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The International Comparative Legal Guide to:

Employment & Labour Law 2012

A practical cross-border insight into employment and labour law

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Albania

Shirli Gorenca



Aigest Milo



KALO & ASSOCIATES

1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main sources of employment law are: the Constitution of the Republic of Albania; Law no.7961 dated July 12, 1995 “Labour Code of the Republic of Albania” (amended); Law no.7703 dated May 11, 1993 “On Social Security” (amended); Law no.7870 dated October 13, 1994 “On Health Insurance” (amended); Law no.7995 dated September 20, 1995 “On promotion of employment” (amended); Law no.9634 dated October 30, 2006 “On Labour inspection State Labour Inspectorate”; Law no.8549, dated November 11, 1999 “On the status of the civil servants”; Law no.9959, dated July 17, 2009 “On foreigners”; Law no.8829 dated November 5, 2001 “On ratification of ILO Convention no.183 on Maternity Protection, 2000”; Law no.8856 dated July 2, 2002 “On ratification of ILO convention no.154 on Collective Bargaining”; and Law no.8775 dated April 4, 2001 “On ratification of ILO convention no.131 Minimum Wage”.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The Labour Code (‘LC’) protects all workers, unless their employment is not regulated by any special law.

The LC provides for the following types of engagement: part-time employment agreement; home-based work agreement; commercial agent agreement; and agreement for acquiring a specific profession. The parties entering into such engagements are also subject to the provisions of the Albanian LC.

The employment of civil servants is regulated by a special law, the Law no.8549, dated November 11, 1999 “On the status of the civil servants”.

In addition, a service agreement is another type of engagement frequently used in practice in Albania. However, this type of agreement can only be entered into with physical person(s) registered for commercial purposes. The service agreement is a *sui generis* agreement, and such agreement is regulated by the provisions of the Albanian Civil Code and not by the LC.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Employment contracts may be agreed orally or in writing. In the event that the employment contract is agreed orally, the employer is

obliged to produce a written employment contract within 30 (thirty) days from the date of the oral agreement, bearing the signature of the employer and that of the employee and containing all mandatory legal elements as provided in the LC. Failure to issue the employment contract in written form will not affect the validity of the agreed contract, but the employer will be subject to a fine.

1.4 Are any terms implied into contracts of employment?

Some terms are implied into employment contracts e.g. payment of social insurance and health contribution and of the corresponding withholding of tax on personal incomes generated from employment, the right to the minimum notice period, non-discrimination, duty of the employer and employee for confidence and trust (i.e. good faith), the right of the employee to not work during public holidays (in the case that the employee works during such public holidays, the employee should be paid as defined in the LC), the employees’ duty to obey to any reasonable instructions given by the employer, etc.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

The employer should respect the minimum employment age. According to article 98 of the Albanian LC, the employment of a minor person under 16 (sixteen) years old is prohibited. Furthermore, the employer ought to respect the minimum monthly salary to be paid to all employees which according to the Council of Minister Decision no.566, dated July 14, 2010 “On defining the national minimum salary” is 20,000 ALL (200 USD) and to declare the employees periodically at the Labour and Tax Office.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Collective bargaining can negotiate all employment terms and conditions, providing that these provisions are not less favorable for the employees than the provisions defined in the existing laws and secondary legislation. Usually, collective bargaining takes place between the employer and one or more trade unions of the company (i.e. employer).

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Collective bargaining can negotiate all employment terms and conditions, providing that these provisions are not less favorable for the employees than the provisions defined in the existing laws and secondary legislation. Usually, collective bargaining takes place between the employer and one or more trade unions of the company (i.e. employer).

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

A trade union must have a minimum of 20 (twenty) people and is formed as an organisation/body with legal status gained through the registration as such with the Court of Tirana.

2.2 What rights do trade unions have?

A trade union can negotiate with employers on the pay and conditions of work. Each legally founded trade union may also make a collective bargaining request to its employer or employer organisation, in order to commence negotiations in relation to a collective labour contract at either enterprise, group of enterprises, or sector level. Furthermore, the Trade Unions are entitled to exercise the right of strike for the purpose of solving their economic and social requests in compliance with the rules as defined by the LC.

