





## Labour & Employment 2009

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**Labour & Employment 2009**  
Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
© Law Business Research Ltd  
2009

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ISSN 1744-0939

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Printed and distributed by  
Encompass Print Solutions  
Tel: 0870 897 3239

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# Cyprus

**Nicholas Ktenas**

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## Legislation and agencies

### 1 What are the main statutes and regulations relating to employment?

Cyprus employment law is a mixture of statute and case law. The Constitution guarantees certain fundamental rights relating to employment, such as the rights to work, to strike and to equal treatment. The main statutes which relate to employment include the Termination of Employment Law of 1967, Social Insurance Law of 1980, Annual Paid Leave Law of 1967, Protection of Maternity Law of 1997, Minimum Salaries Law Cap 183, Equal Treatment at Work and Employment Law of 2004 and the Health and Safety at Work Law of 1996, as amended. Each is supplemented by relevant Regulations and Decrees. There is also a considerable amount of case law on all employment related laws.

### 2 Is there any legislation prohibiting discrimination or harassment in employment? If so, what categories are regulated under the legislation?

Discrimination in employment, including harassment, is illegal under a number of legislative measures, including Law 3 of 1968 Ratifying the Convention Relating to Discrimination (Occupation and Profession) of 1958, the Equal Treatment at Work and Employment Law of 2004, the Law on Equal Pay for the Same or Equal Work of 2002, the Part Time Employees (Prohibition of Discrimination) Law of 2002 and the Equal Treatment of Persons Regardless of Racial or Ethnic Origins Law of 2004. The grounds of discrimination regulated by these laws include religion or beliefs, age, sexual orientation, and racial or ethnic origin. Protected categories include all private and public sector employees.

### 3 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Processing of Personal Data (Protection of the Individual) Law of 2001 as amended (the 'Data Protection Law') protects employee privacy and personnel data. The Data Protection Commissioner has also issued an explanatory Directive for Processing Personal Data in Employment. Employers are considered 'controllers' and employees are 'data subjects' for the purposes of the Data Protection Law. Employers must ensure that data is processed in accordance with the law and for specific and legitimate purposes. The data must be relevant, appropriate and not excessive in relation to the purpose of processing. Employers are discharged from the general obligation to notify the Commissioner about the establishment and operation of a filing system, provided that the employees have been previously informed.

### 4 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Ministry of Labour and Social Insurance has the primary responsibility for the enforcement of employment statutes and regulations. The Ministry operates a number of branches, known as labour offices, in every district in order to best serve the public. The Ministry's Department of Labour Inspection is also responsible for the enforcement of a number of employment laws and regulations including those relating to health and safety at work.

Under the Industrial Relations Code, the Ministry also mediates in disputes under collective agreements between trade unions, employees and employers.

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## Worker representation

### 5 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

The European Works Councils Law of 2002 applies to Community-scale undertakings and Community-scale groups of undertakings satisfying all the following criteria:

- at least 1,000 employees within the EU member states;
- at least two group undertakings in different EU member states; and
- at least one group undertaking with at least 150 employees in one EU member state and at least one other group undertaking with at least 150 employees in another EU member state.

A European Works Council or a procedure for the purposes of consultation and information must be established in all groups of Community-scale undertakings, at the initiative of central management or at the request of at least 100 employees or their representatives, belonging to two undertakings or establishments which are in two different EU member states.

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## Background information on applicants

### 6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There are no specific restrictions or prohibitions against background checks on applicants. An employer will be allowed to carry out a background check on an applicant as long as this does not violate data protection laws and the rights of privacy and personal life. The safest way to do this is with the consent of an applicant. Exceptionally, assuming the employer is seeking to protect a legitimate interest, he may carry out a background check on an applicant without consent provided that such legitimate interest overrides the applicant's

rights, interests and fundamental freedoms. In any event, any information collected must be relevant, appropriate and not excessive in relation to the purpose for which it is obtained.

- 7** Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

There are no specific restrictions or prohibitions against requiring a medical examination as a condition of employment. However, medical information about a person is considered 'sensitive data' under data protection law. Consequently, submission of an applicant to a medical examination would require the applicant's wilful and explicit consent. Furthermore, any medical examination must be relevant, appropriate and not excessive in relation to the position applied for. An employer can generally refuse to hire an applicant on any grounds, including refusal to submit to a medical examination, provided the refusal is not based on any ground which may be considered discriminatory under the relevant legislation.

