LATVIA

§ 1

I. SOURCES OF LAW

§ 1.1

A. What are the primary constitutional provisions, statutes and regulations related to employment?

Article 106 of the Latvian Constitution (*Satversme*)[1] proclaims that everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. This article also prohibits forced labor. Participation in the relief of disasters and their effects and work pursuant to a court order is not deemed to be forced labor.

Article 107 proclaims the right of every employed person to receive appropriate remuneration for the performed work, which is not less than the minimum wage established by the state, and to receive weekly holidays and paid annual vacation.

The Constitution also establishes the right of employed persons to collective labor agreements and the right to strike, and declares that the state ensures the freedom of trade unions. Further, the Constitution guarantees the right to social security in cases of disability, unemployment, old age and in other cases as provided by law.[2]

Employment relationships are regulated by the Constitution, provisions of international law that are binding to the Republic of Latvia, laws and other regulatory acts, collective agreements and working procedure regulations (as defined in § 10.1 below). The Latvian Labor Law[3] is the principal source of employment law, regulating various aspects of employment law, such as:

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[1] Constitution of the Republic of Latvia (*Satversme*) of 15 February 1922, Chapter VIII on Fundamental Human Rights was adopted on 15 October 1998, effective as of 6 November 1998.

[2] Constitution of the Republic of Latvia (*Satversme*), arts. 108, 109.

[3] Labor Law of 20 June 2001, effective as of 1 June 2002.

- types of, and procedures for entering into, collective agreements and employment contracts;
- rights and obligations of the employer and employee;
- remuneration rules;
- termination of employment; and
- work time and rest time, including vacation, public holidays, absence, illness, rest breaks, etc.

Health and safety issues are regulated by the Labor Protection Law.[4]

§ 1.2

B. What international treaties apply to employment?

Within the EU legal framework, the basic provisions related to employment law are included in the Treaty on the Functioning of the European Union.[5] Many provisions of employment law are included in the EU directives and regulations.

Other European instruments with relevance to employment law are the European Social Charter[6] and the Convention for the Protection of Human Rights and Fundamental Freedoms.[7]

Latvia has ratified several conventions of the International Labour Organization (ILO) that theoretically can be directly applicable. However, according to available information, the Latvian courts have not yet applied the aforementioned conventions directly. Some of the ratified ILO conventions are as follows:

- C106 Convention concerning Weekly Rest in Commerce and Offices
- C120 Convention concerning Hygiene in Commerce and Offices
- C131 Convention concerning Minimum Wage Fixing
- C132 Convention concerning Annual Holidays with Pay
- C138 Convention concerning Minimum Age for Admission to Employment

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[4] Labor Protection Law of 20 June 2001, effective as of 1 January 2002.

[5] Treaty on the Functioning of the European Union, Official Journal C 83 (30 March 2010).

[6] Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163.

[7] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 5.

- C148 Convention concerning the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration
- C158 Convention concerning Termination of Employment at the Initiative of the Employer
- C183 Convention concerning the revision of the Maternity Protection Convention

§ 1.3

C. What are the primary mechanisms for enforcement?

Compliance with labor laws is monitored by the State Labor Inspectorate. The State Labor Inspectorate possesses the authority to impose administrative fines on employers not respecting applicable labor laws. In some cases, criminal sanctions may be imposed upon the employer, mainly for breach of health and safety requirements. Criminal sanctions are adjudicated by the respective criminal courts.

Any other labor law disputes are reviewed and handled by the respective civil courts of the Republic of Latvia. No special court is established for labor law disputes.

§ 1.4

D. What are the primary means for resolving disputes between employees and employers?

Labor law disputes are primarily resolved by means of negotiations between the employer and representatives or trade unions, or between the employer and an individual employee. The Labor Dispute Law[8] sets forth procedures of dispute resolution for certain types of disputes.

The employer and representatives of employees may agree to establish a Labor Dispute Commission in the company for the settlement of individual disputes between the employee and the employer that they have been unable to resolve in negotiations.[9] Decisions of the Labor Dispute Commission are binding unless appealed to the court by any of the parties within ten days of the date of the decision.

The following types of disputes are not subject to the competence of the Labor Dispute Commission and shall be handled only by the courts:

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[8] Labor Dispute Law of 16 October 2002, effective as of 1 January 2003.

[9] Labor Dispute Law of 16 October 2002, effective as of 1 January 2003, art. 5, para. 2.

- claims to declare void the employer's termination notice and reinstatement of the employee to his or her previous position;
- claims by the employer to terminate the employment contract with a member of a trade union if the trade union has refused its consent;
- claims for collection of unpaid remuneration; and
- claims for violation of prohibition of differential treatment.[10]

If a collective agreement is concluded, it will likely include provisions on dispute resolution procedures.

In addition, the Labor Law requires that disputes regarding rights and interests that arise from the collective agreement relations or that are related to such agreement be settled by a conciliation commission. A *conciliation commission* is established by the parties to a collective agreement, each authorizing an equal number of representatives. The conciliation commission makes a decision by agreement. The decision is binding on both parties to the collective agreement and it has the validity of the collective agreement. If a conciliation commission does not reach agreement on a dispute regarding rights, the dispute is settled by a court or arbitration court.[11]

Labor Law disputes in the court are reviewed in an expedited procedure. This means that the labor cases do not have to line up in a general line of civil cases; they have their own docket. In practice it takes approximately two and a half months to review a labor case in the first instance, which is a very short timeline in comparison with the timeline of a regular civil case.

§ 1.5

E. What are the definitions of employee, employer, independent contractor, and contingent worker (i.e., a temporary or agency worker)?

An *employee* is a natural person who, on the basis of an employment contract and for agreed work remuneration performs specific work under the guidance of an employer.[12]

An *employer* is a natural or legal person or a partnership with legal capacity that, on the basis of an employment contract, employs at least one employee.[13]

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[10] Labor Dispute Law of 16 October 2002, effective as of 1 January 2003, art. 7, para. 3.

[11] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 25, paras. 1, 3, art. 26, para. 1.

[12] Labor Law of 20 June 2001, effective as of June 1, 2002, art. 3.

An *independent contractor* or a *service provider* is a person who under a service agreement performs for another party an order or produces a product, or conducts and completes an activity by using its own tools and equipment and for certain remuneration.[14] Independent contractors can be legal and natural persons, the latter of which is a self-employed worker or a performer of a specific job, such as a shoemaker, hairdresser, etc. The Labor Law does not apply to independent contractors.

When a self-employed worker is in fact working in a relationship subordinate to his or her employer, such individual may be recognized as an employee even if parties have agreed on an independent contract relationship. Tax laws establish a number of criteria that are indicative of an employment relationship despite the presence of an agreement to an independent contract relationship.

There is no specific definition of *temporary workers* included in the Labor Law, however, it is provided that an employer is entitled to conclude a fixed-term (temporary) employment contracts only in certain situations (see § 3.4 below).

A definition of *agency workers* has not been provided in the Labor Law, however, a number of specific provisions have been included setting forth the rights of the agency workers and obligations of the employer/agency with respect to the agency workers. The general concept is that the agency shall be considered as the employer of the agency worker.[15]

§ 1.6

F. What are the most important characteristics of the legal culture relating to employment?

The Latvian Labor Law can be characterized as "employee-protective." The courts traditionally regard employees as the "weaker party" to be protected and tend to make "employee-protective" decisions in the face of even formal procedural violations.

In general, employees are not overly litigious, particularly while they are still employed. However, it is not rare for employers to face an employment dispute in a court in case of termination where the employee feels mistreated in comparison with his or her former peers or subjected to unfair treatment.

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[13] Labor Law of 20 June 2001, effective as of June 1, 2002, art. 4.

[14] Civil Law, Part Four, Obligations Law of 28 January 1937, effective as of 1 March 1993, art. 2212.

[15] Labor Law of 20 June 2001, effective as of June 1, 2002, art. 4.

§ 2

II. HIRING

§ 2.1

A. Must a foreign employer set up a local entity to employ local workers, and if so, what are the requirements?

Setting up a local entity is not a requirement for a foreign employer in order to hire workers in Latvia. Once the foreign employer employs a Latvian employee, it has to comply with the Latvian taxation requirements in relation to the employee, as well as in relation to the employer itself if and when the permanent establishment within the meaning of the Latvian tax law is created.

The foreign employer and Latvian employee can enter into an employment contract governed by either Latvian or foreign law. If the work is performed in Latvia, such choice of law provisions may not deprive or restrict an employee of the protection of Latvian law.

§ 2.2

B. What rules apply to the employment of foreign nationals? How much time should an employer allow to obtain the required work authorization documents?

If a Latvian company intends to hire a foreign national, first it must be verify whether a work permit and/or residence permit is required. Once the immigration requirements are fulfilled, the employer can enter into the employment contract with the foreign national.

Immigration laws apply also in situations when an employee is posted in Latvia for a certain period of time. If an employee has been sent to perform work in Latvia, irrespective of the law applicable to the employment contract and the existing employment relationship, such employee is entitled to benefit from the working conditions and employment provisions provided for by Latvian law, as well as by collective agreements that have been recognized as generally binding and that regulate the following:

- maximum working time and minimum rest period;
- minimum annual paid leave;
- minimum wage rate, as well as supplementary payment for overtime work;

- provisions regarding securing workforce, especially through work placement agencies;
- safety, health protection and hygiene at work;
- protection measures for persons under 18 years of age, pregnant women and women during the period following childbirth, as well as the provisions of work and employment of such persons; and
- equal treatment of men and women, as well as prohibition of discrimination in any other form.

If foreigner is a citizen of EU, EEA or Swiss Confederation then no work or residence permit will be required to work in Latvia and he/she may commence the work immediately, however, within first 90 days of his/her stay in Latvia such foreigner is required to register with the Office of Citizenship and Migration Affairs of the Republic of Latvia.

However, if foreigner is not a citizen of the above countries and does not hold a residence and work permit in any of those countries, he/she will be required to apply for residence and work permit or visa with rights to work before commencement of the work in Latvia. In average it takes 4 weeks to take care of all formalities in this respect.

As of 1 July 2011 EU Blue Card has been introduced in Latvia allowing highly qualified foreigners to apply for a residence permit encompassing also a work permit, i.e. EU Blue Card for work in Latvia. In average it takes 4 weeks to obtain the EU Blue Card.

§ 2.3

C. What rules apply to background checks?

Latvian laws do not directly address the privacy issues of an employee, apart from the Constitution, which sets forth that everyone has the right to privacy, including inviolability of home and correspondence.[16] The general right to privacy is also found in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, it is generally accepted that the privacy right is not unlimited within the framework of an employment relationship. Invasion of privacy is possible if it is:

- justified by a legitimate interest;
- proportionate to the pursued goal; and

[16] Constitution of the Republic of Latvia (*Satversme*), art. 96.

- based on law.

It is generally accepted practice to contact the previous employer to discuss the employee's performance while working at that employer.

As to criminal and abuse of substances background searches, the employer would receive information regarding the candidate from the respective authorities only if the law requires the employer to possess the information on the candidate's criminal and/or abuse of substances. This occurs only where the respective information is crucial for the performance of the work, *e.g.*, in case of hiring a police officer or fire fighter.

The employer may use any publicly available data in relation to the candidate, but cannot use the information in an unlawful discriminatory manner.

§ 2.4

D. What rules apply to medical examinations or health-related tests?

The Labor Law provides that a candidate has a duty to inform an employer regarding his or her state of health insofar as it is related to the intended performance of work.[17] During the interview the employer is not entitled to ask questions directly related to the employee's health.

The Medical Treatment Law sets forth that information regarding the medical treatment of a patient, diagnosis, prognosis of progress of a disease, as well as any other information obtained by medical practitioners during the medical treatment process is confidential. Such confidential information may be provided only to institutions as listed in the law. The list does not include employers.[18]

The Labor Law sets forth that the employer may request the candidate to undergo a health examination that verifies that the candidate is suitable for performance of the intended work.[19] In the medical statement regarding the state of health of the candidate, a physician indicates only whether the candidate is suitable for performance of the intended work and provides suggestions for improvement of the work environment. The physician shall not provide any detailed information on the candidate's health condition or history.