2.3 Are there any rules governing a trade union's right to take industrial action?

Yes. There are specific rules defined in the LC that govern the trade unions' right to take industrial actions, such as strike. According to the provisions of the LC, the strike shall be lawful if it is organised by a Trade Union and, it aims to reach the signing of a collective agreement, the Trade Union and the employer have made efforts to come to an agreement and the strike is in compliance with the legislation in force.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

The employers are obliged to establish a Council of Safety and Health at Work. The mission of the Council is to contribute to the protection of the health and security of employees as well as to improve the work conditions for the employees. The number of persons representing the employees in such Council depends on the number of employees working with the employer and on the level of risk of the specific work. The number of employees and employers' representatives in the Council shall consist of not less than:

- 3 representatives of the employees and 3 representatives of the employer, if the number of employees varies from 51 up to 250.
- 4 representatives of the employees and 4 representatives of the employer, if the number of employees varies from 251 up to 500.
- 6 representatives of the employees and 6 representatives of the employer, if the number of employees varies from 501 up to 1,500.
- 9 representatives of the employees and 9 representatives of the employer, if the number of employees is over 1,500.

In case of less than 50 employees, entities elect a representative of the employees in a council established at professional level and the employer elects its representative in such Council.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

The employer, in collaboration with the Labour State Inspectorate, is obliged to apply the proposals of the Council of Safety and Health at Work.

2.6 How do the rights of trade unions and works councils interact?

This is not applicable.

2.7 Are employees entitled to representation at board level?

Article 21 of the Company Law no.9901, dated April 14, 2008 expressly provides on the participation of employees at board level and only in joint stock companies. According to this legal provision, the legal representative of the company (i.e. employer) and the Employees Council (EC) may agree that EC may nominate persons to represent the employees at board level.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

The discrimination of employees is prohibited under the Constitution of the Republic of Albania, conventions ratified by Albania and the Albanian legislation. The LC, Law no.9773, dated July 12, 2007 "On ratification of the ILO convention, 1958 On Discrimination (Employment and Occupation)" and article 1 of Law no.10221 dated February 4, 2010 "On Protection from Discrimination" provide that the persons cannot be discriminated because of: gender; race; colour; sexual orientation; disability; ethnic background; nationality; religion or belief; age; educational or social origin; family relation; pregnancy and maternity leave; economic condition; residence; or belonging to a particular group.

3.2 What types of discrimination are unlawful and in what circumstances?

Any differentiation, exclusion or preference based on race, colour of skin, sex, age, religion, political beliefs, nationality, pregnancy and maternity leave, social origin, family relation, physical or mental disability, that violates the right of an individual equal in employment and treatment, is considered unlawful. Please note that differentiation, exclusion or preferences required by a specific job position are not considered as discrimination. Furthermore, according to article 115 of the LC, the employer shall give the same salary to employees carrying out the same jobs. In the case that the employer pays to the employee a different salary for the same job, this shall be considered as discrimination.

3.3 Are there any defences to a discrimination claim?

Employers may defend against discrimination claims by proving to the tribunals that they had reasonable cause or a legitimate non-discriminatory cause for dismissing or taking other actions against the employee(s).

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

The employees can enforce their non-discrimination right(s) by referring any discrimination matter to a competent tribunal. The employer may settle claims before or after they are initiated.

3.5 What remedies are available to employees in successful discrimination claims?

In the case that the employment contract is terminated because of discrimination, the employer should pay to the employee a damage compensation of 12 (twelve) monthly salaries. Other remedies also may include payment of expert witness fees, and court cost and expenses, etc.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

No. "Atypical" workers enjoy the same protection as the "typical" workers.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

The existing Law "On social security" provides that a pregnant woman is entitled to a paid maternity leave of 365 calendar days, including a minimum of 35 (thirty five) days prior to childbirth and 42 (forty two) days after childbirth.

