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ESTONIA LATVIA LITHUANIA BELARUS

A GUIDE TO HIRING AND FIRING IN LATVIA



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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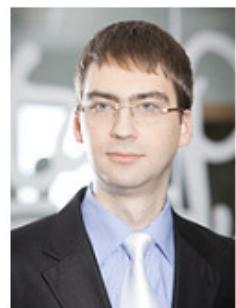
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LATVIA: HIRING

RECRUITMENT PRACTICE AND PROCESS

Most employers recruit externally by advertisements, recommendations and professional recruitment agencies. Employers with large numbers of employees may also advertise internally within the company.

Pre-employment references and background checks

Employers may ask for pre-employment references that might be associated with the work to be performed and this often happens in practice. However, background checks can only be carried out with the consent of the prospective employee (other than in very limited circumstances). Employers may ask a prospective candidate to undergo a medical examination in order to assess whether their health status would allow him or her to perform specific work.

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 gender, race, color, age, disability, religion, political or any other beliefs, national or social origin, sexual orientation, and property and family status.

Itemized pay slips

Employers must give employees itemized pay statements specifying gross salary, hours worked, taxes paid and any deductions made. Employers must explain such calculations if requested by an employee.

Health and safety

Employers are obliged to safeguard the health and safety of their employees. The obligations are extensive. They include a duty to carry out a risk assessment and take steps to mitigate any risks identified, prepare a written health and safety policy, and investigate and report accidents to the appropriate state institutions.

Written contract of employment

An employment contract setting out all terms and conditions of employment must be entered into in writing and must include several mandatory clauses such as those relating to commencement date, place of work, amount of remuneration, vacation

entitlement, termination rules, working time, and any applicable collective agreements.

This must be done before the employee actually commences work for the employer. Offer letters are not very common, though some employers do use them. Junior and senior employees are treated in the same way in respect of employment contracts.

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 an employee's duty to use reasonable care in the course of employment and to keep confidential his or her employer's confidential information or trade secrets.

Company rules

Employers with 10 or more employees must have work procedure rules in place within two months of the employer being established.

Data protection

An employer is obliged to ensure the safety of the data of its employees and staff. Employers must process the data fairly and lawfully; process only for limited purposes; and ensure data are adequate, relevant, not excessive, accurate, up to date, not kept for longer than necessary, processed in line with the data subject's rights, kept secure and not transferred to other countries or third persons that do not have adequate protection and valid legal grounds.

STATUS

Depending on the needs of the employer and the requirements of the work to be done, an employer can hire employees (either for indefinite or fixed periods of time) or enter into a service agreement with a self-employed person. The status of the individual dictates the level of statutory protections he or she is entitled to receive, and his or her rights. Where there is a dispute as to whether an individual is engaged as an employee or a self-employed person, the Latvian state authorities and courts look at the practical arrangements between the parties rather than the form of the legal relationship or contract (i.e., the substance over form rule).

Employees

An employment relationship gives the employer a greater ability both during and after the

employment to protect company confidential information and intellectual property, and to prevent the former employee from setting up in competition.

Independent contractors or consultants

Independent contractors and consultants are subject to the same rate of personal income tax as is payable by employees. However, they can benefit from lower levels of social security contributions. Independent contractors and consultants are subject to bookkeeping and monthly and annual reporting requirements. These individuals also have to register with the Latvian taxation authorities as independent contractors.

Agency workers

Legislation regarding the use of temporary agency workers is now in force. As a result, agency workers are to be provided with safe working conditions and be informed of vacancies at the end user (i.e., the client business in which the agency worker is placed). A provider of work placement services (i.e., a company hiring out its personnel) is required to ensure the following protections to its employees:

- The employee must have the same working conditions and be subject to the same employment provisions (e.g., in relation to working time, rest time and remuneration) that would apply if the employee was engaged directly by the end user to carry out the same work; and
- Between placements, irrespective of the agreed working time, the employee must be paid remuneration not less than the statutory minimum monthly salary in proportion to the time between placements.

PRACTICALITIES

Restrictions on overseas individuals working in Latvia

Overseas individuals, other than citizens of the European Union, the European Economic Area or Switzerland, must have a work permit to work in Latvia. If the employee fails to have a work permit, the employer can be administratively fined; the amount of fine depends on the number of persons illegally employed. In the case of repeated violations, the employer can also be liable for criminal sanctions.

Tax and social security contributions

An employer must register each of its employees with the local taxation authority. The employer will be assigned a date (usually the 10th, 15th or 20th day of the following month) as the date by which it must pay the employer and employee social security contributions in respect of the previous month's salary. This is also the date by which the employer must file a report detailing the amount of personal income tax (PAYE) and social security contributions payable and paid by the employer with respect to its employees.

Latvian salaries are normally paid to the employee's bank account. PAYE must be withheld and remitted by the employer to the taxation authorities on the same day as the salary is paid. This also applies where the salary is paid in cash.