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[17] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 36, para. 1.

[18] Medical Treatment Law, effective as of 1 October 1997, art. 50.

[19] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 36, para. 2.

§ 2.5

E. May an employer require drug and alcohol testing?

The Latvian Labor Law provides that the employee, on the basis of a relevant order of the employer, has a duty to undergo a health examination in cases where:

- undergoing of such examination is provided for by regulatory enactments; or
- undergoing of such examination is provided for by collective agreement; or
- there is a cause for suspicion that the employee has become ill with an illness that causes or may cause a threat to his or her, or another person's, safety or health.[20]

The Regulations on Procedures for Mandatory Health Examinations provide that a health examination shall be performed for the persons who are employed (or who are to be employed) in positions in which they are affected by factors (risks) of the working environment harmful to health.[21] Examination has to be performed by a physician – specialist of occupational diseases.

The employer is entitled to introduce internal procedures in relation to testing use of intoxicating substances at workplace. It is customary practice to request to perform daily or random intoxication testing for motor vehicle drivers, construction workers or other employees working in dangerous work environments or with hazardous items.

Regular or random intoxication testing of office workers is unusual; however, the employer may introduce internal procedures requiring employees to undergo intoxication testing in cases of suspicion of an employee being unable to carry out his or her duties. The employees would be entitled to refuse such testing in which case the employer, in order to impose any disciplinary measures or terminate the employee, would be required to prove the fact of intoxication by witness testimony.

§ 2.6

F. Are there mandated preferences in hiring?

The employer can not discriminate when hiring workers and has to evaluate all candidates evenly.

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[20] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 81, para. 1.

[21] Regulations on Procedures for Mandatory Health Examinations, effective as of 1 April 2009, art. 1.

§ 2.7

G. Are there mandated sources for recruiting employees, such as local labor authorities, agencies, or to recruit from within an existing workforce?

There are no mandated sources for recruiting employees.

In relation to the existing workforce, in certain situations the employer may be obliged to offer existing vacant positions to its employees. If the employer intends to terminate an employee on grounds unrelated to the employee's behavior (*e.g.*, an employee's lack of adequate occupational competence, inadequate state of health as certified by a physician, reinstatement in a position of a previous employee, or reduction in the number of employees) the employer has to offer the employee in question another position in the same or another undertaking, if such vacant position exists. The employer has to offer only those positions corresponding to the knowledge and skills of the employee. The employee's consent is required in order to amend the existing terms and conditions of the employment contract.

§ 2.8

H. Are there requirements to advertise or post openings in particular places?

There are no requirements to advertise or post job openings in particular places.

§ 2.9

I. Are there restrictions on filling openings with contingent workers?

There are no restrictions on filling job openings with contingent workers.

§ 2.10

J. What are the consequences of misclassifying a worker as an independent contractor, contingent worker, or temporary worker?

The Labor Law provides for the possibility to enter limited duration employment contracts only in specified cases (see § 3.4 below). If the employment contract has been entered for limited duration despite the fact that it does not fall under any of the categories specified in the law, it shall be considered that the contract is entered for an unlimited term. If an employee is mistakenly classified as an independent contractor,

such individual would be entitled to request entering into an employment contract with the employer. If the employer does not agree to conclude the employment contract, the individual may turn to the State Labor Inspectorate with a complaint. The employer may be fined with an administrative fine for failure to comply with employment legislation and ordered to enter into the employment contract.

If the employer does not agree with the decision of the State Labor Inspectorate and refuses to conclude the employment contract, the individual is entitled to file a respective claim with the court.

Misclassification of an employee as an independent contractor may also have taxation consequences. The State Revenue Service can requalify the legal relationship as an employment relationship and require payment of any overdue taxes along with the penalties and late payment interest (however, for not more than three preceding years).

§ 3

III. EMPLOYMENT CONTRACTS

§ 3.1

A. Are written employment contracts required for certain employees?

Written employment contracts are required for all employees.[22] If the parties have agreed on essential elements of the employment contract (wage and type of work to be performed) and have failed to draft a written contract, the employee can bring a claim requesting the employer to conclude a written contract. If one or both parties have already commenced performing their obligations, it shall be regarded that the oral contract has the same consequences as if it were concluded in writing. Notwithstanding, the employer may be held liable (administrative liability) for noncompliance with the obligation to enter a written contract.[23]

§ 3.2

B. Are there certain essential terms in employment contracts?

The essential elements of the employment contract are terms on:

- wages to be paid; and

[22] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 40, para. 1.

- type of the work to be performed.

Furthermore, the Labor Law sets forth that the following terms must be included in the employment contract:

- name, surname, personal ID code, place of residence of the employee;
- name, registration number and address of the employer;
- date of commencement of work;
- length of employment legal relationships (in case of a fixed-term contract);
- place of work or reference that the employee can be employed in various places;
- profession (position) of the employee (in accordance with a special list of professions) and general job description;
- amount of wage and terms of payment;
- weekly or daily working time;
- length of annual paid vacation;
- termination notice period; and
- reference to the collective agreements and internal regulations (if any) applicable to employment legal relations.[24]

§ 3.3

C. In what language(s) must employment contracts be written?

Although the Labor Law does not address any language requirements, general requirements on the use of the official state language – Latvian – are set forth in the Official Language Law.[25] The Official Language Law provides that the private company should use the official language if its activities affect the lawful interests of the public, *inter alia*, employment rights.[26] Therefore, the employment contract should be drafted

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[23] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 41.

[24] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 40, para. 2.

[25] Official Language Law of 21 December 1999, effective as of 1 September 2000.

[26] Official Language Law of 21 December 1999, effective as of 1 September 2000, art. 6, para. 2.

and concluded in Latvian. Likewise, it is recommended to have a Latvian version of any employment documents referred to in the employment contract.

In addition to the Latvian language, the employment contract can be drafted and concluded in parallel in any other language.

§ 3.4

D. What rules exist relating to the duration of employment contracts?

The employment contracts shall be concluded for an unspecified period of time, unless the Labor Law allows concluding the contract for a fixed term.

The term of fixed-term employment contract cannot exceed three years. There is an exception for seasonal work, in which case the contract can be limited to ten months. In both cases the maximum term includes any extensions of the employment contract. Entering into a new employment contract with the same employer is regarded as an extension of the term of the employment contract if during the period from the date of entering into the former employment contract until the entering into a new employment contract the legal relationship has not been interrupted for more than 30 consecutive days.[27]

The fixed-term contracts may be entered for performance of short-term work, including and limited to:

- seasonal work (list of work qualifying as seasonal work is specified by regulations of the Cabinet of Ministers);
- such type of work the contract for performance of which usually is not entered into for an unlimited period of duration, taking into account the nature of the relevant occupation or temporary nature of the relevant work (the list is specified by regulations of the Cabinet of Ministers), *e.g.*, work in cultural events, acting, activities related with sports, traineeships, project management;
- replacement of an employee who is absent or suspended from work, as well as for replacement of an employee whose permanent position has become vacant until the moment a new employee is hired;
- casual work that is usually not performed within the company;
- specified temporary work related to short-term expansion of the scope of business of the company or to an increase in the amount of production;

- emergency work in order to prevent consequences caused by a *force majeure* event, an unexpected event or other exceptional circumstances that adversely affect or may affect the normal course of business in a company;
- temporary paid work intended for an unemployed person or other work related to his or her participation in employment fostering measures;
- work by a student of academic or vocational educational establishment related to necessary training in a specific profession or area of study;
- work in a position of the management board member of a company (in which case the usual practice is to conclude a contract for the term corresponding to the term of powers of the respective board member).[28]

If the employment contract is concluded for a fixed term, the term of expiry of the employment contract can be indicated either as a fixed date or condition (*e.g.*, completion of a project).

If upon expiry of the term for which an employment contract has been entered into, no party has requested termination of the employment contract and employment legal relationships are effectively continuing, the employment contract is regarded as entered into for an unspecified period of time.[29]

§ 3.5

E. Are probationary periods allowed, and if so, what restrictions apply?

Upon entering the employment contract the parties may agree on a probationary period that cannot exceed three months. The probationary period shall not be applied to persons under the age of 18.[30]

The employer is entitled to give a termination notice to the employee at any time during the probationary period without giving any reason for termination. However, if the employer has violated the prohibition of differential treatment when giving a termination notice during the probationary period, the employee has the right to bring an action to a court within one month from the date of receipt of the termination notice. The burden of proof lies on the employer to show that the termination notice has not been given on

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[27] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 45, paras. 1, 2.

[28] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 44, para. 1.

[29] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 45, para. 4.

[30] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 46.

discriminating grounds. This can be done by revealing the true grounds of the termination notice.

If the employment continues after the expiry of probationary period, it is deemed that the employee has passed the probationary period.[31] During the probationary period the employee is entitled to receive a full wage; however, the amount of the wage during the probationary period can be smaller than after the probationary period.

§ 3.6

F. Must employment contracts specify termination provisions, and if so, with what degree of specificity?

The Labor Law sets forth an exhaustive list of grounds available for unilateral termination of the employment contract at the initiative of the employer. The employment contract does not have to specify all potential grounds for termination; a general reference to the Labor Law provisions is sufficient.

Due to the fact that the Labor Law explicitly defines the unilateral termination grounds by the employer and due to the fact that certain terms of the Labor Law can be interpreted widely (*e.g.*, interpretation of "substantial breach of employment contract" is fully at the court's discretion), the court will pay considerably little attention to the definitions and provisions provided in the employment contract.

The parties are entitled to agree on any provisions more favorable to the employee than those as set in the Labor Law. For example, the parties are entitled to agree on the length of the termination notice periods different from the Labor Law (*e.g.*, a shorter termination notice period by the employee and a longer termination notice period by the employer).

§ 3.7

G. Do employment contracts customarily contain covenants to safeguard the employer's intellectual property, covenants not to compete and/or contracts to not solicit the employer's customers or employees?

The use of the above-mentioned covenants in the employment contracts depends on the position of the employee in question. Such covenants are typically included in the employment contracts of employees occupying managerial positions, creating in the course of their work intellectual property, etc.

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[31] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 47.

The Labor Law does not elaborate on safeguarding the intellectual property rights. The principles of ownership of different types of intellectual property rights are provided in specific laws. Covenants to safeguard the employer's intellectual property are used in the employment contracts when relevant.

The noncompetition covenant between the employee and employer after the termination of the employment relationship is permitted only if it conforms to the following:

- the purpose is to protect the employer against such occupational activity of employee which may cause competition for the commercial activity of the employer;
- the term of noncompete covenant does not exceed two years from the date of termination of employment relationship; and
- it provides for a duty of the employer to pay the employee adequate monthly compensation for observance of the noncompete covenant with respect to the entire time period of operation of the noncompete covenant.[32]

The noncompete covenant may only extend to the field of activity in which the employee was engaged during the period of the employment relationship. The noncompete covenant shall be invalid to the extent the type, extent, place and time of restriction, as well as the compensation payable to the employee, is an unfair restriction of further occupational activity of the employee.

The noncompete covenant has to be expressed in writing, indicating the type, extent, place and time of restriction and the compensation payable to the employee. It may be included in the employment contract or entered as a separate agreement.[33] The content of the noncompete covenant usually includes nonsolicitation provisions as well. At the time of imposition of the noncompete covenant the parties may agree a contractual penalty to be imposed for breach of the covenant.

The employer may withdraw in writing from the agreement regarding the noncompete covenant at any time prior to the termination of employment legal relationship. If the employer terminates the employment relationship based on the employee's misconduct, the employee loses his or her right to receive compensation for the observance of the noncompete covenant.

If, on the other hand, the employee gives the termination notice on the basis of considerations of morality and fairness that do not allow continuation of the employment,

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[32] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 84, para. 1.

