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A GUIDE TO HIRING AND FIRING IN LITHUANIA



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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LITHUANIA: HIRING

RECRUITMENT PRACTICE AND PROCESS

Recruitment services are provided by the State Labour Exchange Office free of charge, or by private recruitment service providers. Employers also recruit by advertisements, recruitment agencies and personal contacts. It is also common to recruit students in universities. Headhunting from competitors is prohibited where the purpose is unfair commercial practice.

Pre-employment references and background checks

Most employers carry out background checks as part of the recruitment process. Criminal record certificates can be granted only directly to the employee. However, the employer is specifically entitled to check the employee's identity documents, social security certificates and qualification diplomas, as well as to send the employee to a medical exam in certain circumstances.

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, sexual orientation, race, nationality, language, ethnic origin, social status, religion, family status, age, beliefs, membership in political parties and public organizations, or any other circumstances that are not related to the candidate's working skills.

Itemized pay slips

Employers must give their employees itemized pay statements, on a monthly basis, specifying gross and net salary, the amount and purpose of any deductions and details of overtime. At the time of writing the Lithuanian Parliament is considering legislative amendments that may cancel this requirement unless there is a special request by the employee.

Health and safety

Employers are obliged to safeguard the health and safety of their employees, visitors to their premises and the public. The obligations are extensive.

They include mandatory medical exams for employees working in certain industries, environments and positions. Employees must be individually informed about the health and safety rules and requirements that apply at the workplace.

This should be evidenced in writing and signed by the employee before the start of their employment.

The employer must also appoint a specialist (employee) to be responsible for health and safety, or enter into a contract with a licensed health and safety company for this purpose.

Written contract of employment

Contracts of employment must be entered into in writing. There is a model form, approved by the government, which employers are bound to follow. The employer has an obligation to give the employee an employment contract to sign before starting employment. This should include terms and conditions relating to employment such as position, work place, salary, working time and vacation. Offer letters are not common. Senior positions may be subject to more detailed employment contracts than those used for junior positions.

Implied duties of the employer and the employee

In addition to terms and conditions set out expressly in the contract of employment the law also implies certain additional terms into every employment relationship. These include the following:

- Employees have a duty to work fairly and honestly, to follow work discipline, to execute orders made by their employer accurately and on time and to protect their employer's property; and
- Employers have a duty to organize work appropriately, to comply with health and safety and other laws, and to take care of the needs of their employees.

Company rules

A number of issues must be regulated by internal work rules. Such rules are also used to regulate the working environment and conditions and are common in Lithuania.

Data protection

An employer has duties in respect of processing personal data. Personal data must be processed and stored safely only to the extent necessary for the management of employment relations. Employees must be informed of the processing of their data. Sensitive personal data may be processed only with the employee's consent, or where such processing is allowed by law.

STATUS

Where the individual will be supervised by the engaging entity and be subject to internal company rules, their engagement will be one of employment and must therefore be regulated by a written employment contract. Alternatively, individuals in Lithuania can be engaged as independent contractors under service agreements.

Employees

An employment relationship gives the employer a greater ability, both during and after the employment, to protect company confidential information and intellectual property (if these obligations are included in the appropriate documents). It also prevents the former employee setting up in competition or poaching other staff (if a special agreement on post-employment non-compete obligations is signed and the appropriate monetary compensation is paid by the employer).

Independent contractors or consultants

Independent contractors are sometimes used in Lithuania. They allow the employer to avoid cumbersome employment termination procedures and other protections and benefits afforded to employees. There may also be a cost benefit because no social insurance contributions are payable by the engaging entity in respect of an independent contractor. However, these arrangements may be scrutinized by the authorities and so the contract entered into between the parties must reflect the practical arrangements.

Agency workers

Agency workers have a special status in Lithuania. Agency workers cannot be discriminated against in comparison to employees engaged directly by the end user client of the agency in terms of work remuneration and work environment. The end user client of the agency is responsible for the health

and safety of any agency worker it uses. The end user client and the agency must enter into a written agency-services contract.

PRACTICALITIES

Restrictions on overseas individuals working in Lithuania

An employer who wants to employ an individual who is not a citizen of the European Economic Area to work in Lithuania has to ensure the individual obtains a work permit and a residence permit before he or she arrives in the country. Those holding a permanent residence permit do not require a work permit. A work permit can only be obtained if there is a shortage of employees with a particular qualification in Lithuania. In other cases, working without a work permit is considered illegal and employers could face administrative liabilities in respect of each illegal employee.

Tax and social security contributions

If an organization has employees in Lithuania, it is responsible for deducting the applicable income tax and social security contributions from each employee's wages. All employers have an obligation to register with the territorial tax inspectors and register their employees with a State Social Insurance Board before the start of employment.

Taxation of individuals working in Lithuania

There is no difference between a Lithuanian national and an overseas employee legally working in Lithuania with regard to his or her obligations to pay (and to have paid by his or her employer) taxes to the Lithuanian government, with certain limited exceptions.

THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

Probationary Period

Probationary periods are common. The maximum length is three months.