- 8** Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions or prohibitions against drug and alcohol testing of applicants. Similar considerations apply as for question 7.

#### Hiring of employees

- 9** Are there any legal requirements to give preference in hiring to particular people or groups of people?

There is a legal requirement to give preference in hiring to particular people or groups of people only in the case of an employer who has previously made employees redundant and wishes to increase his workforce of the same kind or specialisation within eight months from the date of the redundancies. In such case the employer must give priority to the employees who were made redundant, taking into account the needs of the business. In the public sector disabled individuals may also be given preference in relation to certain positions in which their ability to perform the task is not affected by their disability.

- 10** Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

There is no specific legal requirement that there must be a written employment contract but employers must provide employees with specific information about their terms of employment within one month, at the latest, from the commencement of employment in the form of a contract of employment, a letter of appointment or any other document, signed by the employer. Such information must include the parties' identities, the place of work, the position or specialisation of the employee, the commencement date and duration of employment, the annual leave entitlement, notice periods, all emoluments, the usual duration of daily or weekly employment and reference to any applicable collective agreements.

- 11** To what extent are fixed-term employment contracts permissible?

Employment contracts in Cyprus may be of a fixed term or of unlimited duration. However, a court may consider that under the circumstances a fixed-term contract is actually for an indefinite period. Case law of the Industrial Disputes Court advises that care must be taken as regards fixed-term contracts to avoid abusing the possibility of entering into such contracts as a way of depriving employees of their statutory rights (ie, by appointment from year to year on a series of such contracts). There are no restrictions as to the maximum term.

- 12** What is the maximum probationary period permitted by law?

The default statutory probation period is 26 weeks but it may be extended up to a maximum of 104 weeks by written agreement at the time of employment. Throughout the duration of the probationary period the statutory provisions relating to notice and protection from termination of employment do not apply and the employee may be dismissed for any reason and without notice, subject to any provisions in the contract of employment.

- 13** To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

It is a fundamental and basic principle of Cyprus employment law that the employee should offer his services to his employer in a trustworthy and faithful manner. Covenants not to compete, solicit or deal with customers for the duration of an employment relationship are therefore valid and may be implied even if they are not explicit. However, post-termination covenants of these kinds are considered restraint of trade clauses under Cyprus law, by which employees are restrained from exercising a lawful profession, trade, or business of any kind, and to that extent are void.

- 14** What are the primary factors that distinguish an independent contractor from an employee?

Cyprus law distinguishes a contract of service (employment) from a contract for services (independent contractor). This distinction is important for determining payment of taxes and social insurance contributions and statutory employment rights relevant to employees. To distinguish an independent contractor from an employee the courts will take into account all relevant factors of the relationship, such as the degree of integration into the business, the degree of control exercised by the employer and the economic realities of the relationship such as whether or not emoluments depend on performance and responsibility for payment of social insurance contributions and income tax.

#### Foreign workers

- 15** Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

The maximum period of stay for all third country nationals for the purposes of employment is four years, with only a few exceptions such as highly skilled personnel employed in companies with a significant turnover, athletes and other sportsmen. EU citizens are free to work in Cyprus provided they comply with a relatively simple registration procedure. As regards third country nationals, the Department of Labour is responsible for examining applications on the basis of the criteria and procedures agreed between the social partners (employers, employees and government) as approved by the Council of Ministers.

- 16** Are spouses of authorised workers entitled to work?

Members of family and dependants of citizens of EU member states who are not EU citizens themselves generally enjoy the same rights but in order to work they need a visa and a work permit. Spouses of third country nationals who are employed in Cyprus may also be able to work, subject to certain conditions.

**17** What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

EU nationals are free to work in Cyprus but third country nationals must obtain a residence and work permit. The terms and conditions of employment of all foreigners must be the same as those for Cypriot nationals and this is ensured by the use of model employment contracts provided by the Ministry of Labour and Social Insurance. The employment of foreign nationals without a work permit is a criminal offence, punishable with imprisonment for up to three years, a fine of up to €8,543 or both. The employee may also be deported and the employer may be prohibited from employing foreign nationals for any period of time as may be decided by the court.