[33] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 84, paras. 2-4.

he or she has the right, within a one-month period from the date of termination of the employment contract, to withdraw in writing from the noncompete agreement.[34]

§ 3.8

H. Are the terms of employment contracts considered confidential?

There is no general provision that the terms and conditions of the employment contract are confidential. However, the parties may agree that the content of the employment contract is confidential. Also, usually the employment contracts fall under the definition of a "commercial secret" included in the employment contract, and in that case the content cannot be revealed to third parties.

The breach of the confidentiality clause allows the nonbreaching party to claim damages.

§ 4

IV. DISCRIMINATION IN EMPLOYMENT

§ 4.1

A. What prohibitions against discrimination exist, and how are they defined?

A general prohibition against discrimination is included in the Constitution and sets forth that human rights shall be effected without discrimination of any kind.[35] The Constitution also provides the right to freely choose employment and workplace according to a person's abilities and qualifications.[36]

The more specific principle of equal rights applicable in employment relationships is set forth in the Labor Law and provides that everyone has an equal right to work; to fair, safe and healthy working conditions; and to fair work remuneration. These rights should be ensured without any direct or indirect discrimination — irrespective of a person's race; color; gender; age; disability; religious, political or other conviction; ethnic or social origin; property or marital status; sexual orientation; or other circumstances.

The Labor Law also prohibits discrimination against the right to unite in organizations and states that employees, as well as employers, have the right to freely, without any

[34] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 85, paras. 1, 2.

[35] Constitution of the Republic of Latvia (*Satversme*), art. 91.

[36] Constitution of the Republic of Latvia (*Satversme*), art. 106.

direct or indirect discrimination, unite in organizations and to join them in order to protect their social, economic and occupational rights and interests.

§ 4.2

B. What prohibitions exist against religious discrimination, and what accommodations of religious practices are required of the employer?

The Constitution provides a general right to freedom of thought, conscience and religious beliefs; however, the Constitution restricts the right to express religious beliefs in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the state and public safety, welfare and morals.[37]

The Labor Law does not include any specific provisions in respect of religious discrimination and does not require any specific accommodations of religious practices. General principles on prohibition of religious discrimination is provided in the Labor Law as mentioned in § 4.1 above.

§ 4.3

C. What prohibitions exist against disability discrimination, and what accommodations of disabilities are required of the employer?

The Labor Law addresses disability discrimination in its general provisions on prohibition of discrimination. It also draws specific attention to disability discrimination by providing that the employer has a duty to take measures that are necessary in conformity with the circumstances to adapt the work environment to facilitate the possibility of a disabled person to establish an employment relationship, fulfill work duties, be promoted to a higher position or be sent for occupational training or other training, insofar as such measures do not place an unreasonable burden on the employer.[38]

§ 4.4

D. What prohibitions are there against harassment?

Latvian law does not provide detailed provisions against harassment. However, the general provisions of the Labor Law address the prohibition against harassment and

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[37] Constitution of the Republic of Latvia (*Satversme*), arts. 99, 116.

[38] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 7, para. 3.

provide that *harassment of a person* is the subjection of a person to such actions that are unwanted from the point of view of the person, associated with his or her belonging to a specific gender, including actions of a sexual nature if the purpose or result of such actions is a violation of the person's dignity and creates an intimidating, hostile, humiliating, degrading or offensive environment.[39]

§ 4.5

E. What exceptions are permitted to the prohibitions against discrimination (e.g., job requirements that mandate hiring candidates of a certain age or gender, or quotas to address past discrimination)?

General exceptions to the prohibition against discrimination are permitted under the Constitution, which provides that a person's rights can be restricted in circumstances provided for by law in order to protect the rights of other people, democratic structure of the state and public safety, welfare and morals.[40]

The Labor Law specifies that differential treatment based on gender is permissible only if belonging to a particular gender is an objective and necessary precondition for the ability to fulfill certain duties or occupy a certain position. Differential treatment must be commensurate with the legal aim pursued by imposing such a measure. The burden of proof to show objectivity, necessity and proportionality of the measure imposed lies with the employer.[41]

The above provisions by analogy are applied in cases of differential treatment on the basis of race; color; age; disability; religious, political or other conviction; ethnic or social origin; property or marital status; sexual orientation; or other circumstances.[42]

The Latvian courts have reviewed a number of discrimination cases and the case law shows that the grounds for permission of discrimination should be solid and fully justified in each particular case of discrimination.

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[39] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 29, para. 7.

[40] Constitution of the Republic of Latvia (*Satversme*), art. 116.

[41] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 29, paras. 2, 3.

[42] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 29, para. 9.

§ 4.6

F. What are the potential remedies for prohibited discrimination and harassment?

If the prohibitions against differential treatment and causing adverse consequences are violated, the employee, in addition to other rights specified in law, has the right to request compensation for damages and for moral harm. In case of a dispute, the court at its own discretion determines the amount of compensation for moral harm.[43] Other rights of the employee specified in law can be, for example, reinstatement in the previous position if the employment was terminated based on discriminatory grounds.

§ 4.7

G. What prohibitions exist regarding retaliation/reprisal?

The Latvian Labor Law prohibits employers from applying sanctions to an employee or to otherwise directly or indirectly cause adverse consequences upon the employee because the employee, within the scope of employment relationship, exercises his or her rights in a permissible manner. This same principle applies when the employee informs competent institutions or officials regarding suspicions with respect to criminal offenses or administrative violations in the workplace.[44]

If the employee is able to show evidence that may establish the employer's actions potentially caused adverse consequences, the burden of proof to show that no sanctions have been imposed or that no adverse consequences have been caused (directly or indirectly) is upon the employer.

The Civil Law provides general provisions regarding offenses against personal reputation and dignity. If someone unlawfully damages a person's reputation and dignity — orally, in writing or by acts — he or she shall pay a financial compensation and the court determines the amount of such compensation.[45]

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[43] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 29, para. 8.

[44] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 7, para. 1, 2, art. 8, para. 1, art. 9, para. 1.

[45] Civil Law, Part Four, Obligations Law of 28 January 1937, effective as of 1 March 1993, art. 2352.1.

§ 4.8

H. May individual persons be liable for discrimination, harassment, or retaliation/reprisal?

An individual may be held liable for the breach of the discrimination prohibition either under provisions of Latvian Administrative Penal Code or Criminal Law.[46] However, in practice, administrative liability or criminal liability so far has not been imposed on individuals for violations within the framework of the employment relationship.

§ 5

V. COMPENSATION

§ 5.1

A. What restrictions are there on hours that may be worked?

The normal working hours are eight hours per day and not more than 40 hours per week. In most cases the working week consists of five working days.

If the working time during any particular day is shorter than normal working hours, the working hours may be extended on another day, however, for not more than one hour and observing the normal weekly working hours.

If due to the nature of the work it is not possible to determine a working week of five days, the employer, after consultation with employee representatives, may introduce a working week of six days. In that case, the length of daily working time shall not exceed seven hours.[47]

Normal working hours for employees who are subject to particular risk (*e.g.*, crane operators) shall not exceed seven hours per day and 35 hours per week. The same is applicable for night shift workers. A *night shift employee* is an employee who normally performs night shift work in accordance with a shift schedule or for at least 50 days within a calendar year. Night shift work means any work performed at night for more than two hours (from 10:00 p.m. to 6:00 a.m.; for children from 8:00 p.m. to 6:00 a.m.).[48]

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[46] Latvian Administrative Penal Code of 7 December 1984, effective as of 1 July 1985, art. 204.17, Criminal Law of 17 June 1998, effective as of 1 April 1999, art. 149.1, para 1.

[47] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 131, para. 1, art. 133, paras. 1, 2.

[48] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 131, para. 3, art. 138, paras. 1, 2.

However, if due to the nature of the work it is not possible to comply with the length of the regular daily or weekly working time prescribed for the relevant category of employees, the employer, after consultation with employee representatives, is entitled to set the aggregated working time in which case working time may not exceed 24 continuous hours, 56 hours per week, and normal working hours during the reference period. The reference period shall be a month unless the collective agreement or employment contract specifies otherwise. The reference period established under the employment contract may not exceed three months and the reference period established under the collective agreement may not exceed 12 months.[49]

Working hours exceeding the aforementioned limitations are *overtime hours*. The employer is entitled to request the employee to perform overtime work only if there is a written agreement between the employer and the employee. Under the following circumstances the employee's consent is not required:

- if the work is required by the most urgent public needs;
- to prevent the consequences caused by *force majeure*, an unexpected event or other exceptional circumstances that adversely affect or may affect the normal course of business activities in the company;
- for the completion of urgent, unexpected work within a specified period of time.

In cases where the consent of employee for the overtime work is not required, the employer should ask for permission from the State Labor Inspection if overtime work continues for more than six consecutive days, unless it is envisaged that the repeated necessity for the similar work will not occur.[50]

In all cases, the overtime work shall not exceed 144 hours during the period of four months.

There are particular limitations regarding working hours for the employees under the age of 18:

- children of age from 13 to 15 shall not be employed for more than two hours per day and ten hours per week if the work is performed during the school year and for more than four hours per day and 20 hours per week if the work is performed during the school holidays;
- teenagers of age from 15 to 18 shall not be employed for more than seven hours per day and 35 hours per week;

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[49] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 140.

[50] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 136.

- if persons under the age of 18 continue to study for basic education, secondary education or professional education the total hours spent at educational facility and work shall not exceed seven hours per day and 35 hours per week;
- persons under the age of 18 shall not be employed overtime.[51]

§ 5.2

B. What minimum wage requirements exist?

The minimum wage is set by the Cabinet of Ministers. The current minimum wage requirements are provided in the Regulations on Minimum Monthly Wage and Minimum Hourly Rate[52] and are as follows:

- minimum monthly wage for normal working time is Latvian lats (LVL) 200 (approx. EUR 285);
- minimum hourly rate for adults is LVL 1. 189 (approx. EUR 1.698);
- minimum hourly rate for children of the age from 15 to 18 and employees who are subject to particular risks is LVL 1. 360 (approx. EUR 1.943).

Apart from the above-mentioned minimum limits, the parties are free to determine the amount of the wage. However, the male and female workers are entitled to the same remuneration for equivalent work or work of equivalent value.

There are not any wage freeze measures or any compulsory wage indexing requirements.

§ 5.3

C. What is the required schedule for paying wages, and in what form and currency must they be paid?

The Labor Law provides that the wage should be paid at least twice a month, unless the parties have agreed that the wage is paid once a month. If the time of payment of the wage has not been contracted or the wage is to be calculated for a specified period of time, the wage according to the work done is paid upon completion of the work or expiry of the relevant period of time, but not less frequently than once a month.

If the date for payment of work remuneration occurs on a day of rest or on a holiday, the wage shall be paid before the relevant date. Payment for the period of vacation and wage

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[51] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 132.

[52] Regulations on Minimum Monthly Wage and Minimum Hourly Rate of 30 November 2010, effective as of 1 January 2011.

for the time worked up to the vacation shall be paid no later than one day before the vacation.

The wage is paid in cash; however, the employer has the right to pay wage as noncash payment if the parties have agreed to do so. When paying the wage, the employer must issue a written calculation of the work remuneration. The employer has a duty to explain such calculation upon a request of the employee.[53]

§ 5.4

D. What overtime pay requirements exist?

The employee who performs overtime work is entitled to a supplement of not less than 100% of the hourly or daily wage rate specified for him or her. If piece-work pay has been agreed, the employee is entitled to a supplement of not less than 100% of the piece-work rate for the amount of work done. Parties may agree on higher rates for overtime pay than the law sets forth.

The same remuneration conditions apply if the employee performs work on holidays.[54]

§ 5.5

E. What rules apply to the payment of commissions?

There are no particular provisions regarding the payment of commissions. This issue is left to the discretion of the parties to the employment contract.

The payment of commissions is a common provision in employment contracts with trade representatives where the wage consists of the fixed-monthly wage and an additional sum — the commission — proportionate to the turnover created by the trade representative or sales made by the trade representative.

The total wage of the employee, however, must comply with the minimum statutory wage requirements. Therefore, the employer normally sets at least the minimum statutory wage as the fixed part of the remuneration and the commissions are earned in addition.