In the event of the birth of more than one child, the duration of this period is extended to 390 days.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

The employer cannot terminate the employment contract in the period during which the woman benefits from income from the Social Insurance Institute due to child birth or child adoption. When the termination of the employment contract is announced before the "protection period" (as defined in question 4.1), and the notice period has not expired, this notice period shall be suspended during the protection period. The deadline for the notice of termination continues only after the "protection period" has expired.

During the maternity leave, the woman shall receive payment from the Social Security Institute ('SII') amounting to: 80 per cent of the average daily salary over the last calendar year, applicable for the first 150 days of the maternity leave; and 50 per cent of the average daily salary for the last calendar year, applicable for the remaining days of maternity leave. Maternity leave is paid by the SII and not by the employer.

4.3 What rights does a woman have upon her return to work from maternity leave?

The employer cannot terminate the employment contract, because of child birth, when the female employee is back at work from maternity leave.

4.4 Do fathers have the right to take paternity leave?

According to the Council of Minister Decision No.511 dated October 24, 2001 "On working hours and leave in Public Administration", as amended, the male employees working in public administration have 3 (three) days leave as paternity leave. The Albanian LC does not provide for any paternity leave and does not have any other provision related to paternity leave.

4.5 Are there any other parental leave rights that employers have to observe?

The employee is entitled to other periods of paid leave in specified circumstances:

- i. in the event of the death of a spouse, direct predecessors or descendants: 10 days;
- ii. in the event of serious illness of direct predecessors or descendants, as evidenced by a medical report: 10 days;
- iii. in the event of indispensable care for dependent children: 12 days per year; and
- iv. in the event of illness, as evidenced by a medical report, of a child less than 3 years: 15 days.

Furthermore, the employee is entitled to an additional 30 (thirty) days leave without pay in case of indispensable care for dependent children.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependents?

Breastfeeding mothers cannot be obliged to begin their work day before 5am in summer time or 6am in winter time and to terminate the working day after 8pm. Breastfeeding mothers are entitled to a paid break not less than 20 (twenty) minutes every 3 (three) hours, in the case that this is justified by their condition(s).

LC does not have other related mandatory provisions. However, the employer and the employee can agree on other work flexible arrangements.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

In the event of transferring an enterprise or part of it, all rights and obligations arising from a contract of employment valid until the moment of transfer, will pass on to the person that due to such transfer will inherit the rights and obligations of the employer. Any employee refusing to change employer in this event remains bound by the employment contract until the expiration of the termination notice.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

In a business sale, all rights and obligations, powers, and liabilities under the employee's employment contract are transferred to the transferee. Liabilities arising before the transfer such as unpaid wages, etc, are excluded from the applicability of the general rule; such liabilities remain with the transferor (i.e. the employer).

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Article 139 of the LC provides for an information and consultation procedure in the event of a transfer of enterprise. The transferor and the transferee are obliged to inform the trade union of its role in the capacity of the representative of employees, or, in the absence of a trade union, the employees are informed and explained on the reason for the transfer, its legal, economic and social effects on the employees, and the measures to be undertaken in respect thereof. Moreover, they are obliged to engage in consultations regarding the necessary measures to be taken at least 30 (thirty) days prior to the completion of the transfer. In the event that an employer terminates the contract without following the above-mentioned procedures of information and consultation, each employee(s) is entitled to compensation equal to six months' salary in addition to the salary he/she would have received during the prior notice period.

An employer failing to comply with the above mentioned procedures may be punished with a fine in the amount of 30 (thirty) times of the minimal monthly salary.

5.4 Can employees be dismissed in connection with a business sale?

An employee cannot be dismissed because of a business sale. Exceptions to this rule are when the dismissals are due to economic, technical or organisational reasons that impose changes to the organisational structure of the company.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

The Albanian legislation does not have any expressive restriction on such issue.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

The employer is obliged to give notice for the termination of the employment relationship. The notice period for the termination of the employment contract is defined in the individual employment contract. In the event that the parties have not defined the notice term in the employment contract, reference shall be made to the provisions of the LC. According to the LC, the notice period for termination within the 3 (three) month probationary period is at least 5 (five) days, which may be changed by the written agreement of both parties.