**18** Is a labour market test required as a pre-cursor to a short or long-term visa?

The main criterion for the employment of third country nationals in Cyprus is the inability of an employer to satisfy the requirements of his business with local or EU citizen workers. The employer notifies the vacancy to the District Labour Office and attempts are made for a period of six weeks to find suitable local or EU citizens. The vacancy is also published in the national daily press and if there is no suitable local or EU citizen the employer can submit a relevant application. The agriculture and animal husbandry sectors are excluded from this procedure.

#### Terms of employment

**19** Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Generally, the number of working hours should not exceed 48 per week, including overtime. However, in certain sectors (such as the hotel industry) different limitations may apply. Employees are generally entitled to a minimum of 11 continuous hours of rest per day, 24 continuous hours of rest per week and either two rest periods of 24 continuous hours each or a minimum of 48 continuous hours within every 14 day period.

Employees may opt out of the above rules as long as they freely consent. Managerial members of staff are also exempt from the statutory restrictions on working hours.

Night workers should not, on average, exceed eight working hours per day, within a period of one month or within any other period specified in a contract. Night workers whose work is hazardous or physically or mentally demanding should not exceed eight hours of night work.

**20** What categories of workers are entitled to overtime pay and how is it calculated?

Overtime pay is generally not regulated by law in Cyprus and is usually a matter of agreement between employer and employees. However, in certain industries in which working time is regulated by specific legislation and regulations, overtime payment may also be regulated accordingly. For example, employees in the hotel industry are entitled by law to receive overtime pay for work performed outside the prescribed daily working hours and on weekends and public holidays, at a rate of one and a half times the normal pay. Collective agreements may also regulate overtime pay.

**21** Is there any legislation establishing the right to annual vacation and holidays?

Statutory minimum holiday entitlement per year is 20 working days for employees working a five-day week and 24 working days for employees working a six-day week, provided that the employee has worked for 48 weeks within the year. The holiday entitlements are reduced proportionately for part-years. An employee is not entitled to paid annual leave if he has worked for less than 13 weeks in the year. It is possible for employers and employees to agree to more days and more generous terms provided that the employer obtains an exemption from the obligation to pay contributions to the relevant statutory holiday fund and undertakes the payment of annual leave himself.

Where payments are made from the statutory holiday fund the employee must have taken an uninterrupted period of at least nine days' leave during the year.

**22** Is there any legislation establishing the right to sick leave or sick pay?

Statutory sick pay is paid by the Social Insurance Department for any period of three days or longer in which an employee is unable to work. The weekly entitlement is 60 per cent of the weekly average of basic insurable earnings within the previous year and is increased by one third for the employee's first dependant (including a spouse, whether or not in employment) and one-sixth for each child or other dependant.

The maximum number of days for which sick pay is payable is 156 days in relation to every period of interrupted employment. This can be extended for a further period of 156 days during the same period of interrupted employment, provided that the insured is eligible to receive incapacity pension but is not expected to remain permanently incapacitated from working.

**23** In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Apart from paid annual leave and sick leave, employees may also take maternity leave up to 18 continuous weeks. Nine of the weeks must be taken within the period beginning on the second week before the week of expected childbirth. Female employees who adopt a child under the age of 12 years are entitled to 16 continuous weeks starting immediately from the date on which care of the child begins.

In addition to maternity leave, for nine months after childbirth a female employee is entitled each day to interrupt her employment for one hour or start work one hour later or finish work one hour earlier for the purposes of breastfeeding or for the increased needs of child raising. In accordance with the law such time must be considered and paid as normal working time.

Employees of either gender who have completed six months or more of continuous employment with the same employer can claim unpaid parental leave for up to 13 weeks in total on the grounds of childbirth or adoption, at a minimum of one week and a maximum of four weeks per year.

Employees are entitled to unpaid leave of seven days per year for reasons connected to illness or accident of family members or dependants.

Employers must pay employees in relation to any period of absence from work due to military service.