§ 5.6

F. What bonuses are mandated or customary?

The Latvian law does not provide any mandated bonuses and payment of bonuses may vary greatly from company to company.

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[53] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 69, paras. 1-4, arts. 70-71.

[54] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 68.

Some of the customary bonuses that may be provided include a health insurance policy, company telephone and/or company car, depending on the employee's seniority or the type of work performed. Those may be considered as fringe benefits to the employee and are subject to certain taxation requirements.

§ 5.7

G. What special rules exist for stock options or stock grants?

The Labor Law does not provide any specific rules for stock options or stock grants as part of remuneration.

General provisions on granting stock to the employees are outlined in the Commercial Law. The Commercial Law sets forth that a company may issue stock to employees ("employee stock") that is transferred free of charge and may be acquired only by the employees of the company and members of the management board. Employee stock may be registered stock only.

Employee stock is issued on the account of the net profit of the company. The total par value of the employee stock may not exceed 10% of the subscribed share capital of the company. Employee stock does not grant voting rights and rights to receive a liquidation quota. The stockholder may alienate the employee stock only if the articles of association do not set forth any restrictions. If the employment is terminated for any reason, the company has the right of first refusal to acquire the stock of the particular employee.[55]

Other rules for granting the company stock have to be agreed upon in the employment contract or provided for in the specific internal regulations.

§ 6

VI. TIME OFF FROM WORK

§ 6.1

A. What public, statutory or national holidays are required, and what are the requirements if employees work on such holidays?

The Law on Public Holidays and Remembrance Days prescribes the following public holidays in Latvia:

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[55] Commercial Law of 13 April 2000, effective as of 1 January 2002, art. 255.

Holiday	Date
• New Year's Day	January 1
• Good Friday	
• Easter	
• Easter Monday	
• Labor Day, Convocation of the Constitutional	
• Assembly of the Republic of Latvia	May 1
• Reinstatement of Independence of the Republic of Latvia	May 4
• Mother's Day	2nd Sunday of May
• Midsummer Eve and Midsummer Day	June 23
• Proclamation Day of the Republic of Latvia	November 18
• Christmas	December 24, 25, 26
• New Year's Eve	December 31

If the public holidays — May 4 and November 18 — fall in Saturday or Sunday, the following working day shall be a holiday.[56]

As a general rule the employee should not be employed during the public holidays. If the working time of the employee falls during the public holiday and for that reason the employee does not work, the employer has to pay the wage or average earnings (if piece-work pay has been agreed upon) for that day.[57]

If the employer needs to secure continuous work within the company, it may employ the necessary employees during the public holiday. In such case, the employer has to either pay the supplement for the work on public holiday as described in § 5.4 above (pay in double amount), or grant a day of rest on another day of the week.

[56] Law on Public Holidays and Remembrance Days of 3 October 1990, effective as of the same day, art. 1.

[57] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 75, para. 1, Item 8.

§ 6.2

B. What are the requirements for short-term sick pay, and who pays it?

The employee is entitled to sick pay if he or she is absent from work and thereby loses paid labor income due to the following reasons:

- loss of capacity due to sickness or injury;
- a need to receive medical assistance of therapeutic or prophylactic nature;
- isolation is necessary due to quarantine;
- treatment in a medical treatment institution during the period of recuperation after sickness or injury if such treatment is required in order to restore capacity for work;
- nursing of a sick child aged up to 14 years; and
- prosthetics or orthotics in a hospital.[58]

The employer covers the sick leave for the first 10 calendar days of temporary sickness in the amount of 75% from the average earnings for the 2nd and 3rd day of sickness and not less than 80% for the 4th up to 10th day of sickness.[59] The employer pays the sick pay after the employee has submitted a sick leave certificate. The sick leave certificate is issued by a certified medical practitioner in accordance with respective regulations of the Cabinet of Ministers.

The State Social Insurance Agency covers the sick leave from the 11th day of sickness, but not more than for 26 weeks from the first day of sickness in case of uninterrupted disablement or not more than for 52 weeks within the three-year period in case of repeated disablement. Sick pay shall be granted in the amount of 80% of the average wage of the benefit recipient.[60]

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[58] Law on Maternity and Sickness Insurance of 6 November 1995, effective as of 1 January 1997, art. 11.

[59] Law on Maternity and Sickness Insurance of 6 November 1995, effective as of 1 January 1997, art. 36, para. 1.

[60] Law on Maternity and Sickness Insurance of 6 November 1995, effective as of 1 January 1997, art. 13, para. 1, art. 17.

§ 6.3

C. What are the requirements for paid vacation or annual leave?

Every employee is entitled to a paid annual vacation of at least four calendar weeks (one month for persons under the age of 18), excluding public holidays. In general the annual leave should be uninterrupted, but it may be divided into parts upon mutual consent of the employee and the employer. However, one part of the annual leave must be at least two uninterrupted calendar weeks. The Labor Law entitles employees having three or more children under the age of 16 years or a disabled child, as well as employees exposed to a special risk, to a supplementary annual leave of three additional days.[61] *Special risk* is a risk of employment environment that is related to such elevated psychological or physical pressure or such elevated risk for safety and health of the employee that cannot be eliminated or decreased to the permitted level by other labor protection measures than by shortening the working time during which the employee is exposed to such risk[62] (for example, working at heights, working with hazardous materials).

An employee may demand an annual paid leave once he or she has been employed with the employer for at least six consecutive months. [63] The annual paid leave has to be granted in the full amount. The time that gives the right to the annual paid leave includes the time during which an employee was actually employed by the relevant employer and the time during which the employee did not perform work for justified cause, including period of a temporary disablement, prenatal leave and maternity leave, period of short-term absence and period of forced absence from work if the employee was dismissed illegally and has been reinstated in his or her previous work.[64]

In exceptional cases when the granting of the full annual paid leave to the employee in the current year may adversely affect the normal course of business of the company, it is permitted with the written consent of the employee to transfer a part of the leave to the subsequent year. In such case the part of the leave in the current year shall not be less than two consecutive calendar weeks. The part of the transferred leave shall, as far as possible, be added to the leave of the next year. Part of the leave may be transferred only to the subsequent year. The above provisions on transfer of a part of the leave to the subsequent year are not applicable in relation to the following categories of persons:

- persons under the age of 18;
- pregnant women; and

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[61] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 149, para. 1-2, art. 151, para. 1.

[62] Labor Protection Law of 20 June 2001, effective as of 1 January 2002, art. 1, point 19.

[63] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 150, para. 3.

- women for a period following childbirth up to one year (but if such women are breast feeding – during the entire period of breast feeding).[65]

The annual paid leave cannot be compensated in money or by any other means. The annual leave can be compensated in money only if the employment contract is terminated and the person has not used the annual vacation.[66]

The annual paid leave is granted each year at a specified time in accordance with the agreement between the employee and the employer or the leave schedule that is to be drawn up by the employer after consultations with employee representatives. All employees should become acquainted with the leave schedule and amendments to it, and it should be made available to each employee. When granting the annual paid leave the employer has a duty to take into account the wishes of employees as far as possible.[67]

Employees under the age of 18 and employees who have a child under the age of three or a disabled child up to the age of 18 should be granted the annual paid leave during summer or at a time of his or her choice. If the employee under the age of 18 continues to study, the annual paid leave should be granted as far as possible to match the holidays at the educational institution. A woman at her request should be granted the annual paid leave before the prenatal and maternity leave or immediately after, irrespective of the time the woman has been employed by the relevant employer.[68]

The annual paid leave is transferred or respectively extended in case of the employee's temporary incapacity.

§ 6.4

D. May the employer mandate when vacation is taken under any circumstances (*e.g.*, year-end shutdown, furlough, prohibitions on vacation use in busy periods)?

The Labor Law does not provide the possibility for the employer to mandate that the vacation is taken at any particular time. The only possibility is to comprise the respective leave schedule which, however, is subject to consultations with the employee representatives.

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[64] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 152, para. 1.

[65] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 149, paras. 3-4.

[66] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 149, para. 5.

[67] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 150, paras. 1-2.

[68] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 150, paras. 4-5.

§ 6.5

E. What requirements exist for paid or unpaid maternity and paternity leave?

The Labor Law provides that a female employee is entitled to a *prenatal leave* of 56 calendar days and *maternity leave* of 56 calendar days. The term of the above leaves is calculated together and 112 calendar days of leave are granted irrespective of the number of days of prenatal leave used prior to childbirth.

A woman who has initiated pregnancy-related medical care at a preventive medical institution by the 12th week of pregnancy and has continued it for the entire period of pregnancy, is entitled to a supplementary leave of 14 days, adding it to the prenatal leave and calculating 70 calendar days in total. In case of complications during the pregnancy, childbirth or postnatal period, as well as if two or more children are born, a woman is entitled to a supplementary leave of 14 days, adding it to the maternity leave and calculating 70 calendar days in total.

The prenatal and maternity leave is not included in the annual paid leave. A woman who has used the pregnancy or maternity leave, is entitled to return to her previous position after the leave. If this is not possible, the employer shall ensure to woman a similar or equivalent work with no less favorable conditions and employment provisions.[69]

The father of a child is entitled to ten calendar days of *parental leave* immediately after the birth of the child, but not later than within a two-month period from the birth of the child. If a mother has died during the childbirth or within a period up to the 42nd day of the postnatal period, or up to the 42nd day of the postnatal period has refused to take care of and bring up the child in accordance with the procedures prescribed by law, the child's father is entitled to a leave for the period up to the 70th day of the child's life. Such leave is granted also to another person who actually takes care of the child. If a mother cannot take care of the child up to the 42nd day of the postnatal period due to illness, injury or other health-related reasons, the father or another person who actually takes care of the child is entitled to leave for those days on which the mother herself is not able to take care of the child.

For a family that has adopted a child up to the age of three, one of the adoptive parents is entitled to ten calendar days of leave.[70]

The prenatal, maternity, as well as paternal leaves are paid by the State Social Insurance Agency.

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[69] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 154.

[70] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 155.

Any employee is entitled to take a child care leave (parental leave) related to birth or adoption of a child. Such child care leave shall be granted for a period of one and a half years within the period until a child reaches the age of eight. Child care leave shall be granted as one interrupted period or in parts, depending on the request of the employee. Child care leave shall be counted towards the term of employment of an employee. An employee who has used a child care leave shall be entitled to return to the previous position. If this is not possible, the employer shall ensure to the employee a similar or equivalent work with no less favorable conditions and employment provisions. The parental leave is paid by the State Social Insurance Agency up to the time when the child has reached the age of one year.[71]

§ 6.6

F. What requirements are there for new mothers (e.g., part-time work, breaks for breast feeding, or day care)?

The Labor Law provides for various advantages for new mothers in relation to work organization and termination of employment.

The employer is obligated to provide part-time work if requested by a pregnant woman, a woman for a period following childbirth up to one year, but if the woman is breast feeding — for the entire period of breast feeding.[72]

A pregnant woman, a woman for a period up to one year after giving a birth, and a woman who is breast feeding for the entire period of breast feeding may be employed in overtime work only if she provides her written consent.[73]

It is prohibited to employ for the night shifts pregnant women and women for a period following childbirth up to one year, but if a woman is breast feeding — during the entire period of breast feeding (see also § 5.1 above), if there is a doctor's opinion that the performance of the relevant work causes a threat to the safety and health of the woman or her child. The employee who has a child who is less than three years of age may be employed on night shifts, only with the employee's consent.[74]

Pregnant women and women for a period following childbirth up to one year (but if a woman is breast feeding — during the entire period of breast feeding) must not be employed during the rest time of a week. *Rest time* is a period of time when an employee

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[71] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 156.

[72] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 134, para. 2.

[73] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 136, para. 7.

