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ESTONIA LATVIA LITHUANIA BELARUS

A GUIDE TO HIRING AND FIRING IN ESTONIA



ABOUT THE GUIDE

This Guide is excerpted from *A Guide to Hiring and Firing in Europe*, which was compiled and edited by the Employment and Labor Group of Morrison & Foerster LLP. The country text is based on information provided by **SORAINEN**.

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ESTONIA: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements, recommendation or professional recruitment agencies.

Pre-employment references and background checks

Employers may request a reference from a previous employer with the consent of the candidate. However, use of pre-employment references is not common. Other background checks, such as medical history checks and criminal record checks, can only be requested if they are relevant to the job. However, employers often make use of public databases to investigate the background of candidates.

Selection of employees or workers

An employer may not discriminate in its recruitment practices, or in the terms and conditions it offers to a successful candidate on the basis of sex, racial or ethnic origin, level of language proficiency, disability, age or sexual orientation. Compensation for both economic and non-economic damage suffered can be awarded where an employer discriminates in this way.

Itemized pay slips

Employers must give their employees itemized pay statements specifying gross and net salary, and the amount and purpose of any deductions upon the employee's request.

Health and safety

Employers are obliged to safeguard the health and safety of their employees in the workplace. This includes an obligation to carry out risk assessments, have a health and safety policy, and keep a record of accidents at work. Employers are not obliged to obtain employers' liability insurance for employees; this is on a voluntary basis only.

Written contract of employment

A contract of employment must be in writing if the term of employment exceeds 14 days (although failure to adhere to the format requirements will not invalidate the employment contract). Typically, the contract of employment is given before the employment commences. The parties are free to agree the terms of employment subject to those complying with minimum, mandatory terms set out in law. Offer letters are not commonly used.

In practice there is no difference between the employment contracts entered into with junior and senior employees, however, an employer may include more extensive restrictions for senior employees (e.g., non-compete restrictions).

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly in the contract of employment, common practice implies that both parties are bound by a mutual obligation of loyalty and good faith. For an employee, this means that he or she must perform duties loyally, bearing in mind the benefit to the employer, in accordance with his or her knowledge and skills, and with the requirements of his or her role; should notify the employer of any and all material circumstances affecting the employment; and refrain from actions which harm the reputation of the employer.

Company rules

There is no requirement in Estonia to have company rules. It is, however, common practice for employers to have such rules in place and for those to be available on the employer's intranet and at the place of work. If work rules are introduced, they are considered mandatory.

Data protection

An employer has duties under the Personal Data Protection Act in respect of the personal data of its employees. As it maintains the personal data of its employees, the employer is considered the chief processor. The employer must appoint a person responsible for processing personal data (e.g., details of family life and data concerning trade union membership).

STATUS

In Estonia, most individuals are engaged as employees under employment contracts. Other types of service providers such as independent contractors are rarely used. This is mainly due to the fact that employees working under employment contracts are afforded better social protection than those providing work under other arrangements.

Employees

An employment relationship does not give greater protection to employers regarding their confidential information, intellectual property or anticompetitive practices, as protection of such interests can be agreed and included in contracts with independent contractors and self-employed workers.

Independent contractors or consultants

The use of self-employed independent contractors and consultants is not very common in Estonia. Statutory employment law protections such as ill health insurance benefits, overtime regulations or benefits related to absence from work and termination do not apply to these types of relationships.

Agency workers

Agency workers are used in Estonia. These workers are generally the employees or workers of an agency to which a fee (plus any applicable VAT) is paid for providing the manpower. There is no limitation or restriction on their use.

PRACTICALITIES

Restrictions on overseas individuals working in Estonia

An Estonian company must ensure that its staff has permission to work in Estonia. Failure to do so can result in civil and criminal sanctions being imposed on the company. A citizen of the European Union has the right to work in Estonia if a right of residence has been

granted (for this the individual's place of residence must be registered in Estonia). Those residing in Estonia on the basis of a temporary residence permit require a work permit in order to work.

Tax and social security contributions

An employer is obliged to withhold income tax from salary paid to the employee at a rate of 21 percent.

In addition, social taxes must be withheld. Social tax is a mandatory monthly tax from which public pensions, social security benefits and health insurance services are financed. The social tax rate is 33 percent of the gross taxable salary, made up of 20 percent social security payments and 13 percent health insurance contributions. Both employers and employees must also pay unemployment insurance premiums (at the rate of two percent for employees and one percent for employers). Employees can also join the funded pension system (which is obligatory for employees born after 1983). If they do, their employer must withhold an additional two percent of their gross salary.