**24** What employee benefits are prescribed by law?

Apart from any contractual benefits and payments for redundancy or annual leave, the social insurance scheme provides a wide range of benefits including old age pension, invalidity pension, widow-

hood pension, social pension, marriage allowance, labour allowance, funeral allowance, sickness benefit, unemployment benefit, maternity benefit, orphan's benefit, missing persons benefit, labour work related accident and sickness benefit and other specific benefits such as housing benefits and benefits in relation to certain disabilities.

**25** Are there any special rules relating to part-time or fixed-term employees?

The principle of proportionality must be followed for part-time employees, according to which a part time employee is entitled to receive the same salary and benefits as a comparable full time employee, in proportion to the number of weekly working hours.

For the purposes of the law a comparable full time employee is one who works in the same business as the part time employee, has the same form of contract or employment relationship as the part time employee and performs the same or similar duties as the part time employee taking into account factors such as seniority, qualifications and specialisation.

### Liability for acts of employees

**26** In which circumstances may an employer be held liable for the acts or conduct of its employees?

Under civil law, an employer is vicariously liable for any damage caused to other employees or third parties by any negligent acts or omissions of the employee, committed during the course of employment and the performance of his duties.

### Taxation of employees

**27** What employment-related taxes are prescribed by law?

The main employment related taxes prescribed by law are income tax and social insurance. Employers are also required to make contributions to a number of statutory funds including the statutory annual leave fund (unless they have contracted out), the redundancy fund, the industrial training fund and the social cohesion fund. Some professional associations also require the payment of mandatory contributions by their member employees.

### Employee-created IP

**28** Is there any legislation addressing the parties' rights with respect to employee inventions?

Under the Patents Law, when an invention has been ordered or is invented in the course of a contract of employment the intellectual property rights to the patent belong to the person who gave the order or the employer as the case may be, subject to any contractual arrangements to the contrary. The inventor employee nevertheless has the right to a fair remuneration, taking into account the value of the invention and the benefit accruing to the employer. In the event of disagreement as to what constitutes fair remuneration, this will be determined by the court.

### Business transfers

**29** Is there any legislation to protect employees in the event of a business transfer?

In the event of a business transfer there is an automatic assignment from the transferor of the business to the transferee of all rights and obligations of the transferor deriving from contracts of employment or from employment relationships which exist at the date of the transfer of the business. The transfer of a business, an installation or part

of business, cannot itself be a reason for dismissal for the transferor or the transferee. This, however, does not prevent dismissals due to economic, technical or organisational reasons. This applies to public and private businesses carrying out economic activities. A transfer of shares alone is not considered a business transfer for the purposes of the law since the identity of the employer does not change.

### Termination of employment

**30** May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Dismissals which cannot be justified under any one or more of the grounds below are considered unlawful and give rise to a right for compensation:

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

**31** Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

The statutory minimum notice to be given by the employer to the employee and vice versa varies according to the employee's period of continuous employment. The notice period can be effectively extended by agreement but cannot in any event be less than the statutory minimum. The employer has the right to require the employee to accept payment instead of notice which should cover his salary entitlement, pro rata, for the period of the notice.

**32** In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Dismissal without notice or payment in lieu is a drastic measure and may be justified only on the basis of the employee's conduct at work. Such dismissal is lawful only when the employee has displayed conduct making it clear that the relationship between employer and employee cannot reasonably be expected to continue under the circumstances, committed a serious disciplinary or criminal offence, displayed indecent behaviour or repeatedly violated or ignored employment rules. Examples may include outbursts of violence, use of vulgar language, theft or disregard of safety rules.

**33** Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Redundancy payments are calculated according to length of service as follows:

- two weeks' wages for each year of service up to four years;
- two-and-a-half weeks' wages for each year of service from five to 10 years;
- three weeks' wages for each year of service from 11 to 15 years;
- three-and-a-half weeks' wages for each year of service from 16 to 20 years; and
- four weeks' wages for each year of service beyond 20 years.

**Update and trends**

In accordance with recent amendments introduced in the Social Insurance Law, contributions will be gradually increased every five years until 1 January 2039. The increase will be borne inclusively by employees, employers and the state. In this way the contributions, which currently stand at 16.6 per cent will gradually reach 25.7 per cent by 2039. Contributions are levied up to an upper earnings limit, which is currently €4,004 per month or €48,048 per year, and which is reviewed annually.