[74] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 138, paras. 6-7.

does not have to perform his or her work duties and that he or she may use at his or her own discretion; it includes rest breaks during work, one-day rest, weekly rest, holidays and leaves.[75]

An employee who has a child under one and a half years of age is entitled to additional breaks from work of not less than 30 minutes and not less than every three hours for feeding the child. If the employee has two or more children under 1-1/2 years of age — a break from work should be granted of at least one hour. The employer shall determine the length of breaks after consultation with employee representatives. When determining the procedure for granting a break, the wishes of the relevant employees shall be taken into account as far as possible. Breaks for feeding a child may be added to breaks in work or, if requested by the employee, transferred to the end of the working time thus shortening the length of the working day accordingly. Breaks for feeding a child are treated as working time, retaining work remuneration for such time.[76]

§ 6.7

G. What requirements exist for paid or unpaid medical leaves of absence, and how do these differ from short-term sick pay?

In respect of the paid sick leaves, please see § 6.2 above.

If the time periods stated under § 6.2 have expired, but the employee is still unable to work, in order to receive financial support from the state, the employee has to undergo an examination by the State Medical Commission for the Assessment of Health Condition and Working Ability. The Commission determines the degree of disability of a person. If a person is recognized as disabled, the allowance is paid to the person up to the age at which the person will receive an old-age pension or until the time at which the person's disability ends.

Latvian law does not provide for unpaid sick leave.

§ 6.8

H. What are the employer's duties if an employee requests a flexible working schedule?

Latvian law does not provide for such type of working time as the flexible working time or schedule. The employee can only be employed under normal working time (organized also in shifts), part-time or aggregated working time.

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[75] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 141.

In practice, however, the flexible working time may be agreed between the employer and employee.

§ 6.9

I. What other paid or unpaid leaves of absence must be provided by employers?

The employer must provide the following leaves of absence to the employee:

- The employer, at the request of the employee, shall grant unpaid leave for care and supervision of child to be adopted, that, before the approval of adoption by a court, has been handed over to the employee for care and supervision on the basis of a decision by an Orphan's Court (parish court). Such leave is granted for the time period specified in the decision of the Orphan's Court (parish court). If the Orphan's Court makes a decision regarding an extension of the time period for care and supervision, the leave shall be extended up to the time of the coming into effect of the court decision regarding approval of the adoption. Such unpaid leave is counted towards the total length of service, but it is not counted towards the annual paid leave.[77]
- The employer may grant to the employee the unpaid leave on any occasion if the parties agree so.[78]
- The employer is obligated to grant study leave of not less than 20 days per year to the employee for taking state exams or preparation and defense of a final paper. The wage may be or may not be retained, depending on the terms of employment contract or collective agreements. The employer is obligated to grant additional study leave only if such right is provided by the collective contract or employment contract (with or without retaining wage or average earnings).[79]

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[76] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 146.

[77] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 153, para. 1.

[78] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 153, para. 3.

[79] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 157.

§ 7

VII. BENEFITS

§ 7.1

A. What benefits must employers furnish to employees?

Latvian law does not set forth any mandatory benefits that the employer must grant to the employees.

§ 7.2

B. What health benefits must be provided to employees (and their families), and what is the employer's role in the provision of these benefits?

The Labor Protection Law provides that the employer shall ensure the mandatory health examinations for those employees whose state of health is influenced or may be influenced by workplace environment factors that are harmful to health, and for those employees who have special conditions at work.[80] The employer covers expenditures that are associated with the mandatory health examinations of employees. The Cabinet of Ministers determines the procedures for performance of the mandatory health examination.[81]

The Labor Law furnishes the night shift employee (see § 5.1 above) with the possibility to request undergoing a health examination before the employee is employed in night shift work, as well as to subsequently undergo regular health examinations not less frequently than once every two years. The night shift employee, who has reached the age of 50, is entitled to undergo a health examination not less frequently than once a year. Expenditures associated with such health examination are covered by the employer.[82]

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[80] "Special conditions at work" are usually considered special risks in the work environment (see § 6.3 above).

[81] Labor Protection Law of 20 June 2001, effective as of 1 January 2002, art. 15, paras. 1-2.

[82] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 138, para. 4.

§ 7.3

C. What pension contributions must be made and to whom?

A social security contribution in the amount of 35.09% from the employee's wage is payable in the respective state budget, a part of which is covered by the employer (24.09%) and the remaining part is covered by the employee (11%). The payments of both portions of contribution are administered by the employer.

During the entire period of the employee's employment a part of the social security contribution is transferred by the state to the state pension budget, which shall entitle the employee to old-age pension after retirement. The amount transferred to the state pension budget is determined by the Cabinet of Ministers and changes every year. The part of the social security contribution transferred to the state pension budget in 2012 is 26,74%.

There are no other mandatory payments to be made by the employer on account of any pension plans.

§ 7.4

D. What percentage of overall compensation do benefits usually represent?

There are no official statistics in respect of size of benefits relative to overall compensation. Practices vary widely in each respective company.

§ 7.5

E. What requirements exist for mandatory retirement?

General retirement age for men and women is 62 years. For certain professions, different retirement ages are established. The employee is entitled to go on premature retirement if he or she wishes to do so. The rules on premature retirement slightly differ depending on profession.

Under Latvian law, the employee is not obliged to retire and the employer cannot force the employee to leave the employment due to retirement age, except in respect of certain professions, for example, employees of transportation vehicles, *e.g.*, captains, pilots, stewards, drivers of public transport.

§ 8

XIII. TAXATION

§ 8.1

A. What taxes must be paid by the employer and employee, at what rates, and which taxes must the employer withhold from wages?

The wage is subject to the personal income tax at the rate of 25%. The personal income tax shall be withheld and paid into the state budget by the employer.

The social security contribution (or *social tax*) payable for each employee is 35.09%. Out of this total, 11% is paid by the employee and 24.09% is paid by the employer. However, the employer is responsible for withholding and payment of the entire social tax.

§ 8.2

B. Are there specialized tax or pension requirements for expatriates?

In general, according to Latvian law and Double Taxation Treaties concluded with other countries, wages of nonresidents performing work for the employer that is a resident of the Republic of Latvia are subject to the personal income tax at the rate of 25% in Latvia. The personal income tax in such situation shall be withheld and paid to the state by the employer. The employer has to register such employees as taxpayers with the Latvian State Revenue Service. The employees would be allowed to credit the tax paid in Latvia against the tax payable in their country of residence.

Salaries of nonresidents performing work for an employer and who are not residents of Latvia will be subject to the personal tax at the rate of 25% in Latvia if the work is carried out in Latvia for more than 183 days in a 12-month period.

In accordance with the EU Regulations on Social Security, special certificates on applicable social security legislation (forms E101, E102, etc.) will be accepted by the State Social Insurance Agency. If a nonresident holds an E101 (or E102) certificate issued by his or her resident country tax administration, it will be accepted by the Latvian tax authorities and the nonresident will have to pay the social tax only in his or her country.

If a foreigner is unable to file an E101 (or E102) certificate, the general rules would apply, *i.e.*, the wage would be subject to the social tax at the rate of 35.09%. The social tax in such cases is withheld and paid to the state by the employer.

§ 9

IX. INTELLECTUAL PROPERTY

§ 9.1

A. Who owns intellectual property created during the employment relationship?

As a general rule, if the employer has not agreed with the employee in the employment contract on the ownership of the intellectual property created within the course of employment, the ownership of a specific type of intellectual property will remain with the party as set forth in the law:

- **According to the Copyright Law:** an author has the economic rights to the work that has been created in the course of his or her employment, unless the economic rights of the author have been transferred to the employer by the employment contract.[83] If a computer program has been created by an employee while performing a work assignment, all economic rights to the computer program so created belong to the employer, unless specified otherwise by the employment contract.[84]
- **According to the Law on Designs:** a designer has the economic rights to the design that has been created in the performance of a work task, unless provided otherwise by the employment contract.[85]
- **According to the Patent Law:** the employer has the right to a patent if the invention, in relation to which the patent application has been filed, has been created by the employee, the work duties of which include: (1) activity of an inventor; and (2) research, designing and construction or preparation of a technological solution.

  If the duties of the employee do not include those mentioned above, but are related to the employer's field of activity, the rights to the patent belong to the inventor (employee). In this case, the employer has the right to use the invention as a nonexclusive license without the right to grant license to other persons. If the undertaking of the employer is transferred in the ownership of another person, the rights to use the invention are transferred together with the undertaking to the

[83] Copyright Law of 6 April 2000, effective as of 11 May 2000, art. 12, para. 1.

[84] Copyright Law of 6 April 2000, effective as of 11 May 2000, art. 12, para. 2.

[85] Law on Designs of 28 October 2004, effective as of 18 November 2004, art. 10, para. 3.

legal successor of the employer's rights. The transfer of these rights is not permitted in any other way.[86]

§ 9.2

B. What are the primary means that employers use to prevent theft of trade secrets?

The Labor Law contains a general nondisclosure provision, which provides that the employee has a duty not to disclose any information brought to his or her knowledge that forms a commercial secret of the employer. The employer, on the other hand, has a duty to indicate in writing what information is to be regarded as a commercial secret. The employee has a duty to ensure that the information regarded as a commercial secret is not directly or indirectly available to third parties.[87]

The Labor Law does not provide for any sanctions in case of breach of such nondisclosure obligation; as a result, the employer has two following options:

- to claim damages under civil law as discussed below; or
- to impose disciplinary sanctions upon the employee in question (written reproof, written reprimand or dismissal).

The Labor Law provides certain limitations in respect of employee's civil liability, *i.e.*, the employee has a duty to compensate for losses caused to the employer if the employee does not perform work without justified cause, or performs it improperly or as a result of other illegal or culpable action has caused losses to the employer.

The employee is liable for all the damages caused, excluding lost profit. If losses to the employer have been caused with malicious intent of the employee or due to his or her illegal, culpable action not related to performance of the contracted work, the employee is liable for all losses to the employer. The employee whose work is subject to an increased risk of potential losses is liable only if losses to the employer have been caused as a result of malicious intent or gross negligence.[88]

The Criminal Law also provides for liability for disclosure of a commercial secret, although the criminal liability is rarely applied. If applied, it may result in imprisonment

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[86] Patent Law of 15 February 2007, effective as of 1 March 2007, art. 15, paras. 1, 2, 7.

[87] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 83.

[88] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 86.

for a term up to five years or custodial arrest, or community service, or a fine up to 100 times the minimum monthly wage.[89]

§ 9.3

C. After employment ends, what restrictions exist on the employer's ability to impose covenants not to compete or covenants not to solicit customers or employees?

The law provides the possibility for an employer to impose a noncompete covenant on the employee after the employment relationship has terminated (see § 3.7 for details). Labor Law is silent with respect to nonsolicitation provisions. Accordingly, although it is quite common practice to include nonsolicitation provisions in employment contracts, in case of a dispute such provisions may be declared invalid by the court to the extent they are not covered by a permitted noncompete covenant.

The employer may attempt to invoke provisions of nondisclosure of commercial secrets or similar in order to counteract solicitation of its customers or employees by a former employee. An employer has to prove the amount of damages it claims from a former employee. The actual amount of damages is evaluated by the court on a case-by-case basis.

§ 9.4

D. What duties do employees have to their present and former employers with respect to intellectual property?

The employees do not have any particular duties to their employers with respect to intellectual property except for those mentioned under § 9.1.

[89] Criminal Law of 17 June 1998, effective as of 1 April 1999, art. 200, para. 2.

§ 10

X. CODES OF CONDUCT

§ 10.1

A. What requirements exist for a code of conduct governing employees?

The employer who usually employs at least ten employees shall adopt, after consultation with representatives of the employees, working procedure regulations. The *working procedure regulations* provide for the following (if not included in the collective agreement or the employment contract):

- beginning and end of working time, breaks in the work, as well as the length of the working week;
- organization of working time at the undertaking;
- date, place and manner of payment of work remuneration;
- general procedures for granting of annual paid leave;
- labor protection measures at the undertaking; and
- behavioral regulations for employees and other regulations pertaining to the working procedures in the undertaking.[90]

The behavioral regulations may address any issues of behavior and include sections regarding employees' honesty and integrity at the workplace, prohibition to bribe, kickback, etc.

