be enforceable (e.g. compensation, level of position, industry)?**

For any agreement to constitute a contract, lawful consideration is necessary. If the restrictive covenant is a clause of the employment contract, anything that forms the consideration for the entire contract is also consideration for the restrictive covenant. If, on the other hand, the restrictive covenant is a separate agreement, this will also require consideration. Moreover, whether or not a payment is made to the employee, will be one of the factors that Court will take into consideration in determining the reasonableness of the restriction.

### **Does a change in position, salary or responsibilities affect enforceability?**

The validity of the restriction will be determined at the time of enforcement and will depend on the facts of the case. It is considered that the higher the position and the closer the employee comes to clients and/or confidential information, then the more likely it is that the restrictive covenant will be held to be enforceable.

### **Is continued employment sufficient consideration to enforce a restrictive covenant?**

With regard to restrictive covenants during the course of the employment relationship, the continued employment suffices as consideration.

With regard to restrictive covenants after the end of the employment relationship, some form of consideration is needed. However, the employment contract or the restrictive covenant may refer to the employment relationship as the relevant consideration for the said restrictive covenant. If this is the case, continued employment may be deemed to be an adequate consideration.

## **Can an employee be terminated if he or she refuses to sign a restrictive covenant?**

Under the Termination of Employment Law, there is no lawful dismissal at the will of the employer, unless the employee has been employed for less than 26 weeks. Moreover, dismissals that cannot be justified under any one of the grounds listed in section 5 of the same Law are considered unlawful per se. These grounds are:

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

In view of the above, if there is no relevant provision in the contract and if the signing of the restrictive covenant is not a prerequisite for the employment, any termination on the ground that the employee refuses to sign a restrictive covenant, will amount to unfair dismissal.

## **Are restrictive covenants assignable?**

As a general rule, only rights are assignable to third-parties.

Where there is a transfer of an economic entity (transfer of undertakings), 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.

## **List any necessary language requirements.**

There is no specific language requirement.

## **List any other requirements of importance.**

N/A

## **Contact Information**

**Yiannis Karamanolis**  
y.karamanolis@chrysostomides.com.cy

**Dr K. Chrysostomides & Co LLC**  
1 Lampousas 1095 Nicosia

Tel: +357.22.777000 Fax: +357.22.779939

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