Furthermore, as regards payment of social insurance by foreign employees working in Cyprus, according to a Decision of the Ministerial Committee dated 23 December 2008, holders of an immigration permit, holders of a long term residence permit, managers with an annual salary in excess of €41,000 per year and executive staff with an annual salary in excess of €20,500 per year are required to contribute to the Social Insurance Fund from the first day of their employment. Staff earning less than €20,500 per year are exempted during the course of the validity of their first residence and working permit.

The upper limit for redundancy compensation is 75-and-a-half weeks' wages.

Statutory compensation for unlawful dismissal is payable by the employer pro-rata for the period of continuous employment, calculated in the same way as for redundancy. Depending on the circumstances the employee may also claim general damages for breach of contract or loss of career prospects. In the event of redundancy the payments are made from the government redundancy fund.

**34** Are there any procedural requirements for dismissing an employee?

As a general rule, dismissal should be a last resort for the employer. Depending on the circumstances, before dismissing an employee the employer should have brought to his attention any complaints against him in relation to his efficiency or conduct, have warned him and given him the chance to improve. Warnings should be given in writing wherever possible and performance should subsequently be monitored and noted so that the employer can determine whether improvement has taken place. The facts of each case must be taken into consideration when determining whether a particular course or incident of misconduct would justify dismissal with or without notice.

Employers must notify the Ministry of Labour of proposed col-

lective dismissals (see question 36 below) but there is no requirement for government approval of any dismissals.

**35** In what circumstances are employees protected from dismissal?

Employees are generally protected from dismissal for any reason which does not justify dismissal under the law. However, such protection is not always effective in the sense that the only remedy which can effectively be ordered by a court for unlawful dismissal is statutory and contractual compensation, which is often insufficient. The remedy of reinstatement is theoretically available but due to the nature of an employment relationship it is very rarely ordered by Cyprus courts. Employees are also protected from dismissal for participating in trade union related activities and it is a criminal offence to dismiss a pregnant employee from the time of being presented with a doctor's certificate of pregnancy up to three months after the end of maternity leave.

**36** Are there special rules for mass terminations or collective dismissals?

Collective dismissals under Cyprus law are dismissals for one or more reasons not related to the employees, and where the number of the employees dismissed within a 30 day period is:

- at least 10, where usually more than 20 but less than 100 employees are employed;
- at least 10 per cent of the employees, where usually at least 100 but less than 300 employees are employed; and
- at least 30, where usually a minimum of 300 employees are employed.

Employers who intend to carry out collective dismissals must consult with the representatives of the employees in good time, with a view to reaching agreement.

They must also give notice to the Minister of Labour and Social Insurance of any proposed redundancy dismissal at least one month before the intended date of termination. Notice must be given on a standard form and include the following particulars:

- the number of employees likely to be made redundant;
- the affected branch or branches of the business;
- the occupations and, where possible, the names and family obligations of the employees concerned; and
- the reasons for redundancy.

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**Dispute resolution****37** May the parties agree to private arbitration of employment disputes?

The Labour Disputes Court has primary jurisdiction to hear and decide any disputes arising in the application of the law relating to the termination of employment. However, a person has the right to apply to a district court in relation to a dispute concerning employment where his claim is greater than the maximum amount which may be ordered by the Labour Disputes Court (two years' salary). Recourse to one court excludes the jurisdiction of the other. The parties therefore cannot agree to arbitration of all employment disputes. Under the Industrial Relations Code and certain collective agreements mediation may be possible but the parties' rights to apply to court are reserved.

**38** May an employee agree to waive statutory and contractual rights to potential employment claims?

Generally an agreement by which a party agrees to forfeit statutory rights (such as the right to compensation for unlawful dismissal) is

not enforceable. However, the labour courts have recognised that in accordance with general contract law a contract of employment may be terminated by mutual agreement between both parties. This is based on the general contract principle that a contract may be effectively discharged by mutual agreement (provided there is 'accord and satisfaction') between the parties. Therefore, a termination agreement would be binding provided that the employee is offered more than he is already entitled to receive.

**39** What are the limitation periods for bringing employment claims?

The limitation period from bringing employment claims before the Labour Disputes Court is 12 months from the date when the dispute arose. There is currently no limitation period in force as regards claims brought before the district courts.



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