Minimum Wage

National minimum wage is Lt6.06 (approximately €1.75) per hour and Lt1,000 (approximately €289.60) per month.

Non-pay Benefits

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

- Private health insurance
- Car benefit
- Mobile phone
- Sport compensation

Hours of Work

A regular week must not exceed 40 hours per week and eight hours per day. Overtime can extend this to a maximum of 48 hours per week and 12 hours per day. There is a daily rest entitlement of 11 hours, and a weekly rest entitlement of 35 hours (which should be provided in two consecutive days).

Holiday Entitlement

Employees are entitled to a minimum of 28 days of paid annual leave and (usually) 14 public holidays per year. Employees under 18 years of age, single parents of children under 14 or disabled children under 18, and disabled employees are entitled to a minimum of 35 calendar days of paid annual leave. Additional periods of leave apply to specific industries, e.g., aviation and health care. Employees are entitled to take annual leave after six months of employment.

Default Normal Retirement Age

There is no age at which an employer can compulsorily retire an employee; it is an employee's choice whether to retire or not. The current retirement age for men is 62 years and eight months, and for women is 60 years and four months.

Sick Pay Entitlement

Sick pay is payable to employees who have been covered by social insurance for at least three months during the last 12 months, or at least six months during the last 24 months, save for limited exceptions. The employer must pay between 80 and 100 percent of the employee's average salary during the first two calendar days of sickness absence. During the third to the seventh day of absence the state pays the employee 40 percent of salary from the social insurance fund. From the eighth day of sickness absence, the state pays the employee 80 percent of salary.

Rates of Tax Payable by Employee

Income tax is payable at the rate of 15 percent.

Rates of Social Security Payments

Employers' social security contributions are 31 percent of gross salary. Employees' contributions are three percent. In addition, employees must contribute six percent of gross salary to the mandatory health insurance scheme.

Maternity Benefits

Employees receive 70 days' maternity leave before birth and 56 days' leave after (if the birth is complicated, it is 70 days). Maternity leave is paid by the state if the minimum period of social insurance coverage has been met (as a general rule, 12 months of insurance coverage during the last 24 months). The compensation is 100 percent of the previous salary, subject to a statutory cap.

Paternity Benefits

Paternity leave runs from the day the child is born until he or she is one month old. Paternity pay is 100 percent of the salary for the duration of leave, subject to a statutory cap. Paternity leave is compensated by the state if the minimum period of social insurance coverage has been met (as a general rule, 12 months of insurance coverage during the last 24 months).

Parental Benefits

Each parent is equally entitled to take child care leave until the child is three years old. Only one parent can take it at a time; however, the leave can be taken in parts (in turns). The leave is compensated by the state for the first two years of a child's life if the minimum period of social insurance coverage has been met (as a general rule, 12 months of insurance coverage during the last 24 months). The amount of compensation depends on if the leave is taken for only a child's first year or for his or her first two years. In the former case, 100 percent of salary is compensated, subject to a statutory cap. In the latter case, 70 percent of the salary is compensated for the first year and 40 percent of the salary is compensated for the second year, subject to a statutory cap.

Flexible Working

Certain categories of employees are entitled to a part-time arrangement at their request, including pregnant women or women who have taken a period of maternity leave, disabled employees, and single parents.

Equal Opportunities

Employees are protected against discrimination on the basis of sex, sexual orientation, race, nationality, language, ethnic origin, social status, religion, family status, age, beliefs, membership in political parties or public organizations, or any other circumstances not related to the individual's working skills.

Protected Employees

Protected employees include trade union officials, trade union members, pregnant women, those on maternity, paternity or adoption leave, working students and pupils, juvenile employees, donors, those on business trips, those on strike, those on fixed-term contracts, those who are ill or were injured at work, disabled employees, employees with small children, and single parents.

Minimum Notice Period

An employer can terminate an employment contract without any fault on the employee's part only after he or she notifies the employee in writing and confirms it with the signature of the employee. Such notification must be presented two months before the dismissal. If the employee has less than five years until his or her retirement age, or if he or she is younger than 18, disabled or has children who are younger than 14, the minimum notice term is four months.

Collective Agreements

Any applicable collective agreements must be referred to in the employment contract. Generally, collective agreements are not common in Lithuania, although they do exist in both the private and the public sector.

Disciplinary Rules

Disciplinary rules are regulated in detail by the Labour Code. Amongst other things, an employer must make a written request to an employee to give an explanation of his or her misconduct, and set a reasonable deadline for such explanation. The disciplinary action must only be taken after considering the employee's explanation, or the deadline has passed. The disciplinary measure must be applied by a written order, presented to the employee and confirmed by the employee's signature. The action must be taken no later than one month from the time the misconduct became known to the employer and no later than six months from the date the misconduct took place.

Grievances

The employee can appeal the employer's actions to the Labour Disputes Commission in the State Labour Inspectorate. Some employees' claims (including claims of unlawful employment termination) are heard only by the courts.