Taxation of individuals working in Latvia

Persons resident, ordinarily resident and domiciled in Latvia are liable for Latvian income tax on their worldwide income, and Latvian capital gains tax on their worldwide capital gains. Benefits-in-kind derived from employment are likely to be subject to income tax. Individuals working for an overseas company who are sent to Latvia for the purpose of working in its Latvian business operations will, in broad terms, only be resident in Latvia if their actual residence in Latvia in any tax year is 183 days or more.

A non-Latvian tax resident will also be subject to Latvian tax on employment income, including income earned from paid employment performed in Latvia for an employer who is not a resident of Latvia or who does not have a permanent establishment in Latvia, or for work which has been performed outside Latvia for an employer registered in Latvia.

A non-Latvian tax resident will also be subject to Latvian tax on income from the performance of duties in a council or board of directors of a company or a co-operative company registered in Latvia, irrespective of whether the income is received from the company or co-operative company registered in Latvia, or from another capital company or co-operative company that is not a resident of Latvia. This income also includes expenses paid in respect of work travel and official travel that exceed statutory limits.

Both of the above are, however, subject to applicable double-tax treaties.

THE EMPLOYMENT CONTRACT

Overview of key terms and legal requirements:

Probationary Period

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

Minimum Wage

The minimum salary in Latvia from January 1, 2014, is €320 per month.

Non-pay Benefits

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

- Private health care
- Mobile phone expenses
- Company cars
- Pension contributions
- Bonuses
- Share options

Hours of Work

The normal working week is 40 hours. The normal working day is eight hours. If the employee is engaged in high-risk activities, these maximums are reduced to 35 hours and seven hours, respectively. There is a daily rest entitlement of 12 hours, and a weekly rest entitlement of 42 continuous hours. Special rules on working hours and daily rest apply to underage employees.

Holiday Entitlement

Employees are entitled to a minimum of four calendar weeks of paid annual leave. In addition, there are 14 public holidays per year (however, some of them fall on a Sunday).

Default Normal Retirement Age

There is no compulsory age at which employees must retire and retirement cannot be used as a reason for terminating the employment relationship. From January 1, 2014 until January 1, 2025, the normal retirement age will be gradually increased from 62 to 65 years.

Sick Pay Entitlement

Employers must pay employees 75 percent of average earnings for the second and third day of sickness absence and 80 percent from the fourth to the tenth day. From the 11th day of absence, employees may receive payments from the state social insurance agency.

Rate of Tax Payable by Employee

The current tax rate is 24 percent.

Rates of Social Security Payments

Employers' social insurance contributions are 23.59 percent of gross pay. Employees' contributions are 10.5 percent.

Maternity Benefits

Employees are granted maternity leave of 112 calendar days – 56 days before the birth and 56 days after the birth. In the case of difficult or multiple births, or if expectant mothers start regular medical treatment from the 12th week of pregnancy, paid maternity leave is prolonged to 126 calendar days. Maternity leave is paid by the state at a rate close to the employee's previous salary if it does not exceed a certain limit.

Paternity Benefits

Paternity leave can be taken for up to 10 calendar days, and can be taken at any time within the two months following the birth of the child. In some circumstances (such as death of the mother, or diagnosed depression of the mother) the father or another person who is in fact taking care of the baby may also request a part of the maternity leave. Paternity leave is paid by the state.

Parental Benefits

Employees are granted parental leave for up to 18 months. Parental leave is paid by the state until the child reaches the age of

one at a rate close to the employee's previous salary if it does not exceed a certain limit. After the child has turned one, the amount of the benefit significantly decreases.

Flexible Working

Pregnant women and young mothers who are breastfeeding are entitled to request flexible working hours.

Equal Opportunities

Employees are protected against discrimination on the grounds of sex, race, color, nationality, ethnic or national origin, age, disability, religion, political or any other belief, national or social origin, sexual orientation, property, and family status.

Protected Employees

Protected employees include trade union members, disabled persons, pregnant women, mothers who are breast feeding, employees on maternity, paternity or adoption leave, under aged employees, and those for whom adverse consequences were created because they exercised their statutory right.

Minimum Notice Period

The minimum notice period to be provided by the employer is one month, unless the employment contract or collective bargaining agreement provides for a longer period. Where the employment contract is terminated due to the employee's breach, the statutory notice period is either 10 days or, in certain circumstances, the contract can be terminated with immediate effect.

Collective Agreements

In practice, collective agreements are generally limited to public-sector and former public-sector businesses.

Disciplinary Rules

Employers may give a written warning or reprimand to an employee for violation of specified working procedures or breach of the employment contract. Generally, a warning or reprimand may be issued no later than one month after the date of detecting the violation or breach. Only one warning or reprimand may be issued for each violation. These are statutory rules and do not have to be set out in the contract.