§ 10.2

B. What whistleblowing protections exist?

See the discussion in § 4.7 above regarding the prohibition of retaliation/reprisal.

[90] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 55, paras. 1, 2.

§ 10.3

C. How are codes of conduct (including whistleblowing protections) enforced?

All employees must become acquainted with the accepted working procedure regulations and the employer has a duty to ensure that the text of the working procedure regulations is available to each employee.[91]

If employees do not comply with the working procedure regulations (or codes of conduct) the employer is entitled to impose disciplinary sanctions against the respective employees. The employer may give a written reproof or issue a reprimand in writing to the employee for violation of specified working procedures or employment contract.[92]

In cases of grave violations of internal procedures established by working procedure regulations or other documents the employer is entitled to terminate employment with the respective employee.[93] The law does not provide a definition of a "grave" violation. Therefore, an employer needs to evaluate the severity of a violation and if there is a consequent need to dismiss an employee. An employee may dispute the basis of the employer's dismissal at the court and the court would evaluate if the employer's considerations can be considered correct. Each situation is approached and evaluated on a case-by-case basis.

§ 11

XI. EMPLOYMENT INFORMATION & PRIVACY

§ 11.1

A. What rules protect the privacy of data about employees?

Under Latvian law the processing of personal data is regulated by the Personal Data Protection Law,[94] the purpose of which is to protect the fundamental human rights and freedoms of natural persons, in particular, the inviolability of private life with respect to the processing of data regarding natural persons (*personal data*).

The Personal Data Protection Law applies to processing of all types of personal data, subject to certain exceptions specified in the said Law if: the system administrator is

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[91] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 55, para. 3.

[92] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 90, para. 1.

[93] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 101, para. 1, item 1).

[94] Personal Data Protection Law of 23 March 2000, effective as of 20 April 2000.

registered in the Republic of Latvia; data processing is performed outside the borders of the Republic of Latvia in the territories that belong to the Republic of Latvia in accordance with international agreements; and if the equipment utilized for the processing of personal data is located in the territory of the Republic of Latvia.[95]

§ 11.2

B. What restrictions are there on electronic surveillance of employees and on the employer's ability to monitor use of computers, personal digital assistants (PDAs), telephones, or other technology?

Most of the data protection provisions included in the Personal Data Protection Law are of general nature and can be applied to any situation related to data protection, including employment matters. As a general rule, employees should be kept informed of what information the employer holds about them, how it will be used and to whom it might be disclosed.

Personal data processing is permitted only if not prescribed otherwise by law, and if at least one of the following conditions exists:

- the data subject (employee) has given his or her consent;
- personal data processing results from contractual obligations of the data subject or, taking into account a request from the data subject, the processing of data is necessary to enter into the relevant contract;
- data processing is necessary to a system administrator (employer) for the performance of his or her duties as specified by law;
- data processing is necessary to protect vitally important interests of the data subject, including life and health;
- data processing is necessary in order to ensure that the public interest is complied with, or to fulfill functions of public authority for whose performance the personal data have been transferred to a system administrator or transmitted to a third person; or
- data processing is necessary in order to exercise lawful interests of the system administrator or of such third person to whom the personal data have been

[95] Personal Data Protection Law of 23 March 2000, effective as of 20 April 2000, art. 3, paras. 1, 2.

disclosed to in compliance with the fundamental human rights and freedoms of the data subject.[96]

In most cases monitoring employees' e-mail, any electronic devices and Internet activity shall constitute personal data processing. By engaging in surveillance of such activities an employer is expected to comply with data protection requirements and ensure that the surveillance is not excessive. Employers should have clear policies on personal data monitoring and surveillance and employees should be aware of the extent and purpose of such monitoring and surveillance. Employees should also be notified by the employer of the type and character of the monitoring and/or surveillance (*e.g.*, e-mail, open cameras, hidden cameras, etc.). Surveillance should only be carried out to give effect to the stated purpose. Consequently, ancillary use of personal data and excessive use of personal data in most cases shall be considered unlawful.

The monitoring and surveillance information should not be disclosed to any third party unless the employer is legally obliged to do so or there is an emergency to protect an employee. The employer must ensure that all personal data, including monitored and surveillance data, are protected against unauthorized access and disclosure, and only employees who have a professional necessity to deal with personal data of employees should have access to such data created and used by the employer.

§ 11.3

C. What restrictions apply to the export of data to related companies in the United States?

Personal data can be transferred to related companies located in the United States if the United States ensures the level of data protection corresponding to the level of the data protection in effect in Latvia. There are no specific data protection provisions in relation to transfer of data concerning employees, therefore, general data protection requirements are applied.

Exemptions from compliance with the relevant level of the data protection effective in Latvia are permissible if:

1. the data processing controller (*i.e.*, the employer) undertakes to supervise the relevant protection measures; and
2. at least one of the following conditions is met:
   - the data subject has given consent to transfer the data to another state;

[96] Personal Data Protection Law of 23 March 2000, effective as of 20 April 2000, art. 7.

- the transfer of data is necessary to fulfil an agreement between the data subject and the system administrator (employer), the personal data is required to be transferred in accordance with contractual obligations binding upon the data subject, or taking into account a request from the data subject the transfer of data is necessary in order to enter into a contract;
- transfer of the data is required and requested, pursuant to prescribed procedures, in accordance with significant state or public interests, or is required for judicial proceedings;
- transfer of the data is necessary to protect the life and health of the data subject; or
- the data to be transferred is public or has been accumulated in a publicly accessible register.[97]

The evaluation of the level of personal data protection is performed by the Latvian Data State Inspectorate and it issues permission in writing for the transfer of the personal data.

§ 11.4

D. What information must the employer provide to employees before processing (e.g., collecting, storing, using, disclosing, etc.) their personal data?

When collecting personal data from a data subject (employee), a system administrator (employer) has a duty to provide a data subject with designation (or given name and surname), as well as address of the system administrator and the personal data operator, and intended purpose and basis for the personal data processing, unless such information is already available to the data subject and/or the conducting of personal data processing without disclosing its purpose is authorized by law.

Upon request from the data subject, the system administrator has a duty to provide also the following information:

- possible recipients of the personal data;
- the right of the data subject to gain access to his or her personal data and to make corrections in such data; and
- whether providing an answer is mandatory or voluntary, as well as the possible consequences of failing to provide an answer.[98]

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[97] Personal Data Protection Law of 23 March 2000, effective as of 20 April 2000, art. 28, paras. 1, 2.

§ 11.5

E. What access do employees have to records kept about them by the employer?

In addition to the rights referred to in § 11.4 above, the Personal Data Protection Law provides the following general requirements to information disclosure applicable in relation to the employers:

- the data subject (employee) has the right to obtain all information that has been collected concerning himself or herself in any system for personal data processing, unless the disclosure of such information is prohibited by law in the field of national security, defense and criminal law;
- the data subject has the right to obtain information concerning those natural or legal persons who, within a prescribed period of time, have received information from a system administrator concerning the data subject.

As a general rule, applicable also in relation to the employers, the data subject has the right, within a period of one month from the date of submission of the relevant request and not more frequently than twice a year, to receive in writing the information specified by law free of charge.[99]

§ 11.6

F. What record-retention duties does the employer have with respect to information about employees?

Any records regarding employees should be kept in a safe manner depending on the type and amount of records, intended time of storage, vulnerability of data, etc. Certain employee information is likely to be considered sensitive and will give rise to additional obligations on the employer and its employees who are involved in processing personal data, thus, the employer needs to ensure extra security over such sensitive personal data (*e.g.*, records on sickness, injuries, etc.).

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[98] Personal Data Protection Law of 23 March 2000, effective as of 20 April 2000, art. 8.

[99] Personal Data Protection Law of 23 March 2000, effective as of 20 April 2000, art. 15, paras. 1, 2, 4s.

§ 12

XII. REPRESENTATION OF WORKERS

§ 12.1

A. Do workers have a freedom of association and representation?

The Labor Law secures the right to unite in organizations and provides that employees (as well as employers) have the right to freely, without any direct or indirect discrimination, unite in organizations and join them in order to defend their social, economic and occupational rights and interests. Affiliation of the employee with the above-mentioned organizations or intention to join such organizations may not serve as a basis for refusal to enter into an employment contract, termination of an employment contract or otherwise restrict the rights of an employee.[100]

Employees can defend their social, economic and occupational rights and interests directly or indirectly through the mediation of employee representatives. The *employee representatives* are:

- an employee trade union on behalf of which a trade union institution (or an official authorized by the articles of association of the trade union) acts; or
- authorized employee representatives who have been elected in accordance with provisions of the Labor Law.[101]

§ 12.2

B. How may workers obtain trade union representation?

Trade unions may be formed on the basis of professional, regional or other principles. The trade union shall be registered as an organization with rights of a separate legal entity if it has at least 50 members or if it unites not less that 1/4 of the employees working in a particular undertaking, establishment, organization, profession or industry.[102] Consequently, employees of any particular undertaking have an option either to join any existing trade union or form their own trade union.

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[100] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 8.

[101] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 10, para. 1.

[102] Law on Trade Unions of 13 December 1990, effective as of 2 January 1991, arts. 2 and 3.

§ 12.3

C. Are there workers who, by law, must be represented by one or more trade unions?

The Latvian law does not provide for any compulsory representation of an employee by a trade union.

§ 12.4

D. What is the role of unions or works councils on a day-to-day basis?

The employee representatives (trade unions or authorized employee representatives), when performing their duties, have the following rights and obligations to be effected in favor of the employees:

- to request and receive from the employer information regarding the current economic and social situation of an undertaking, as well as regarding potential changes; information regarding employment of agency workers within the undertaking;
- to receive information in good time[103] and consult with the employer before the employer makes such decisions that may affect interests of employees, in particular, decisions that may substantially affect work remuneration, working conditions and employment in undertaking;
- to take part in determination and improvement of work remuneration provisions, working environment, working conditions and organization of working time, as well as in protection of safety and health of employees;
- to enter the territory of undertaking, as well as to have access to workplaces;
- to hold meetings of employees in the territory and premises of undertaking; and
- to monitor how regulatory enactments, collective agreement and working procedure regulations are being observed in employment legal relationships.

The rights of employee representatives shall be exercised in a manner ensuring that the efficiency of the operations of undertaking is not reduced.[104]

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[103] There is no definition of "good time;" thus, in case of a dispute, the court would evaluate if activities of the relevant party can be considered as acting in "good time."

[104] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 11, paras. 1, 4.

§ 12.5

E. What is the scope of the employer's duty to bargain?

The Labor Law neither provides any specific scope nor sets forth any limitations for bargaining. Generally, under defined circumstances employers have an obligation to consult with the employee representatives.

The *consultation* is defined as a process of exchange of views and dialogue between the employer and employee representatives with the purpose of achieving agreement. Consultations shall be performed at the appropriate level, in good time, as well as in an appropriate manner and scope so that employee representatives may receive substantiated answers.[105] Since the definition of consultation refers to "purpose of achieving agreement" it is not required to achieve an actual agreement but rather only to conduct consultations process with a view to achieve agreement. The adequacy of the scope of consultations performed towards achievement of agreement would be evaluated by the court on a case-by-case basis.

Only under limited circumstances is the ability of employer to act affected by failure to reach agreement with employee representatives. For example, a trade union may refuse to grant its consent to termination of its member — in which case the employer would not be entitled to effect termination but rather would be entitled to file a respective claim with the court.

§ 12.6

F. Must the employer pay for time spent on union business or allow leaves for union business?

In general the employer does not have to pay for time spent on union business or allow leaves. However, the Law on Trade Unions provides that the elected officials of trade unions, who have not been excused from their principal work, under the collective agreement may be granted rights to execute their social obligations in the interests of the workforce during working time, as well as to take part in the trade union trainings preserving their average earnings.[106]

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[105] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 11, para. 3.

[106] Law on Trade Unions of 13 December 1990, effective as of 2 January 1991, art. 16, para. 3.