The LC provides for mandatory minimum notice periods to be applied in the case of termination of an indefinite (open) term employment contract by either the employer or the employee, as follows:

- i. during the first 6 (six) months: two weeks;
- ii. between 6 (six) months and 1 (one) year: one month;
- iii. between 1 (one) and 5 (five) years of employment: two months; and
- iv. for more than 5 (five) years of employment: three months.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

The employee is obliged to serve during the notice period. However, insofar as the employee still remains on the payroll (i.e. he/she receives the salary), it is at the discretion of the employer to decide whether the employee shall work or shall stay away from work during the notice period.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The general rules on protection against dismissal are defined in the LC. However, restrictions on dismissal may be imposed by collective agreement and by individual employment contract. The employee is treated as being dismissed if the employer terminates the employment contract with notice or without notice, when the employer offers to the employee a choice to resign or to be dismissed, and when the employer refuses to engage the employee in work for any reason that is not related to the employee and the employer does not pay the salary to the employee during this period.

The consent of any third party is not required.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The employer may not terminate the employment contract when, according to the existing legislation, the employee is completing his/her military service, benefits payment for temporary disability to work from the employer or from SII for a period not longer than 1 (one) year, as well as in the case the employee is on vacation given to him/her by the employer.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

According to the LC a termination of the employment contract by the employer is considered without cause (i.e. the employer cannot dismiss the employee for these causes) when it is based on the fact:

- a) the employee had genuine complaints arising from the employment contract;
- b) the employee had satisfied a legal obligation (e.g. give evidence in court);
- c) the employee's particulars only (such particulars being race, colour, sex, age, civil status, family obligations, pregnancy, religious or political beliefs, nationality, social status);
- d) that the employee had to exercise constitutional rights; and
- e) the employee participates in lawful labour organisations and their activities.

Thus, the employer may terminate the employment contract for any other cause which is not mentioned above.

The Albanian LC provides for dismissal compensation as described below:

If the employer terminates the employment contracts for cause, the employer has to pay to the employee:

- a) Salary for the notice term.

- b) A seniority bonus if the employee has worked for more than 3 (three) years, such seniority bonus ought to be at least that much as the salary of 15 days of work for each complete working year, calculated on the basis of the salary existing at the termination of the labour relations.
- c) Salary corresponding to days of annual leave not give/taken.
- d) The employee is entitled to 2 (two) monthly salaries, if the employer has failed to observe the procedure for the termination.

In the case that the Court shall decide that the employment contract is terminated without cause, it may order the employer to pay, in addition to the above payments, a damage compensation that according to the law can go up to 12 (twelve) monthly salaries.

In the case of immediate termination for serious breach of the employment contract, the employer is obliged to pay to the employee only an amount equal to the salary corresponding to annual leave vacations which are not been taken/given.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

There are procedures which must be followed when the employer decides to terminate an employment contract, both in the case of immediate termination for cause or with prior notice period. If such termination takes place after the probationary period, the employer must convene a meeting with the employee, to discuss the reasons giving at least 72 hours' prior written notice. The notice of termination of employment may be given to the employee from 48 hours to one week following the date of the meeting. Should the employer fail to follow this procedure, the employer shall be obliged to pay the employee a compensation equal to two monthly salaries, and other possible compensation. This procedural requirement does not apply to collective dismissals for which there is a separate special procedure.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

If the contract is terminated by the employer without cause, the employee has the right to sue the employer at the court within 180 days starting from the day on which the notice deadline has expired. Furthermore, the employee has the right to sue the employer for termination without respecting the termination procedure and the notice deadline, or for the failure to pay the payments due to the employee in the case of termination. Remedies for successful claims include: salary for the notice term; the seniority bonus; the payment equal to the salary corresponding not given/taken of annual leave; two monthly salaries, if the employer has failed to observe the procedure for the termination; a damage compensation for termination without cause up to 12 (twelve) monthly salaries; and payment of expert witness fees and court cost and expenses.