All of these payments are made on a monthly basis. The employer must inform the respective state authorities of the amount of the taxes and to transfer those amounts.

Taxation of individuals working in Estonia

Persons resident, ordinarily resident and domiciled in Estonia are liable for Estonian income tax on their worldwide income. Benefits in kind derived from employment are likely to be subject to income tax.

THE EMPLOYMENT CONTRACT

Probationary Period

Probationary (trial) periods are common. They must not last longer than four months (excluding temporary sick leave and vacation days). If a fixed-term employment lasts less than eight months, the period may not exceed more than half of the contract term.

Minimum Wage

National minimum wage is €355 per month and €2.13 per hour (2014 amount). There are proposals to increase this to €390 per month and €2.34 per hour in 2015.

Non-Pay Benefits

Fringe benefits are not a legal requirement, but they are common and may include:

- Company car
- Laptop
- Mobile telephone
- Share options

Hours of Work

Generally, a full-time employee's working hours must not exceed eight hours per day or 40 hours per week. The working week is five days, usually Monday to Friday.

Holiday Entitlement

Employees are entitled to a minimum of 28 calendar days' holiday per calendar year. Employees are entitled to take holiday after six months of employment. If there is a state or public holiday during the employee's holiday period, the holiday is extended by the equivalent number of days.

Default Normal Retirement Age

The default normal retirement age is 63.

Sick Pay Entitlement

Employees are not entitled to any salary or compensation during the first three working days of sickness absence. From the fourth to the eighth working day of absence, employees are entitled to receive payment of 70 percent of salary from their employer. Following this, employees may be compensated by the social security system.

Rate of Tax Payable by Employee

Income tax is payable at 21 percent of salary.

Rates of Social Security Payments

Employers must pay a state social tax each month at a rate of 33 percent of their employees' gross taxable salary. This is made up of a contribution of 20 percent towards social security payments and 13 percent towards health insurance. Employers must also pay one percent towards unemployment insurance tax. Employees contribute two percent of salary towards unemployment insurance and two percent towards a funded pension payment, if the employee has joined the funded pension system.

Maternity Benefits

Female employees are entitled to take up to 140 calendar days of pregnancy and maternity leave. Such leave must start between 30 and 70 days prior to the expected birth. During such leave, a benefit equal to the woman's average daily income is payable by the Health Insurance Fund.

Paternity Benefits

A father may take up to 10 working days of paternity leave during the two-month period prior to the expected birth of the child and the two-month period following the birth of the child. Paternity leave is compensated by the state based on the father's average income.

Parental Benefits

After pregnancy and maternity leave, one parent per couple is entitled to parental leave. Generally, parental leave starts after the end of pregnancy and maternity leave, and continues for up to 435 days. Parental benefit is paid by the state and is equal to the employee's average monthly income during the previous calendar year, subject to social tax, up to a maximum monthly amount equal to three times the average income in Estonia per calendar month.

In addition, after the period of parental leave, a mother or a father may be granted additional leave at his or her request for

raising a child up to three years of age. The employee receives a childcare allowance from the local pensions board during that time.

Flexible Working

There is no right to request to work part-time, however, such flexibility can be mutually agreed between the parties.

Equal Opportunities

Employees are protected against discrimination on the grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in the armed forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership in workers' associations, political opinions or membership in a political party, and religious or other beliefs. Treating part-time and fixed-term employees in a manner less favorably than that of comparable full-time or permanent employees is also prohibited.

Protected Employees

Protected employees include trade union officials, health and safety officials, representatives of employees, pregnant women and those on maternity or paternity leave.

Minimum Notice Period

The minimum periods of notice vary from 15 to 90 calendar days, depending on the employee's length of service.

Collective Agreements

Any applicable collective agreement must be referred to in the employment contract. Collective agreements are compulsory in a limited number of sectors and organizations. They do not generally have a significant impact on employment relations.

Disciplinary Rules

Employers may set out their disciplinary rules in their working rules. Where the employee is in breach of his or her employment contract or duties, the employer can issue a warning and notify him or her that the next breach may result in the termination of their employment. In the case of serious breach, the employer may terminate the employment without notice or prior warning.