§ 12.7

G. What restrictions exist on picketing, strikes, lockouts, and secondary action?

Under Latvian law a *strike* is a tool for resolving a collective interest dispute that is carried out by all employees or a group of employees of an undertaking voluntarily, completely or in part, to discontinue work with an aim to attain the fulfillment of their demands.[107]

Pickets are not provided under Latvian law as a particular and separate form of action by employees.

According to the Strike Law, employees have the right to strike in order to protect their economic or professional interests. The right to strike must be exercised as the last resort if no agreement and reconciliation has been reached in the collective interest dispute. Participation in the strike shall be voluntary and the employee cannot be forced to participate in the strike or be prohibited from participation in the strike.[108]

Announcement of a strike and actions during it are subject to certain procedural requirements (such as formation of strike committee, advance notice, etc.).

The Strike Law provides certain limitations on striking. Judges, prosecutors, policemen, fire-protection, fire-fighting and rescue service employees, border-guards, members of the state security service, warders and persons who serve in the National Armed Forces are prohibited from striking. In addition, the employer and the strike committee shall ensure that during the strike, the minimum amount of work is continued by those undertakings, organizations and establishments whose discontinuation of operations would cause a threat to national security or safety, health or life of population, certain groups of inhabitants or particular individuals.[109] The Strike Law contains an exhaustive list of such services and includes, among others: health emergency services, public transportation, supply of potable water, electricity, gas, communications companies, waste removal, etc.

A *lockout* is a method to be used by an employer, a group of employers or employers' organization in reaction to a strike commenced by employees in order to protect their economic interests, *i.e.*, it is a refusal to employ employees and to pay work remuneration if a strike significantly affects the economic activity of a company. The number of

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[107] Strike Law of 23 April 1998, effective as of 26 May 1998, art. 1.

[108] Strike Law of 23 April 1998, effective as of 26 May 1998, arts. 3, 4.

[109] Strike Law of 23 April 1998, effective as of 26 May 1998, arts. 16, 17, para. 1.

employees against whom the lockout is directed may not exceed the number of employees on strike.[110]

The Labor Dispute Law provides certain procedures to be observed in organizing the lockout, as well as limitations (*e.g.*, the lockout is prohibited in state administration and local government institutions, and in undertakings that in accordance with the Strike Law render services necessary to public). The State Labor Inspection supervises the conformity of the lockout procedures with the law.[111]

§ 12.8

H. How are disputes with union-represented workers or with unions resolved?

As a general rule, disagreements that arise between the trade unions and employer regarding determination of or changes to the labor conditions, as well as on social and economic issues, are reviewed by the supreme institutions of the respective trade unions (if any) and the employer within ten days of the dispute, by participation of the representatives of employer and trade union. Disagreements that cannot be settled by the supreme institutions of the respective trade unions and employer, as well as disagreements between trade unions and the state institutions on labor and other social and economic issues, are tried in court.[112] For general remarks on dispute resolution, please see § 1.4 above.

§ 13

XIII. WORKPLACE SAFETY

§ 13.1

A. What general health and safety rules apply in the workplace?

General health and safety rules at the workspace are set forth in the Labor Protection Law[113] and in a number of respective regulations of the Cabinet of Ministers. General rules require that the employer introduce labor protection measures, which include: creating a work environment that avoids work environment risks or reduces the impact of unavoidable work environment risks, preventing the causes of work environment risks,

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[110] Labor Dispute Law of 16 October 2002, effective as of 1 January 2003, art. 21, paras. 1, 2.

[111] Labor Dispute Law of 16 October 2002, effective as of 1 January 2003, art. 11, para. 2.

[112] Law on Trade Unions of 13 December 1990, effective as of 2 January 1991, art. 19.

[113] Labor Protection Law of 20 June 2001, effective as of 1 January 2002.

replacing dangerous items by safe or less dangerous items, performing employee instruction and training in the field of labor protection, etc.[114]

In accordance with the general principles of labor protection, the employer has an obligation to institute a labor protection system that includes evaluation of work environment risks, internal supervision of work environment, establishment of labor protection organizational structures and consultations with employees in order to involve them in improvement of labor protection. The employer has an obligation to ensure functioning of the labor protection system in the undertaking.[115]

The employer is entitled to apply disciplinary sanctions to employees for violations of regulations of labor protection, as well as for failing to implement the employer's requirements in respect of labor protection issues. The employer is entitled to require employees who have violated regulations of labor protection to undergo an additional training related to labor protection issues. The employees in question retain their minimum salary during the training period.

Balancing obligations imposed on the employers, employees have to comply with a number of labor protection requirements at the workplace:

- to take care of their own safety and the safety and health of those persons who are affected (or may be affected) by employees' work;
- to use protective equipment, work equipment, dangerous substances, transport and other means of production in accordance with the respective requirements;
- to observe safety signs and use safety devices, which the work equipment and workplace is supplied with, in accordance with the respective requirements;
- to immediately inform the employer, direct work supervisor or labor protection specialist regarding an accident at work, as well as regarding any work environment factors that cause or may cause risk to safety and health of persons, also regarding deficiencies in the labor protection system of the undertaking;
- to participate in instructions and trainings in the field of labor protection organized by employer;
- to cooperate with the employer or labor protection specialist and meet labor protection requirements included in the documents issued by the State Labor Inspection;

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[114] Labor Protection Law of 20 June 2001, effective as of 1 January 2002, art. 4, para. 1.

[115] Labor Protection Law of 20 June 2001, effective as of 1 January 2002, art. 5, paras. 1, 2.

- to cooperate with the employer or labor protection specialist in ensuring a safe work environment and working conditions so as not to cause risks to the safety and health of employees; and
- to attend mandatory health examinations in accordance with the order of the employer.[116]

§ 13.2

B. What kinds of specialized workplace safety rules apply in certain industries?

There are a great number of specialized workplace safety rules applicable in different industries, including transportation, retail, manufacturing, printing and publishing, construction, trade, agriculture, social and health care services, education and research, and administration.

§ 13.3

C. What compensation is provided for workplace injuries and illnesses?

An employee who has suffered from an accident at work is entitled to a sick leave payment for the first ten calendar days in the amount of 80% of average monthly wage subject to insurance contributions. The employer has to pay this from its own funds. The employer also has to pay the employee a lump-sum benefit in the amount of one monthly wage if, due to the fault of the employer, a work accident occurred in which the employee suffered a serious bodily injury.[117]

After the 10th day of the employee's sick leave or immediately after the physician's statement on professional disease, sick leave payments or professional disease payments are covered by the State Social Insurance Agency.

The State Social Insurance Agency compensates employees for certain additional expenses incurred due to accidents at work or occupational disease.[118]

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[116] Labor Protection Law of 20 June 2001, effective as of 1 January 2002, art. 17.

[117] Law on Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases of 2 November 1995, effective as of 1 January 1997, art. 7, para. 1.

[118] Law on Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases of 2 November 1995, effective as of 1 January 1997, art. 21, para. 2.

§ 13.4

D. What reassignments or "light duty" is required for injured or ill workers?

In case of a workplace accident or occupational disease resulting in partial incapacity, a physician may recommend work that is adapted to the employee's level of incapacity. The physician would also issue a statement indicating if the employee is able to perform work duties of his or her existing position.

If the employee's incapacity is certified by the physician's statement, the employer has to offer the employee any open position that corresponds to the employee's capacity, if such position is available. If no such position exists and the employee does not qualify as a disabled person, the employer is entitled to dismiss the employee.

If, on the other hand, the employee in question is recognized a disabled person by the physician's statement, the employer is not entitled to dismiss the employee and has to find any adequate job for him or her. Disabled persons can only be dismissed on the grounds of:

- their misbehavior;
- their inability to perform the job they were contracted for; or
- liquidation of the employer.[119]

§ 14

XIV. TERMINATION OF EMPLOYMENT

§ 14.1

A. What grounds for dismissal are permitted?

The Labor Law provides a limited list of grounds for dismissal at the employer's initiative:

1. the employee has, without a justified cause, significantly violated the employment contract or specified working procedures;
2. the employee, when performing work, has acted *illegally* and therefore has lost the trust of the employer (the Supreme Court has established in several cases that the concept of illegality is broad, *i.e.*, it covers not only cases when the employee has breached a particular provision of law, but also when he or she has failed the

[119] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 109, para. 2.

duty to perform work with such care as, in conformity with the nature of the work and requisite competence and suitability of employee for performance of such work, would be reasonable to expect from him or her);

3. the employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of legal employment relationships (for example, an employee had been flirting with clients or gossiping about a company, its employees, clients, etc.);
4. the employee, when performing work, is under the influence of alcohol, narcotic or toxic substances;
5. the employee has grossly violated labor protection regulations and has jeopardized the safety and health of other persons;
6. the employee lacks adequate professional competence to perform the contracted work;
7. the employee is unable to perform the contracted work due to his or her state of health and such state is certified by a physician's statement (this ground refers to *permanent disability*);
8. the employee who previously performed the relevant work has been reinstated in the position;
9. the number of employees is being reduced;
10. the employer (*i.e.*, legal person or partnership) is being liquidated;
11. due to temporary incapacity the employee does not perform work for more than 6 consecutive months or 1 year during a 3 year period if the incapacity is interrupted (these periods exclude maternity leave, occupational accidents or diseases) or
12. in exceptional cases, when there are present any circumstances that do not allow continuation of legal employment relationships on the basis of considerations of morality and fairness.[120]

The ability of the employer to base dismissal on the above grounds may be subject to various procedural requirements and limitations with respect to certain categories of employees (see § 14.3 below).

[120] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 101, paras. 1, 5, art. 104, para. 1.

§ 14.2

B. Under what circumstances may the employee claim that the employer has breached its contract with the employee or that the employer has "constructively dismissed" the employee?

There is no concept of "constructive dismissal" under Latvian Law.

In general the employee is entitled to bring a claim against the employer whenever the employer is in breach of the provisions of the employment contract (*e.g.*, unilateral decrease of wage, delay of wage payment, adding new responsibilities, etc.) or provisions of law. The most common claims against employers are claims for reinstatement into position and compensation for forced absence from work caused by dismissal without sufficient substantive grounds or in violation of procedural requirements.

§ 14.3

C. What notice requirements are there for dismissal and may the employer provide pay in lieu of notice?

If the grounds for dismissal are based on behavior of the employee (items (1) to (5) listed in § 14.1 above), the employer shall give a termination notice no later than within a one-month period from the date of detecting a violation, excluding the period of the employee's temporary incapacity, or the period when the employee has been on leave or has not performed work due to other justified reasons, but no later than within a six-month period from the date when the violation was committed. Prior to giving notice, the employer is obliged to request from the employee a written explanation.

In cases of lack of professional competence, disability, reinstatement of former employee and reduction of number of employees (redundancy), the employer is entitled to give a termination notice only if the employer cannot employ the employee with his or her consent in another position in the same or another undertaking of the employer.[121]

The termination notice may not be given during an employee's period of temporary incapacity (except under item (11) in the list provided in § 14.1 above), during a period when the employee is on leave, or is not performing work due to other justified reasons. The employer is also prohibited from giving a termination notice in the following situations:

[121] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 101, paras. 2, 3, 4.

- To a pregnant woman or to a woman following the period after birth up to one year, but if a woman is breast feeding – during the entire period of breast feeding, except if the grounds for the termination notice are based on her misbehavior or liquidation of the employer (items (1) to (5) and (10) in the list provided in § 14.1 above).
- To a disabled person, except if the grounds for the termination notice are based on the employee's misbehavior, incapacity or liquidation of the employer (as mentioned under items (1) to (5), (7) and (10) in the list provided in § 14.1 above) or if the termination notice is given during probationary period.[122]

An important procedural obligation is that the employer, prior to giving a termination notice, must request that the employee provide information on whether he or she is a member of a trade union. If the employee is a member of a trade union, the employer is obliged to request consent from the trade union before giving a notice. If such request is rejected, the employer may bring a claim in court requesting termination of the employment contract.