Grievances

An employee may exercise his or her statutory right to raise a complaint about his or her treatment at any time during the course of his or her employment. Employee representatives also have the right to submit a complaint on an employee's behalf. Responses to complaints are to be provided without delay, and in any event, no later than seven days of receipt. These are statutory rules and do not have to be set out in the contract.

LATVIA: FIRING

PRIOR TO FIRING

Disciplinary action and dismissal

If an employer intends to give a written warning or reprimand to the employee or to terminate the employee's employment, it must first inform the employee in writing of the reason for the potential action and ask the employee to provide a written explanation. Employers must consider the explanation given and the facts and circumstances in general, along with any consequences of the employee's breach or misconduct, the employee's previous work and his or her personality. Generally, employers must give notice of termination to an employee no later than one month from the date of detecting the violation. Therefore, employers must also consider when the breach or misconduct occurred and whether too much time has passed for disciplinary action to be taken.

Grievances

An employee may exercise his or her statutory right to raise a complaint about his or her treatment at any time during the course of his or her employment. Employee representatives also have the right to submit a complaint on an employee's behalf. Responses to complaints are to be provided without delay, and in any event, no later than seven days of receipt. In addition, it is possible for the employer and the employee representatives to create a special labor-dispute resolution body within the company; however, in practice this option is seldom used.

Consultation with employees

The trade union and employee-authorized representatives have to be consulted before the employer takes any decision that may affect employees. This includes, in particular, decisions which could substantially affect remuneration, working conditions and employment within the company, such as large-scale redundancies or the transfer of a business.

If an employer intends to terminate an employment contract of an employee who is a member of a trade union, the prior written consent of that trade union must be obtained.

INDIVIDUAL TERMINATIONS

An employer may not terminate an employee's employment unless one or more of the statutory grounds for termination of employment are satisfied. The employer may give a termination

notice to an employee only for reasons related to the conduct or abilities of the employee, or as a result of economic, organizational or technological measures taken in the company. The termination notice must contain a detailed explanation of the reasons for terminating the employment relationship.

An employee is entitled to a severance payment if the employment relationship is terminated for one of the following reasons:

- The employee has given notice of termination for a good cause (i.e., a reason based on morality and fairness that means the continuation of the employment relationship is not possible); or
- The employer has given notice of termination because the employee is not competent to perform the contracted work; the employee is unable to perform the contracted work due to his or her state of health (and such state is certified with a doctor's opinion); or the employer has reduced the workforce, or is in liquidation.

Unless a collective agreement or employment contract provides for higher severance payments, the level of severance payable is between one and four months' average earnings, depending on the employee's length of service. Monthly average earnings are calculated taking into account the total amount of work remuneration (i.e., salary, various supplements and bonuses) paid during the last six months. It is not common to have workplace agreements which offer enhanced severance payments.

Claims

(Please note that Latvian law does not recognize the differences between "contractual claim" and "statutory claim," at least in relation to the termination of employment.)

The employee may challenge, in court, the termination of employment as being null and void within one month of receiving the termination notice. The employer is required to show that the termination is factually justified and that it has been conducted in accordance with the law. If the court finds in favor of the employee, the employee will be reinstated (at the employee's request), and the employee will be entitled to back pay for the period between dismissal and reinstatement.

The employer is prohibited from terminating employment due to business reasons if the employee is a disabled person, a pregnant woman, a woman who has given birth within the last year,

and a woman who is breastfeeding during the whole period of breastfeeding. The employment of these employees however, can still be terminated if the employee is in serious breach of the employment contract.

Redundancy payments

Apart from the severance payment mentioned above, there is no additional redundancy payment due where employment is terminated by reason of redundancy.

Discrimination

It is unlawful to discriminate on the grounds of sex, race, color, nationality, ethnic or national origin, age, disability, religion, political or any other belief, sexual orientation, gender reassignment, marital status, or trade union activities/membership in relation to the taking of disciplinary action or dismissal. A discrimination claim can be brought in court. The compensation for damages may be unlimited; however, in practice, the amount of compensation awarded usually does not exceed approximately €1,430.

GROUP TERMINATIONS

Redundancies

A dismissal is deemed to be a collective redundancy when the number of employees to be made redundant during a 30-day period constitutes five people or more, depending on the number of employees in the undertaking.

An employer is obliged to inform the employee representatives about the planned redundancies in good time, and submit a written notification stating the reasons for the collective redundancy, the number of employees to be made redundant (including the occupation and qualifications of such employees), the number of employees normally employed in the undertaking, the time period within which the employer plans to pursue the redundancy and the severance pay calculation. The employer is then obliged to engage in a consultation procedure with the employee representatives.

Employers have to notify the state employment agency and the local government in the territory in which the undertaking is located. The notification has to be provided no later than 45 days in advance of the collective redundancy.

Business transfer

In the case of a business transfer, the rights and obligations arising from the employment contract are transferred to the acquiring undertaking. It is unlawful to terminate an employment contract due to the transfer of an undertaking. Employees have the right and an obligation to continue working at the business formed as a result of the business transfer.