Grievances

There are no statutory rules which the employer must follow in responding to a grievance and it is not common to agree to such procedures in the employment contract.

ESTONIA: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

If the employer intends to issue a disciplinary warning to an employee or dismiss an employee, the employer must first inform the employee of the possible action along with the reasons for doing so. Employees have no statutory right to appeal any warning issued to them. However, employers may establish internal rules allowing employees to do so.

Grievances

Employees may raise a complaint about the employer's treatment of him or her at any time during the course of employment. There are no statutory rules which employers must follow in responding to such a complaint.

Consultation with employees

Employers have an obligation to consult with their employees before any collective dismissals take effect, with the intention of finding ways of avoiding or reducing the number of dismissals. Consultation includes providing relevant information on the potential dismissals to employees or employee representatives (where the affected employees are absent).

INDIVIDUAL TERMINATIONS

In order to terminate employment, employers must have suitable grounds. These can be either related to the employee's conduct or capabilities (e.g. gross misconduct, breach of the employment contract, poor performance or permanent incapacity to work due to illness), or to economic, organizational or technological reasons of the company (e.g. a decrease in the volume of work, organizational changes or financial position of the company). The reason for dismissal must be given to the employee in writing or a format that can be reproduced in writing (e.g., by email or letter).

Employers must also observe the appropriate period of notice. This varies from 15 to 90 calendar days, depending on the employee's length of service. The general rule is that an employer can only terminate employment without notice if the employee is guilty of gross misconduct.

Claims

An employee can claim unlawful termination if the employer has terminated his or her contract without

a reason or has not followed the rules established by the law. Claims for unlawful termination can be heard either by the courts or by the labor-dispute body.

An employee has the right to claim compensation for unlawful termination and/or to continue the employment relationship. If the court or the labor-dispute resolution body finds that a dismissal was unlawful, the employment contract is deemed not to have been terminated. However, on the petition of either of the parties, the court or labor-dispute resolution body can decide that the employment terminated as of the date of the unlawful termination, and instead order that compensation of up to three months' average salary be paid. Should the employee be pregnant, an employee representative or entitled to take maternity leave, the compensation can be up to six months' average salary. The courts and labor-dispute resolution body can award additional amounts, taking the circumstances of the dispute into account.

In rare cases, where the parties decide to continue the employment relationship following unlawful termination of the contract, the employer must pay the employee his or her average salary for the period between the unlawful termination and the reinstatement of the employee, during which they were absent from work.

Employees can challenge the grounds of termination with the labor-dispute committee or at court within 30 days of receiving notice of termination.

If an employee has terminated his or her employment without giving the requisite notice, the employer has the right to a reasonable amount of compensation from the employee.

Redundancy payments

An employee dismissed by reason of redundancy will be entitled to a severance payment on termination. The level of the payment is one month's average salary. Depending on the employee's length of service, the Unemployment Insurance Fund may pay additional compensation. For example, if the length of service is more than five years and less than 10 years an additional payment of one month's average salary will be paid. If the length of service is more than 10 years an additional two months' salary will be paid. The payments are calculated using the last six months' average earnings.

Discrimination

Generally, claims for compensation related to discrimination are rare, and in the past cases

have resulted in only small awards of compensation. However, all employees have the right to claim discrimination and there is no minimum service requirement.

GROUP TERMINATIONS

Redundancies

A collective dismissal occurs where a certain number of employees (ranging from five to 30, depending on the number of employees in the company) are dismissed within a 30-day period for reasons unrelated to the conduct or capabilities of the employees. In the event of a collective dismissal, the employer must comply with its information and consultation obligations, which includes informing the relevant authorities.

Prior to a collective dismissal, an employer must inform the employees of the proposed dismissals and the reasons for them. In addition, the employer must consult with the employees' representatives with the aim of reaching an agreement regarding the possibility of avoiding or reducing the number of redundancies, possible measures to alleviate the consequences of the terminations and ways of supporting the dismissed employees in their search for work (e.g., by providing training). During the consultation process, the employees' representatives have the right to meet with the employer and to submit their representations within a period of 15 days after the receipt of the employer's consultation notice.

Business transfer

The reorganization, or change in the ownership, of a business does not terminate employment nor does it serve as grounds for termination. In those circumstances, employees have the right (and an obligation) to continue working for the new business formed as a result. Before the transfer, the parties must also comply with information and consultation obligations in respect of the transfer and the potential impact it will have on employees.