The requirement to obtain consent of the trade union is not applicable if the termination notice is given during the probationary period or the grounds for dismissal are as follows:

- the employee, when performing work, has been under the influence of alcohol, narcotic or toxic substances;
- the employee who previously performed the relevant work has been reinstated at work; or
- the employer is being liquidated.[123]

The employer, when giving a termination notice, must comply with the following notice periods:

- **Notice without delay:** if termination is based on the grounds related to the employee's serious misbehavior (as mentioned under items (2) and (4) in the list provided in § 14.1 above).
- **3-day notice:** if the termination notice is given during the probationary period, including the last day of the probationary period;

[122] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 109.

[123] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 110.

- **10-day notice:** if termination is based on the grounds related to the employee's misbehavior or incapacity (as mentioned under items (1), (3), (5), (7) and (11) in the list provided in § 14.1 above).
- **One-month notice:** if termination is based on the grounds not related to the employee's behavior or liquidation of the employer (as mentioned under items (6), (8), (9) or (10) in the list provided in § 14.1 above).

At the request of employee, the period of temporary incapacity shall not be included in the termination notice period.

The right to revoke the termination notice by the employer is determined by the employee unless such rights are specified in the collective agreement or employment contract. If the parties agree, the employment contract may be terminated before the expiry of the termination notice period.[124]

The law does not specifically address the issue of whether the employer may provide pay in lieu of notice. Presumably, the employer would be entitled to instruct the employee not to appear at the workplace during the notice period while continuing to pay and formally the last day of employment would be the end of the notice period. This is not a common practice of employers and is used only in situations if an employee has lost the trust of an employer or if an employee can harm the interests of a company by staying at the workplace.

§ 14.4

D. How is termination pay calculated, including any commissions, and when must it be paid?

The Labor Law provides that all sums due to the employee by the employer shall be paid on the last day of employment. If the employee has not performed work on the last day of employment, all sums due to him or her are paid no later than on the next day after the employee has requested a statement of accounts. If there is a dispute in respect of the amounts due to the employee, the employer has a duty to pay the sum that is not disputed by the parties.[125]

[124] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 47, para. 1; art. 103.

[125] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 128.

Upon termination of the employment contract, the employer is obliged to pay:

- Wages for the last month of employment proportionate to the hours worked.
- Compensation for unused annual leave, if any. To calculate the compensation for *unused annual leave:*
    1. Determine the *number of days "earned"* — the number of calendar days that have passed since the end of the previous year divided by 13 (the number of calendar days that gives right to one day of annual leave).
    2. Determine the *daily average earnings* — divide the total amount of work remuneration for the previous six months by the number of days worked during this period. (The number of days worked does not include sick days, leave days and days when the employee has not performed work with a justified reason.)
    3. Multiply the calculated number of days "earned" for the annual leave by the daily average earnings. [126]
- Any bonuses due to the employee.
- Severance pay (if due).

§ 14.5

E. Are there rights to severance pay and how is severance calculated?

The employer is obligated to pay severance pay if the grounds for termination notice are not related to misconduct of employee, *i.e.*, as mentioned under items (6) to (11) in the list provided in § 14.1 above. The employer is also obliged to pay severance pay if the termination notice is given by employee on the basis of considerations of morality and fairness that do not allow continuation of legal employment relationships.

The amount of severance pay depends on the length of service with the respective employer:

- one month's average earnings if employee has been employed by the relevant employer for less than 5 years;
- two months' average earnings if employee has been employed by the relevant employer for 5 to 10 years;

[126] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 75, para. 5.

- three months' average earnings if employee has been employed by the relevant employer for 10 to 20 years;
- four months' average earnings if employee has been employed by the relevant employer for more than 20 years.[127]

Monthly average earnings are calculated by dividing the total amount of work remuneration for the previous six months by six.

§ 14.6

F. What reasons for dismissal/termination of contract are prohibited, and what remedies does the former employee have?

An exhaustive list of the reasons for dismissal are provided in § 14.1 above. The remedies available to former employees for claims of dismissal without sufficient substantive grounds or in violation of procedural requirements include reinstatement into their position and compensation for the forced absence from work.

Theoretically, an employee also would be entitled to claim damages if they result from the unlawful dismissal (for example, an employee has not been able to repay a bank loan for his or her apartment and the bank has taken the employee's property). In order to claim damages an employee would have to prove the amount of damages, unlawful action of the employer (*i.e.*, unlawful dismissal) and causal relationship between the first two.

§ 14.7

G. How may former employees bring claims on behalf of other workers (i.e., a collective or class action)?

Latvian law does not provide the possibility to bring class actions in the court.

The possibilities to bring actions in relation to collective disputes regarding rights are described in § 1.4 above.

[127] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 112.

§ 14.8

H. May employers compel employees to arbitrate claims of wrongful dismissal?

The Civil Procedure Law prohibits arbitration courts to have jurisdiction over disputes based on employment contracts.

§ 14.9

I. What restrictions exist on obtaining a release of claims from a former employee?

The waiver by the employee of rights provided to him or her by law is considered void.[128] However, any dispute may be ended by entering a settlement agreement.

§ 14.10

J. What procedures and terms are required to have an enforceable separation contract with a former employee?

The employer and employee may mutually agree on termination of the employment contract. Such agreement must be executed in writing. Apart from the requirement to have the agreement in writing, there are no other requirements under the law. In practice, it is recommended to include in the termination agreement provisions on mutual settlements, handing over of employer's property, lack of claims, etc.

§ 14.11

K. What are the best practices employers should observe regarding dismissals of employees?

The employer must closely and thoroughly follow the provisions of the Labor Law on dismissals since failure to observe substantive or material procedural provisions may result in a claim for reinstatement and compensation for forced absence from work.

[128] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 6, para. 1.

§ 15

XV. COLLECTIVE DISMISSALS (LAYOFFS), BUSINESS CESSATION & SALE OF A BUSINESS

§ 15.1

A. What rules apply to collective dismissals?

The provisions on collective dismissals (redundancy) apply in situations, where the number of employees to be made redundant within a 30-day period is:

- at least 5 employees if employer usually employs in the undertaking more than 20 but less than 50 employees;
- at least 10 employees if employer usually employs in the undertaking more than 50 but less than 100 employees;
- at least 10% of the number of employees if employer usually employs in the undertaking at least 100 but less than 300 employees; or
- at least 30 employees if employer usually employs in the undertaking 300 or more employees.[129]

The employer who intends to carry out a collective redundancy shall in good time[130] commence consultations with the employee representatives in order to agree on the number of employees subject to the collective redundancy, process of the collective redundancy and social guarantees for the employees to be made redundant. During consultations the employer and employee representatives examine all the possibilities of avoiding collective redundancy or reducing the number of employees to be made redundant and possibilities to alleviate effects of such redundancy by taking social measures that create the possibility to further employ or retrain the employees made redundant.

In order to ensure that employee representatives have an opportunity to submit proposals, the employer shall in good time inform the employee representatives regarding the collective redundancy and provide information in writing regarding: the reasons for the collective redundancy; the number of employees to be made redundant; the occupations and qualifications of such employees; the number of employees usually employed in the undertaking; the time period within which it is intended to carry out the collective redundancy; and procedures for calculation of severance pay if they differ from the

[129] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 105, para. 1.

[130] There is no definition of "good time;" thus, in case of a dispute, the court would evaluate if activities of the employer can be considered as acting in "good time."

provisions under the law. An employer who intends to carry out a collective redundancy must notify, in writing, the State Employment Agency and the local municipality in the territory in which the undertaking is located not later than 45 days in advance of the date of the collective redundancy. The notification must include the information required under the law (*e.g.*, consultations conducted with employee representatives). A copy of the notice must be sent to employee representatives.[131]

The employer may commence a collective redundancy not earlier than 45 days after the submission of the notification to the State Employment Agency, unless the employer and employee representatives have agreed on a later date for commencing a collective redundancy. This term can be extended by the State Employment Agency for another 15 days (up to 60 days) in exceptional cases.[132]

§ 15.2

B. Are there special rules that apply when an employer ceases operations?

There are no special rules in respect of the employer ceasing operations. It is likely that in the case of ceasing operations, termination of employees would be conducted on the grounds of reduction in number of employees (redundancy). Unless employees are terminated or mutual agreements reached in respect of unpaid vacation, employees are entitled to receive payment for any idle time — the time when an employer does not provide work to an employee or does not perform necessary activities for acceptance of employee's work obligations.[133]

§ 15.3

C. Are certain employees protected from collective dismissal?

In case of the collective dismissal the same dismissal restrictions apply as in individual cases (see § 14.3 above).

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[131] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 106, paras. 1, 2, 4.

[132] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 107.

[133] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 74, para. 2.

§ 15.4

D. How long does the collective dismissal process usually take?

The length of the entire collective dismissal procedure depends on the time spent in consultations with employee representatives and agreements reached. Under an optimistic scenario the entire process starting with consultations and ending with actual terminations would take approximately four months.

§ 15.5

E. What rules govern the transfer of undertakings (including employment and labor contracts) when a business is sold?

The provisions of the transfer of undertakings are included in the Labor Law. The rights and duties of the transferor of an undertaking that arise from legal employment relationships effective at the moment of the transfer pass to the acquirer. The transferor has a duty to inform the acquirer of all rights and duties passing to the acquirer insofar as such rights and duties are known or should have been known to the transferor at the moment of transfer of the undertaking. Noncompliance with this duty does not affect the transfer of rights and duties, as well as validity of claims of employees against the acquirer in connection with such rights and duties.[134]

Both transferor and acquirer have a duty to inform their employee representatives — or their employees directly if there are no employee representatives — regarding:

- the date of the transfer of the undertaking or the expected date of the transfer;
- the reasons for the transfer;
- the legal, economic and social consequences of the transfer; and
- the legal, economic and social consequences of measures that will be taken with respect to employees.

The transferor or acquirer — who in connection with the transfer of the undertaking intends to take organizational, technological or social measures in the undertaking with respect to employees — has a duty no later than three weeks in advance to commence

[134] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 118, paras. 1, 3.

consultations with its employee representatives in order to reach an agreement on such measures and procedures.[135]

§ 16

XVI. KEY TRAPS TO AVOID

§ 16.1

A. What are the five most common mistakes foreign employers make and what can be done to avoid them?

The five most common mistakes foreign employers make are as follows:

1. **Failing to comply with the official language requirements when drafting employment documents.**

   Foreign employers occasionally assume that employment contracts can be drafted in English if the employee is fluent in English. This is not correct and the official language requirements apply regardless of the employee's knowledge of a foreign language. Failure to comply with the official language requirements may result in administrative fines and potential disputes with employees.

2. **Failing to comply with compulsory requirements of Latvian law.**

   It is possible to enter into an employment contract with a Latvian employee governed by any other law than Latvian. This option, however, is subject to the compulsory requirements of the Latvian Labor Law. Failure to comply with compulsory requirements of the Latvian Labor Law may result in provisions of the employment contract being ruled void by the court and other potential court claims.

3. **Failing to comply with the procedural requirements of dismissals.**

   Foreign employers often fail to observe various procedural requirements when dismissing employees, for example, failure to request written explanations prior to a dismissal decision being made or failure to indicate the grounds for dismissal in the termination notice. Failure to comply with material procedural requirements may result in the court ruling the dismissal is void.

4. **Failing to perform an adequate evaluation of preference rights to stay employed in case of redundancies.**

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[135] Labor Law of 20 June 2001, effective as of 1 June 2002, art. 120, paras. 1, 3.

When performing a reduction in workforce, it is required that an evaluation be conducted to determine which of several employees of the same position have a preference right to stay employed. Occasionally, evaluation of preferences as specified under the law is substituted by a subjective choice between several employees of the same position. Failure to conduct an evaluation may result in the court ruling the dismissal is void.

5. **Failing to comply with requirement to pay compensation for unused annual leave upon termination of employment.**

   If the employee is terminated, any unused annual leave accrued during the years of employment should be compensated. Often compensation is paid only for unused annual leave for the last year of employment. Failure to compensate unused annual leave in full may result in an employee's claim for outstanding amounts and damages.