LITHUANIA: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

Employers strictly follow the rules relating to disciplinary actions that are set out in the Labour Code. An employee may only be dismissed for a disciplinary reason where he or she is guilty of repeated misconduct (which has resulted in a warning being issued) in the past 12 months, or where he or she is guilty of gross misconduct (a list of conduct which would amount to gross misconduct is set out in the Labour Code).

Before taking any disciplinary action, the employer must request in writing an explanation of the alleged misconduct, and set a reasonable deadline for such explanation. Only once the explanation has been considered, or the deadline passed without any response from the employee, can the employer decide what sanction to impose (if any). The sanction must be applied by a written order, presented to the employee and confirmed by the employee's signature. The action must be taken no later than one month from the time the employer became aware of the misconduct, and no later than six months from the date the misconduct took place.

Grievances

Individual labor disputes are examined by a Labour Dispute Commission or the courts. Labour Dispute Commissions are administered by the State Labour Inspectorate and consist of a representative of the State Labour Inspectorate, a representative of the trade unions and a representative of the employers' organizations. An employee may bring the matter before a Labour Dispute Commission within three months of the date when he or she learned, or should have learned, about the violation of his or her rights. The employer or employee may file an action before the court within one month if he or she is not satisfied with the decision of the Labour Dispute Commission.

Claims of unlawful employment termination and some other types of claims are filed in the courts directly. The dismissal can be disputed within the period of one month. If the court finds the dismissal to be unlawful, the employee may be awarded average work remuneration for the whole period between dismissal and the effective decision of the court (the balance between the previous salary and the current salary is awarded if the employee has already found another job). Additionally, the employee may be reinstated at

the previous job, if the court considers it reasonable.

Consultation with employees

At least once a year, employers should inform and consult with employee representatives about: their present and future activities; the financial position of the company; and the condition of employment relationships in the company.

Employers must also consult with employee representatives (or employees directly if the employee representatives are absent) before any large-scale redundancies. The aim of such consultation is to avoid dismissals, if possible, or reduce the impact of the dismissals on employees. The duty to consult also arises where employers intend to reorganize or restructure the business, or propose certain other changes in the company, such as changes to health and safety policies.

INDIVIDUAL TERMINATIONS

Mutual termination agreements are considered the best way to dismiss employees as they help to mitigate the risk of claims of unlawful termination. The termination agreement must be initiated by a written proposal, and must include detailed terms and conditions agreed upon by the parties.

Where a termination agreement is not used, the employer bears the burden of proof in the event of a dispute.

Contractual claims

Claims based on employment contracts are more protected than commercial claims. If the salary is not duly paid in the course of employment, an employee is entitled to a penalty payment of 0.07 percent for every day of delay. If the employer fails to properly settle with the employee upon termination of employment, the employer is bound to pay the employee's average salary for every day of delay. Average salary would also be payable in respect of the period between dismissal and the court decision deeming that dismissal to be unlawful.

Statutory claims

An employee can challenge the grounds of, and the procedure relating to, termination. No eligibility criteria apply. If the court finds the termination to be unlawful, the employee may be reinstated and paid the average salary for the whole period between dismissal and the reinstatement, or the court may terminate the contract by its decision and award the employee the average salary for the period before the effective decision (the balance

between the previous salary and current salary will be awarded, if the employee has found another job). The employee is also entitled to compensation for non-pecuniary damage.

Dismissal of a pregnant woman is forbidden, save for very specific exceptions. Employees with children under three years old cannot be dismissed without fault.

Dismissal for the following reasons will be unlawful: membership in a trade union; performance of employee representatives' functions; attendance in a case against the employer or having filed a grievance; and discriminatory reasons. An employer cannot dismiss an employee if he or she is on vacation, sickness or similar leave.

Redundancy payments

In the case of a dismissal without fault, or liquidation of the employer, the employee is entitled to statutory severance pay, which depends on the employee's length of service and may vary from one month's average salary to six months' average salary.

Discrimination

It is unlawful to discriminate on the grounds of sex, sexual orientation, race, nationality, language, ethnic origin, social status, religion,

family status, age, beliefs, membership in political parties or public organizations, or any other circumstances that are not related to the individual's working skills. A discrimination claim can be brought in court. Compensation for such claims may be unlimited.

Termination on the grounds of age, participation in a trade union, etc., is explicitly forbidden. However, discrimination claims are not common in practice.

GROUP TERMINATIONS

Redundancies

A termination is considered to be a collective termination where, within a 30-day period, 10 or more employees are dismissed from a company with between 20 and 99 employees; 10 percent or more employees are dismissed from a company with between 100 and 299 employees; or 30 or more employees are dismissed from a company with 300 or more employees.

Employers have to consult with the employee representatives and send information in writing to the territorial labor exchange office before presenting dismissal notices in respect of collective dismissals.

Business transfer

The dismissal of employees or detrimental changes to employment conditions due to any kind of business transfer is forbidden. The transferee is under an obligation to take on all employment contracts and other employment conditions of the transferor. The employees affected by the transfer have to be notified about the terms and conditions of the transfer in writing at least 10 working days before the transfer.