6.8 Can employers settle claims before or after they are initiated?

Yes, the employer(s) can settle claims before or after they are initiated.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

Yes. In the case that the employer dismisses a number of employees

at the same time it may be considered as collective dismissal. Collective dismissal is defined as the termination of labour relations by the employer for reasons unrelated to the employee(s), where the number of dismissals in a 90-day period is at least:

- i. 10 for enterprises employing up to 100 employees;
- ii. 15 for enterprises employing 100-200 employees;
- iii. 20 for enterprises employing 200-300 employees; and
- iv. 30 for enterprises employing more than 300 employees.

Article 148 of the LC defines specific procedures which need to be followed when an employer plans to execute collective dismissals. The employer shall inform in writing the employees' trade union. In the absence of a trade union, the employees shall themselves be informed by way of a notice placed visibly in the workplace. The notice shall contain: the reason(s) for dismissal; the number of the employees to be dismissed; the number of employees employed; and the period of time during which it is planned to execute the dismissals.

One copy of this notice must also be submitted to the Ministry of Labour and Social Affairs.

In order to attempt to reach an agreement, the employer shall then undertake the consultation procedure with the employees' trade union within 20 days of the date on which the notice was displayed. In the absence of a trade union, all interested employees are entitled to participate in the consultations. If the parties fail to reach an agreement, the Ministry of Labour and Social Affairs shall assist them in reaching an agreement within 20 days of the date on which the employer informed the Ministry in writing, on the aims of completing the consultation procedure. After the termination of the 20-day deadline, the employer can then inform the employees of their dismissal and begin the termination of employment contracts providing the following notice periods:

- i. for up to one year of employment: one month;
- ii. for two to up to five years of employment: two months; and
- iii. for more than five years of employment: three months.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Employees can enforce their rights by suing the employer to the competent tribunal. Non-compliance with the procedure defined in our response above shall result in the receipt by the employees of a compensation of up to six months' salary in addition to the salary payable for the notice period or to additional compensation awarded due to non-compliance with the provision of the specified notice periods.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

In addition to the provision which provides that during the employment period the employees are not permitted to work for third parties if such other employment would harm the employer or create competition for the employer, there are provisions to prevent the employee from working for a competitor after the termination of the employment agreement.

7.2 When are restrictive covenants enforceable and for what period?

According to the LC, non-competition clauses taking effect after termination can be enforced subject to the following conditions:

- a) they are provided in writing at the beginning of the employment relationship;
- b) the employee is privy to professional secrets in respect of the employer's business or activity during the course of employment; and
- c) the abuse of such privilege shall cause significant damage to the employer.

The prohibition for the competition period may not be longer than one year.

7.3 Do employees have to be provided with financial compensation in return for covenants?

According to article 28 of the Albanian LC, an agreement on non-competition after termination is subject to remuneration for the employee, such remuneration at the amount of 75 per cent of the salary he/she would have received if he/she were still working with the employer.

7.4 How are restrictive covenants enforced?

The restrictive covenants are enforced by signing up to restrictive covenants as a separate agreement or as a part of the employment contract.

8 Court Practice and Procedure

8.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Lawsuits against the persons living inside the territory of Albania are filed at the court of the defendant's place of residence. A lawsuit may be filed even in the Court of the Country where the employee usually carries out his/her job. When the employee does not carry out his/her job in the same country, a lawsuit may be started in the country where the seat of the employer is located. Albanian Courts hear individual labour disputes with one judge.

8.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed?

There is no mandatory conciliation procedure prior to a complaint being submitted to the Albanian court. However, after the lawsuit is submitted to the competent court, the provisions of the Albanian Civil Procedures Code apply for the employment related complaints in the same manner and at the same extent as with other civil disputes. For such civil disputes, a conciliation mandatory hearing is held by the court before such court proceeds further with the lawsuit.

8.3 How long do employment-related complaints typically take to be decided?

The Court decision for employment-related complaints may take from 6 (six) months up to 1 (one) year.

8.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Yes, it is possible to appeal against a first instance decision and before the relevant Court of Appeals and then to the Supreme Court; in practice, the appeal process may only take 1 (one) year.

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The Employment team advises on all aspects of Labour Law and Residency issues having represented many domestic and international clients on matters ranging from the drafting of employment contracts, negotiating settlements, advising on restructuring and reorganisation, employee shares scheme, social security and related tax issues and more.

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